



The Human Rights Act – Changing Lives

Second Edition

BiHR
bringing rights to life

About BIHR

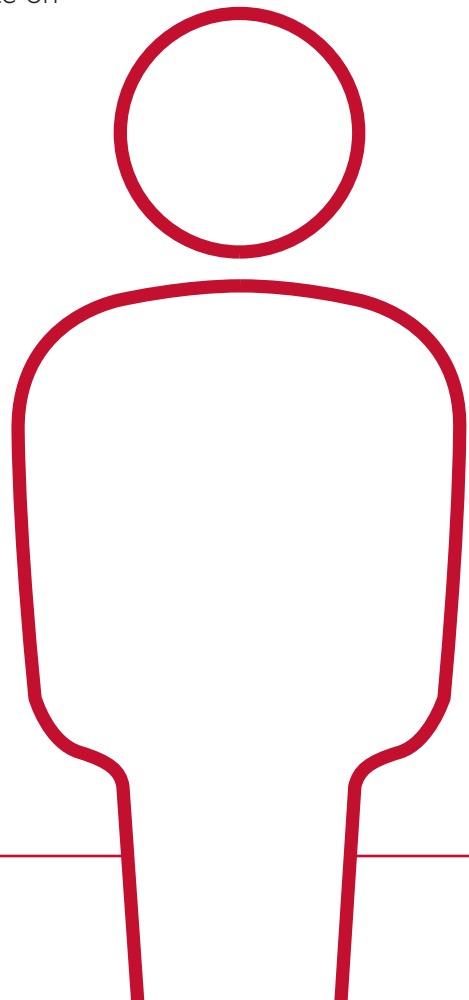
BIHR is a human rights organisation that is committed to challenging inequality and injustice in everyday life in the UK. We aim to achieve this by bringing human rights to life – supporting people to use human rights principles and standards to improve their own lives and as a tool for organisations to develop more effective public policy and practice.

What we do:

- Provide a range of information and other resources (including briefings and toolkits)
- Develop and deliver consultancy and training for the third and public sectors on both practice and policy
- Lead and/or collaborate on demonstration and pilot projects across the third and public sectors
- Undertake policy analysis and research
- Lobby national government and Parliament, do media work and occasional strategic legal interventions
- Organise a range of events that stimulate debate on topical human rights issues

For information about our current work please visit our website at www.bihar.org.uk

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Foreword

When BIHR published the first issue of *Changing Lives*, we did not anticipate how important it would become in providing practical examples of how ordinary people have improved their lives through the Human Rights Act.

Marking the 10th anniversary of the Human Rights Act, this new edition of *Changing Lives* demonstrates the range of safeguards provided by the Human Rights Act, and the real difference human rights make to people's lives.

Changing Lives underlines some principal reasons for the existence of the Human Rights Act: to strengthen the ability of every person to secure the best possible standard of service by public authorities and the right to be treated with respect, dignity and fairness. The courts are a last resort. The Government's stated purpose in introducing the Human Rights Act was to promote a culture of respect for human rights – making human rights a feature of everyday life.

We know that many public authorities are embracing human rights standards and principles and endeavouring to ensure their services deliver respect, autonomy, fairness, equality and dignity. We also know there is still a long way to go, and many people, particularly the most vulnerable, remain in need of the protections afforded by the Human Rights Act.

We hope these stories inspire you to strive for improvements in public services, practice and policy. They show that the Human Rights Act is for everyone, providing the means to free all of us from injustice and allowing us to live to our full potential.

It is 60 years since the Universal Declaration of Human Rights was adopted, recognising the dignity and equal rights of every person. We can be proud of the part played by the UK in developing the international framework for the protection of human rights that followed. In *Changing Lives* we celebrate the Human Rights Act and its value in 'bringing human rights home.'

Sir Geoffrey Bindman
Chair

Contents

Summary	5
Case studies	6 – 23
Key learning and conclusions	24 – 26
Glossary	27
Rights protected by the Human Rights Act	28



Summary

'Human rights are so powerful – staff do take their jobs seriously and are trying to do what's right.'¹

The first edition of Changing Lives documented, for the first time, the positive changes the Human Rights Act is making to individuals' lives. This report adds 16 new case studies alongside the original 15 published in 2006. It highlights the evolving use of the Human Rights Act as it begins to bed down and as human rights become integrated into the culture of our society.

The case studies in this new edition of Changing Lives continue to illustrate the added value of the Human Rights Act, its ideas and language. They demonstrate that ordinary people going about their day-to-day lives are benefiting *from* the law, without resorting to the law. For example, the report highlights the case of a woman who protected her children from an abusive father by taking them out of the family home. The local authorities moved them from one temporary accommodation to another, until declaring that the children would be taken from her, because she was not providing a stable home. By invoking her children's right to respect for family and private life, and to education, she successfully kept her family together. Moreover, they were provided with more appropriate accommodation within three weeks. This is just one of a number of new case studies that expressly use the Human Rights Act as a framework for protecting and balancing everyone's human rights, delivering meaningful and significant outcomes for people in their everyday lives.

Too often the Human Rights Act is associated with technical legal arguments or perceived to be limited to high profile – and sometimes spurious – claims by celebrities and criminals. These case studies reveal a very different picture. They show how groups and people themselves are using not only human rights law, but also the language and ideas of human rights to challenge poor treatment and negotiate improvements to services provided by public bodies. Giving people the power to use human rights as a check against the state in this way is precisely what was envisaged when Parliament passed the Human Rights Act in 1998.

The case studies cover a wide range of people in a variety of situations. They show how human rights can be used by and on behalf of younger people, older people, victims of domestic violence, parents, disabled people, people living with mental health problems, asylum seekers, and others facing discrimination, disadvantage and exclusion.

We have placed the case studies into a range of working categories such as 'protecting human dignity' and 'promoting participation', which are intended to provide a quick and easy reference point for finding the case studies. Each category also provides background information. To encourage continued use of the Human Rights Act, including in other areas where it may be underused at present, we have supplemented the case studies with a range of other real examples illustrating situations in which similar human rights arguments could have been made.

The case studies are not legal cases, and they should not be treated as legal precedents. However we do hope they will inspire further practical use of human rights by individuals and organisations across the country. The final sections of this edition of Changing Lives set out key learning points drawn from the case studies, namely:

- **The language and ideas of human rights have a dynamic life beyond the courtroom**
- **Human rights have a wide application, addressing people's lived and varied experiences in a range of circumstances**
- **Human rights offer a vision of equality which can protect people from ill-treatment by 'plugging gaps' in our anti-discrimination framework**
- **Human rights provide a framework for balancing competing rights**
- **The language and ideas of human rights can be used by public sector organisations and staff to consider the needs of individual service users**
- **There is evidence of an emerging culture of human rights.**

The report's conclusions and recommendations reflect the issues highlighted by the case studies, as well as addressing the current political climate in which the work to make human rights real is taking place. We hope these conclusions and recommendations will inform future plans and activities by both the third and public sectors in strengthening and sustaining the emerging culture of human rights illustrated by these case studies. Anyone who would like to use these examples in their own work is welcome to do so, provided BIHR and other organisations showcased are credited as appropriate. The sources of the case studies in this report have been provided, except where the source has requested anonymity.

¹ Case study 10, Cambridge House Mental Health In-Patient Advocacy Project, page 11.

Protecting human dignity

New Case study 1 – Older woman strapped into her wheelchair against her wishes

A consultant came across an older woman on a hospital ward in London who was crying out in distress. The woman was in a wheelchair and when the consultant lifted up her blanket, she discovered that the woman had been strapped in and that this was why she was so upset. Staff explained that they had fastened her into the wheelchair in order to stop her walking around because they were fearful she might fall over and hurt herself. The consultant told staff that while their concerns were understandable, strapping her into a wheelchair for long periods was an inappropriate response because her human rights had not been taken into account. She pointed out that this could be considered degrading treatment (Article 3) given the impact on the woman. Staff quickly agreed to unstrap her and, after she was assessed by a physiotherapist, they were encouraged to support her to improve her mobility.

New Case study 2 – Learning disabled man provided with inadequate accommodation

Source: Mersey Care NHS Trust

A learning disabled man was living in community housing in North-West England. This accommodation was jointly paid for by the man and his social services department via a support package. It comprised a small, single room which was used as a bedroom, a living room and a bathroom. The shower facilities did not work and the only washing facilities the man had access to was a bowl and hand towel. A health professional working with the man was concerned that his dignity had not been considered because he was forced to use a toilet in the same room he slept in. In addition, the washing facilities were inappropriate, particularly given that he repeatedly soiled himself and spread faeces around the room. When the health professional initially raised this issue with the social services department, they refused to accept there was anything wrong with the situation. After seeking advice from the equalities team at the NHS Trust, she decided to inform both the social services department and the community home agency that the situation raised issues under the Human Rights Act. She explained that the right to not to be treated in a degrading way (Article 3) and the right to respect for private life (Article 8) required the man's dignity to be protected. After the matter was framed in this way, the social services department changed its position and is now seeking new accommodation for the man. Speaking to BIHR, the health professional said: 'The Human Rights Act is there to be used and has been really helpful in this case.'

Case study 3 – Staff refuse to clean up a man's bodily waste

A man detained in a maximum security mental health hospital was placed in seclusion where he repeatedly soiled himself. Staff declined to clean up the faeces and urine or to move the man to another room, claiming that he would simply make the same mess again, and any intervention was therefore pointless. The man's advocate, having attended a BIHR training session, invoked human rights arguments to challenge this practice. He argued that this treatment breached the man's right not to be treated in an inhuman and degrading way, and his right to respect for private life. These arguments were successful and the next time he soiled himself, the man was cleaned and moved to a new room.



Case study 4 – Man supervised by female carers in the bath

A learning disabled man in a care home became very anxious about bathing after slipping in the bath and injuring himself. Afterwards, in order to reassure him and to build his confidence once again, a carer, usually female, would sit in the room with him as he bathed. His female carers felt uncomfortable with the arrangement. One carer commented during a BIHR training session: ‘I knew in my heart he was being treated without dignity, and now I recognise that his human rights are perhaps being violated.’ A discussion of the human rights principle of dignity had served as a ‘trigger’ for her and together with co-workers she was able to develop solutions that would both protect the man’s dignity, whilst also providing him with the support he needed. She indicated that she would use the language of human rights, specifically the right not to be treated in an inhuman and degrading way and the right to respect for private life, to seek a new care assessment for the man who, in her view, required manual lifting. In the meantime she resolved to erect a screen in the bathroom for herself and other carers to sit behind while the man bathed.

Background: The concept of human dignity is central to the Human Rights Act 1998. Dignity is protected by specific human rights including the prohibition of inhuman and degrading treatment (Article 3 of the European Convention on Human Rights – see glossary for explanation of the term ‘Article’ in this context) and the right to respect for private life (Article 8). It is important to remember that, unlike the right to respect for private life (key features of this right are discussed below in the background to case studies 13-17), the prohibition of inhuman and degrading treatment is absolute, meaning that financial constraints cannot be used by public authorities as a justification for interfering with the right. The difference between absolute and other types of rights is discussed in the glossary on page 27.

Other real examples where human rights could have made a difference:

- An older woman being left completely naked on a mixed ward by workers who were training her to dress herself as part of a rehabilitation programme
- Muslim men in detention being told they cannot shower before going to a mosque because it interferes with the prison’s bathing schedules
- Disabled children not being able to go to the toilet at school because of a blanket ban on manual handling
- A six year old girl who took too long to get changed after PE being made to sing in assembly in her pants and vest as punishment
- Older people who do not have incontinence being forced to wear incontinence pads because staff say they do not have time to take them to the toilet

Challenging discrimination

Case study 5 – Non-English speakers sectioned without an interpreter

A mental health hospital had a practice of sectioning asylum seekers who spoke little or no English without the use of an interpreter. After participating in a BIHR session, members of a user-led mental health befriending scheme used human rights language to successfully challenge this practice. They argued that it breached the asylum seekers' right not to be discriminated against on the basis of language and their right to liberty.

Background: Equality is a fundamental human right. The Human Rights Act says that people cannot be discriminated against in the enjoyment of their Convention rights (Article 14). This human rights prohibition of discrimination extends way beyond the six equality 'strands' of sex, race, disability, age, religion or belief, and sexual orientation to be covered by the new Commission for Equality and Human Rights. It protects as well against discrimination on grounds including language, property, marital status, illegitimacy, trade union membership, and imprisonment. In this sense, the Human Rights Act 'plugs gaps' in other anti-discrimination laws. In case study 5, the right not to be discriminated against on the basis of language has been linked with enjoyment of the right to liberty (Article 5).

Other real examples where human rights could have made a difference:

- Welsh speaking farmers missing out on agricultural grants because land registration forms that had to be filed as part of the application process were only available in English
- A woman being told she could not volunteer at a local school because she is a transgender person
- A carer who is also a public sector employee being harassed at work because colleagues feel she takes too much time off on account of her caring responsibilities
- Medical treatment being denied to older people on the sole basis of their age
- Homeless people being excluded from council consultation events because they do not have a stable address in the vicinity

Promoting participation

New Case study 6 – Woman with self-harm history under 24 hour observation supported to participate in discussions about her observation

Source: Cambridge House Mental Health In-Patient Advocacy Project

A woman who was an inpatient at a mental health hospital in London was very distressed after being told she could not close the door to her room because she was under 24 hour observation. She felt this was an invasion of her privacy (protected by Article 8). Her advocate explained to her that in addition to its ordinary duty of care towards her, the hospital had a positive obligation to protect her right to life (Article 2) because she had a history of self-harm including attempted suicide, and that this was why her privacy had been restricted. The advocate also explained that any interference with her privacy needed to be proportionate to the risk of her harming herself. Armed with this information and supported by her advocate, the woman arranged a meeting to discuss these issues with her treatment team. During the meeting, the woman told the treatment team that being under 24 hour observation caused her great anguish. She asked the treatment team to explain why she was under observation, and how long it might be expected to endure, which they did. An agreement was also reached that from then on the woman would be able to close the door when using the bathroom, provided she was searched first, the door was unlocked, and the nurse remained outside. Being given the chance to express her feelings and to discuss and then agree modifications to the observation process gave much needed comfort to the woman. Afterwards she told her advocate that she could now see that the observation process was not a form of punishment, as she'd thought, but was instead designed to protect her human rights.

Case study 7 – Disabled man denied support to attend gay pub

A physical disabilities team at a local authority had a policy of providing support to service users who wanted to participate in social activities. A gay man asked if a support worker could accompany him to a gay pub. His request was denied even though other heterosexual service users were regularly supported to attend pubs and clubs of their choice. During a BIHR training session, the man's advocate realised that the man could invoke his right to respect for private life and his right not to be discriminated against on grounds of sexual orientation to challenge this decision.

Background: Participation in public life is a human right. The Human Rights Act recognises that the ability to develop one's personality by participating in the life of the community is an important aspect of the right to respect for private life (Article 8). As a consequence, unreasonable barriers to accessing essential economic, social, cultural and recreational activities can be challenged. In case study 7, the advocate has combined arguments about participation with the prohibition of discrimination in the enjoyment of Convention rights (Article 14). Being able to participate in important decisions about your life is another important aspect of the right to respect for private life. In case study 6, involving the woman in discussions regarding her treatment not only ensured that her privacy was better respected, but helped her to understand and accept why she was under observation.

Other real examples where human rights could have made a difference:

- A day care centre deciding that certain older people cannot go on day trips because they are too frail or too heavy, even though they have said they would like to participate
- Children in hospital not having any other form of structured interaction with each other beyond one hour of teaching per week

Challenging brutality

New Case study 8 – Mental health patient restrained in a painful manner

Source: Cambridge House Mental Health In-Patient Advocacy Project

A man on a mental health ward in London was very unhappy about the way in which he had been restrained during a challenging episode. He told his advocate that he had been restrained many times in the past and understood that it was done for his safety and that of others. This time, however, he felt as though the restraint had been done to punish him. His arm was pushed all the way up his back and his thumb pushed away from the rest of his hand in a way that caused him great pain. His hand was injured and he required medical treatment. He asked his advocate to make a written complaint seeking an assurance from the ward manager that this sort of restraint would not happen again. In addition to the Mental Health Act and Code of Practice, his advocate invoked the right not to be treated in an inhuman or degrading way (Article 3). Though a formal investigation concluded that the restraint itself had not been inappropriate, new training on restraint use was nevertheless soon introduced for staff.

Case study 9 – Parents banned from visiting their son after complaining about bruising on his body

A young man with mental health problems was placed in residential care on a short-term basis. During a visit one day, his parents noticed unexplained bruising on his body. They raised the issue with managers at the home but their concerns were dismissed. They were also told that they were no longer permitted to visit their son. After participating in a BIHR training session the parents approached the care home once again and invoked their son's right not to be treated in an inhuman and degrading way and their right to respect for family life. As a result, the ban on their visits was revoked and an investigation was conducted into the bruising on their son's body.

Background: The Human Rights Act protects against brutality. Both the prohibition of inhuman and degrading treatment (Article 3) and the right to respect for private life, including the right to physical and psychological integrity (Article 8), can be used to challenge physical and emotional abuse. In case study 9, the young man's parents have combined arguments about suspected brutal treatment with an assertion of their right to visit their son as part of their right to respect for family life (Article 8). In case study 8, while the restraint was not itself found to breach the prohibition on inhuman and degrading treatment in this particular incident (Article 3), the investigation prompted the introduction of training that would ensure human rights were taken into account in the use of restraint in the future, demonstrating how the Human Rights Act can be used to improve standards.

Other real examples where human rights could have made a difference:

- Institutional abuse of learning disabled people receiving services from an NHS Trust, including a man being tied to his bed or wheelchair for 16 hours each day to prevent him from hitting his head and face
- An asylum seeker who was tortured and raped in Uganda being subjected to homophobic and racial abuse by guards at a UK removal centre. On one occasion he was strip searched by staff and forced to undertake an unwarranted and highly painful anal examination that he felt replicated his earlier rape
- An older person being slapped by a staff member after refusing tea

Taking positive steps to protect human rights

New Case study 10 – Securing extra support for a woman with suicidal tendencies

Source: Cambridge House Mental Health In-Patient Advocacy Project

A woman was discharged from a mental health hospital in London before she felt she was ready for this. She had suicidal tendencies and was anxious about a delay in scheduling her follow-up care review meeting which did not take place within seven days of her discharge as required by the Care Programme Approach guidelines. In addition to Standard 7 of the National Service Framework for Mental Health on preventing suicide, her advocate invoked her right to life (Article 2), arguing that her care and treatment team was under a positive obligation to protect her life by ensuring she had the support she needed. The care and treatment team had initially agreed to supply her with a support worker once a fortnight, but as a result of these arguments, it agreed to increase this to once a week. Her advocate is convinced that the human rights argument made the difference in this case. She said ‘human rights are so powerful – staff do take their jobs seriously and are trying to do what’s right’.

Case study 11 – Securing accommodation for domestic violence victims

A social worker from a domestic violence team at a local authority realised during a BIHR training session that human rights language could be used to secure new accommodation for a woman and her children at risk of serious harm from a violent ex-partner. Previously, when she had approached the housing department seeking emergency accommodation for the family, she had been told there was nothing available. During the training session she explained her view that the authority had overriding positive obligations to protect the right of the woman and her children not to be treated in an inhuman and degrading way and, given the extreme risk in this case, their right to life.

Case study 12 – Transport assistance secured for man with mental health problems

An asylum seeker with post-traumatic stress disorder needed to travel from South London, where he lived, to North London, where he accessed medical treatment and support networks. He was very fragile and highly anxious about his pending asylum application and the threat of removal. Because of his disorder, he panicked if he was on a bus for more than 10 minutes. He would alight, calm himself down and then wait for the next bus. Sometimes it would take him several hours to reach North London. His social services case worker successfully invoked the local authority’s positive obligation to protect the man’s right to respect for private life, including his right to respect for psychological integrity, and as a result a bus pass was issued to him.

Background: The Human Rights Act imposes positive obligations on public authorities to protect people from inhuman and degrading treatment (Article 3) and threats to their lives (Article 2). This means that authorities must take proactive steps to protect a person when they are aware that they are at risk in these ways, no matter who or what is the source of the harm. Authorities also have positive obligations to promote the right to respect for private and family life (Article 8) in some circumstances.



Other real examples where human rights could have made a difference:

- A young Asian man forced to share a prison cell with a known racist who attacked him with a table leg the night before his release, leading to his death a week later
- An authority becoming aware that an older woman living with her daughter is sometimes punished by being left outside on a chair overnight and is too frightened to tell her daughter when she is ill
- A residential care home becoming aware that a male resident is trading cigarettes for sex with a female resident who has a long history of mental health problems
- A school becoming aware that Traveller children are being verbally abused and ostracised by classmates
- A range of authorities becoming aware of the poor health of a young girl living with her aunt and her aunt's partner. Despite evidence of abuse no intervention was made and the child died in hospital. The doctor who performed the post-mortem claimed that it was the worst case of child abuse he had ever seen
- A couple, both with learning disabilities, who were expecting their first child being told the child would be removed because they could not relate to or successfully care for a robotic baby provided by the local authority to 'test' their parenting skills

Using human rights where resources are an issue

New Case study 13 – Eighteen year old children in Irish Traveller families forced to leave home before permanent accommodation is given to the family

Source: London Irish Women's Centre

Large Irish Traveller families are often placed in temporary accommodation for unacceptably long periods in London, sometimes for more than 10-15 years. Local authorities routinely say that this is because they have no large houses available for them. Often the families will be offered permanent accommodation after at least one of the children has turned 18, but they are told that the 18 year olds cannot live there (the 18 year olds are advised to make separate applications for housing elsewhere). This causes immense distress to the families involved, as they feel under pressure to force their older children to leave home, or to let them continue living with the family secretly. A London-based support organisation has regularly invoked the right to respect for family life to successfully challenge these decisions and to enable the families to continue living together, whether in their original temporary accommodation or otherwise.

Case study 14 – Older woman to be moved from hospital to residential care home against her wishes

Source: Independent Living Advocacy (Essex)

An older woman was staying in hospital following a number of strokes. She had been interned as a Japanese prisoner of war during the Second World War and suffered a range of trauma related mental health problems. She was observed re-enacting various behaviours from this period including washing her clothes with rocks and hanging them to dry on the hospital fences. Against her wishes, the hospital sought to discharge her and move her into residential care on cost grounds. Her advocate was concerned that being in an institution was what was causing this regression. After receiving BIHR training, he used human rights language to argue that she should not be placed in residential care and that she should instead be allowed to return home in accordance with her wishes. As a result, funding was secured to support her care at home.

Case study 15 – Children denied visits to their mother

A woman with mental health problems increasingly struggled following the death of her husband. She was placed in 24 hour supported care and her children were fostered. It was agreed that the children could visit their mother three times each week, but these visits were gradually reduced to one per week on the basis that the authority did not have enough staff to supervise the visits. Both the children and their mother were greatly distressed by this. The mother's advocate noticed that the local children's services department was not present during a care programme approach meeting and that the children's interests were not being properly represented. After attending a BIHR training session, he invoked the children's right to respect for family life and convinced the mental health team to invite children's services to the next meeting. The three visits each week were restored as a result. From this point onwards, the manager of the children's care team personally saw to it that each visit occurred. The mother and her children have remained very close and recently secured funding to enjoy an overseas holiday together.

Case study 16 – Married woman denied a double bed

Source: *Disability Now*, June 2006, p 14.

A disabled woman was told by her occupational therapy department that she needed a special ('profile') bed. She was unable to leave her bed and this new arrangement would allow carers to give her bed baths. She requested a double bed so that she could continue to sleep next to her husband. The authority refused her request, even though she offered to pay the difference in cost between a single and double bed. A stalemate ensued for 18 months until the woman was advised by the Disability Law Centre to invoke her right to respect for private and family life. Within three hours of putting this argument to the authority, it found enough money to buy the whole of her double profile bed. Writing to *Disability Now*, the woman explained that 'It has made a phenomenal difference to my life. If something similar happened in future, I would have no hesitation in using the [Human Rights Act] again'.

Case study 17 – Older couple split up by local authority after 65 years of marriage

A husband and wife had lived together for over 65 years. He was unable to walk unaided and relied on his wife to help him move around. She was blind and used her husband as her eyes. They were separated after he fell ill and was moved into a residential care home. She asked to come with him but was told by the local authority that she did not fit the criteria. Speaking to the media, she said 'We have never been separated in all our years and for it to happen now, when we need each other so much, is so upsetting. I am lost without him – we were a partnership'. A public campaign launched by the family, supported by the media and various human rights experts and older people's organisations, argued that the local authority had breached the couple's right to respect for family life (Article 8). The authority agreed to reverse its decision and offered the wife a subsidised place so that she could join her husband in the care home.

Background: The right to respect for private and family life (Article 8) is not an absolute human right. Instead it is a qualified right, meaning that it may have to be interfered with in order to take account of the rights of other individuals and/or the wider community (qualified rights are explained in the glossary on page 27). This means that financial difficulties are a relevant consideration. However, for any interference with this right to be justified, including on financial grounds, it must be lawful, necessary and proportionate. A proportionate response to a problem is one that is appropriate and not excessive in the circumstances (see glossary on page 27). Other qualified rights include the right to freedom of thought, conscience and religion (Article 9) and freedom of expression (Article 10).

Other real examples where human rights could have made a difference:

- Disabled people being forced into residential care on cost grounds despite their own preference for support to enable them to live independently
- Refusals by schools to cater for the dietary needs of students from different cultural backgrounds on the basis that it is too expensive
- A carer being told by social workers that she should give up work in order to care for her husband while he recovered from a stroke because there was not enough money to provide adequate home help
- A disabled woman's direct payments being reduced to the point where she could no longer afford a personal assistant to assist her with tasks including toileting, leading to the aggravation of her serious kidney condition

Using human rights to challenge blanket policies

New Case study 18 – Challenging the blanket use of tilt-back chairs in a nursing home

An NHS nursing home in London had a practice of routinely placing residents in special ‘tilt-back’ wheelchairs, regardless of their mobility needs. As a consequence, residents who were able to walk unaided were stopped from doing so. This had a severe impact on their ability to make choices about everyday activities, as well as their capacity to feed themselves and use the bathroom. A consultant pointed out to staff that their failure to consider the different mobility needs of individual residents was contrary to human rights principles. She drew particular attention to the right to respect for private life (Article 8), which emphasises the importance of dignity and autonomy, and the right not to be treated in a degrading way (Article 3). The blanket practice was stopped as a result. Residents who could walk were taken out of the chairs and encouraged to maintain their walking skills.

Case study 19 – Mother threatened with eviction whilst giving birth

A failed asylum seeker was living in accommodation provided by the National Asylum Support Service (NASS). NASS issued a ‘termination of support’ notice to her while she was giving birth in hospital. She was a single mother and this was her second child. The notice period expired whilst she was still in hospital and upon return she and her children faced eviction. After receiving BIHR training, a manager at a voluntary sector organisation suggested to NASS that evicting the family in these circumstances may amount to inhuman and degrading treatment. The manager suggested that they reconsider their decision before taking enforcement action. NASS decided to amend the status of the notice, giving the voluntary sector organisation time to apply for ‘hard case’ support for the family under section 4 of the Immigration and Asylum Act 1999. The application was successful and alternative accommodation for the family was secured.

Case study 20 – Young learning disabled girl denied school transport

A local authority had a policy of providing school transport for children with special educational needs living more than 3 miles from their school. A young learning disabled girl lived 2.8 miles from the special school she attended. Despite being unable to travel independently, she was advised by the authority that she should instead take two buses to and from school each day. An independent parental supporter who had attended a BIHR training session supported the girl’s mother to challenge the decision using human rights language. The mother approached the head teacher of the school and explained that the decision was a disproportionate interference with her daughter’s right to respect for private life, given the failure to consider her specific circumstances. The head teacher took the issue to the local authority, and the decision was reversed. Thereafter the young girl was provided with transport to and from school.

Background: The Human Rights Act requires decision-makers to properly consider the full circumstances of a case before making a decision. This reflects the priority placed by human rights on person-centred decision-making generally. Applying blanket policies without proper regard to the particular situation or consequences may lead to decisions that are disproportionate (see glossary, page 27) and therefore a breach of human rights.

Other real examples where human rights could have made a difference:

- A resident attempted suicide by swallowing large quantities of toilet roll. The care home responded with a new policy requiring all residents to keep the door ajar while using the toilet so that carers could dispense toilet paper through the door
- A homeless man with a serious liver condition requiring stable accommodation and medication being denied both of these by the local authority without his special needs being considered
- A blanket policy in a mental health care home stating that patients should not be woken up at mealtimes resulting in heavily medicated patients who slept during the day going for long periods without food
- Local authorities routinely moving patients from hospital straight into residential care in a bid to avoid fines for causing patients to overstay in hospital. Often no care assessment is performed and the individual needs of the patient are not taken into account
- A blind Iranian asylum seeker and his brother who was his carer being sent to different cities under the NASS dispersal scheme. As a result the man was isolated in his flat. Without his brother, he had to rely on the help of a concerned neighbour who taught him to distinguish tins of food according to their size and shape

Protecting human rights in the context of contracted out services

Case study 21 – Learning disabled man searched by care home staff each time he returns from being out unsupervised

A learning disabled man in a privately run residential care home had a history of starting fires. Although this had not occurred for over two years, care home staff were instructed by his psychiatrist to routinely search him each time he returned from being out unsupervised to ensure he did not have matches or a lighter. This practice was challenged by a health commissioner for the NHS Primary Care Trust (PCT) which had contracted the care home to provide the man with residential care. The health commissioner invoked the man's right to respect for private life to argue successfully that the blanket policy should be replaced with a proper decision-making process. The new decision-making process was based on ongoing risk assessment and was communicated to the man to ensure he understood why, when, how and by whom he would be searched and when the practice would be reviewed. It was agreed that routine searching would cease after six months if no matches or lighter were found on the man and if he was not involved in any fire-related incidents.

Case study 22 – Residential care home refuses to bathe a larger woman

Source: Independent Living Advocacy (Essex)

A larger woman in residential care had not been showered or bathed for many weeks. The care home, with the agreement of the local authority which funded her care, had been providing her instead with a 'strip' wash so that staff did not have to lift her. The woman was very upset about the situation, especially because warmer weather was causing her to perspire. After receiving BIHR training, her advocate wrote to the care home and the local authority and invoked her right not to be treated in an inhuman and degrading way. Within days a new occupational therapist was brought in to explore options and it was quickly agreed that a hoist could be used. From this point onwards the woman was able to take a bath or shower according to her wishes.

Background: The Human Rights Act imposes an obligation to protect human rights on public authorities as well as other bodies performing 'functions of a public nature'. This wide scope of the Act means that bodies delivering public services under contract to public authorities will often assume responsibility for the human rights of their service users. However this does not mean that public authorities who contract out their services lose their human rights obligations. Efforts to ensure that service users are treated in a way that respects their human rights should be integral to the commissioning and contract monitoring processes.

Other real examples where human rights could have made a difference:

- Failure by local authorities to prevent a wide range of human rights abuses in private and voluntary sector residential care homes operating under contract to a local authority including: residents being left in their own waste for long periods, routine over-medication aimed at keeping residents docile, persistent rough handling of fragile residents, and misuse of residents' money
- Failure by the Home Office to prevent a wide range of human rights abuses in privately operated immigration removal centres including: verbal and physical abuse by guards, misuse of detainees' property, and inadequate access to physical and mental health care

Using human rights to support family and private life

New Case study 23 – Woman fleeing domestic violence able to prevent her children being taken into foster care

Source: London Irish Women's Centre

A woman and her children were fleeing domestic violence. The woman's husband was attempting to track the family down and they moved towns whenever he discovered their whereabouts. The family eventually arrived in London and were referred to the local social services department. Social workers told the mother that she was an 'unfit' parent and that she had made the family intentionally homeless. They said that her children had to be placed into foster care. An advice worker helped the mother to challenge this claim on the basis of the right to respect for family life (protected by Article 8). As a result, the family were told that they could remain together and that the social services department would provide the deposit if they could secure private rented accommodation.

New Case study 24 – Challenging a decision to remove children from a mother living in poverty, who was in temporary accommodation to escape an abusive father

A woman living in poverty left her partner after discovering that he had been abusing their children. She and the children were placed in temporary bed and breakfast accommodation but were regularly moved. Over a period of six months, the family was accommodated in three different London boroughs. Eventually, the woman was informed by social workers that the children would be removed from her and taken into care. They claimed that she was an 'unfit' parent because she was unable to provide stability for her children and was having difficulty getting them to school. A local support group helped the woman to prepare for a case conference with the social services department. With help from the group, the woman invoked her children's right to respect for private and family life and their right to education and asked the authority to prove, on the basis of its track record, that it was better placed than her to secure these rights for her children. After being challenged in this way, the department decided not to remove the children, although they remained on the 'children at risk' register. Within three weeks, stable accommodation was found for the family and they were assisted to purchase the furniture and other goods required to set up a home together.

New Case study 25 – Learning disabled couple challenge the use of CCTV cameras in their bedroom at night

Source: ATD Fourth World

A learning disabled couple were living in a residential assessment centre so their parenting skills could be assessed by the local social services department. CCTV cameras were installed, including in their bedroom. Social workers explained that the cameras were there to observe them performing their parental duties and for the protection of their baby. The couple were especially distressed by use of the CCTV cameras in their bedroom during the night. With the help of a visiting neighbour, the couple successfully invoked their right to respect for private life. They explained that they did not want their intimacy to be monitored, and that, besides, the baby slept in a separate nursery. As a result, the social services team agreed to switch off the cameras during the night so that the couple could enjoy their evenings together in privacy.

New Case study 26 – Learning disabled parents use human rights to challenge unannounced daily visits from social workers

A learning disabled couple with children was subjected to unannounced visits on a daily basis by their children’s social workers who were concerned about the couple’s ability to raise their children. The unpredictability of the visits caused immense distress for the parents who felt extremely anxious, and became afraid to answer the door. With the help of their advocate, the couple argued that the visits were a breach of their right to respect for private and family life. The local authority considered this argument and agreed that from then on visits would occur at a time pre-arranged with the family. This helped the parents to regain some control over their lives and they felt that their privacy had been restored.

New Case study 27 – Stopping dawn raids at an accommodation facility for asylum seekers

Home office staff began conducting unannounced early morning visits at an accommodation facility for newly arrived asylum seekers. The visits took place at dawn and no interpreters were present. Asylum seekers were woken and made to answer questions. Often those being interviewed had only had a few hours sleep, after arriving at the facility very late at night. A voluntary sector organisation, having received human rights training from BIHR and legal advice from Liberty, challenged this practice on the basis that it interfered with the asylum seekers’ right to respect for private life. They argued that there were other, more dignified ways to verify who was staying at the facility and for how long. The arguments were successful and the Home Office ceased the practice of these unannounced dawn visits.

Background: The right to respect for private and family life is a non-absolute right, and can be interfered with to take account of the rights of other individuals and/or the wider community. However, interferences must be justified, lawful, necessary and proportionate (see glossary on page 27 for an explanation of proportionate). Case studies 23 and 24 show how human rights arguments can be used to challenge a disproportionate interference with the right to respect for a family life. In these cases the social service departments were acting to fulfil the legitimate aim of ensuring the welfare and safety of the children concerned. However, human rights arguments were used to demonstrate that the action of social services in seeking the removal of children from their non-abusive parent was a disproportionate response. Importantly, once the language and ideas of human rights were engaged, they were also used to assist the public authorities in finding an appropriate and proportionate solution which balanced respect for family life and the need to ensure the safety of the children. In both of these cases, social services eventually took positive steps to support the families in securing suitable accommodation, enabling them to continue living together.



Other real examples where human rights could have made a difference:

- Couples with learning disabilities who live in residential care homes not being allowed to marry
- A woman with severe depression did not fill in her housing benefit form. As a result she and her children were evicted from their council home and placed in temporary accommodation
- Unreasonable restrictions being placed on family visits in hospitals and residential care homes
- A husband and wife who were asylum seekers being separated under the Government's dispersal scheme because they could not prove they were married. They were dispersed to different locations outside London
- A blind and deaf mother was going to be separated from her youngest child by social services, because they said she could not bring her up. This was despite her having raised an older child already

Supporting public sector staff to take individual needs into account in decision-making

New Case study 28 – Consultant convinces staff to respect routine of an 89 year old with dementia who shouted when left in bed till 11 a.m.

An 89 year old woman in an NHS nursing home in London was considered by staff to be extremely difficult. Among other things she shouted continuously in the mornings. A consultant geriatrician was very concerned by the situation and tried to understand why her behaviour was so hostile. This was challenging because the woman suffered from dementia and found it difficult to talk about her state of mind. Contact was made with her daughter who shared important information about her mother's life. The woman had been orphaned early in life. She looked after all her siblings and then, later on, her own children. In addition to her heavy caring responsibilities she worked long hours as a cleaner. This busy schedule meant she rose at 5 a.m. each day, and she maintained this routine for the rest of her life. It emerged that the reason she became so agitated in the mornings was because she was being left in bed until 11 a.m. each day. The consultant explained to staff that in order to deliver services in accordance with human rights, they needed to take the individual needs of residents into account. In this case it meant that the preferred routine of this woman should be respected as much as possible, in accordance with her right to respect for private life (Article 8). From then on, she was helped out of bed at 5 a.m. each morning, fed breakfast in her chair, toileted and then left to enjoy the rest of the morning. Her shouting and difficult behaviour ceased.

New Case study 29 – Staff at a day centre realise their method of intervention to address the self-injuring behaviour of a young man risked violating his human rights

Source: Mersey Care NHS Trust

A young man with learning disabilities began to display self-injurious behaviours including pulling his own hair out, and attempting to bite his hands. These incidents occurred roughly once a week and could last for an entire morning or afternoon. The management team at his day centre decided to introduce straight arm restrictive devices (splints) to avoid him seriously hurting himself. Over a five year period, the time he spent wearing the splints increased until he spent most days in them. Staff at the day centre realised that this intervention risked violating his right to respect for his private life (article 8), and also his right not to be treated in an inhuman or degrading way (article 3). In particular, the amount of time he spent wearing the splints was not proportionate to his self-injurious behaviour, since the episodes occurred at most for one morning or afternoon per week. Staff therefore carried out a review of the intervention, using a human rights based approach. (More explanation of this approach is found in the glossary on page 27). As a result, staff systematically faded down the amount of time he wore the splints. The splints are now only used when his self-injurious behaviour poses significant risk to his own well-being.

New Case study 30 – Human rights considerations used to support a decision to allow a mental health patient to marry

A man who was a long-term resident patient in a mental health hospital wished to marry his partner. However, his consultant was unsure whether the marriage should be allowed as he felt that he may lack capacity to consent to marriage. Staff at the hospital approached this by considering whether any human rights issues were involved. They realised that not allowing him to marry could have implications under the right to respect for private and family life (article 8) and the right to marry and found a family (article 12). Once they had identified which human rights were involved they felt better-equipped to support him, and agreed that it was in his best interests to support him to marry.

Background: In BIHR's experience of training public authorities, providers of public services often find that human rights can be a very useful tool to assist them in making decisions, and can lead to improved outcomes for service users. Human rights can provide a useful framework within which conflicting rights can be balanced, and the individual needs of service users can be taken into account. For example, in case study 29, staff at Mersey Care NHS Trust used the human rights framework to help them decide on the least restrictive way of dealing with the young man's behaviour.

The Human Rights Act also protects the right of men and women of marriageable age to marry and to found a family (Article 12). This is a non-absolute right and can be limited according to the laws of the country, for example by requiring people to have the capacity to consent to marry. This means that where a person does not have the capacity to consent to marry, their right to marry can be limited. However, the Human Rights Act requires decision-makers to consider the full circumstances before making a decision, as shown in case study 30, where the person wanting to marry was experiencing a mental health problem. In this case, the Human Rights Act was important in ensuring the medical staff examined the person's capacity in a way that took his human rights into consideration.

Other real examples where human rights could have made a difference:

- People with learning disabilities being overmedicated or sedated, or not being given information about their medication
- Children of patients for whom English is their second language being asked to interpret for them when sensitive medical issues are being discussed

Fair procedures

New Case study 31 – Mental health patient voluntarily admitted to hospital unable to leave the ward

Source: Cambridge House Mental Health In-Patient Advocacy Project

A young Afro-Caribbean man in a London mental health hospital was repeatedly told by nurses that he could not leave the ward, even though as an informal patient he was entitled to do so. When blocking his efforts to visit family and friends, the nurses did not invoke holding powers under the Mental Health Act and Code of Practice. Instead they had merely told him that it was not in his interests to leave the hospital. His advocate made a written complaint on his behalf arguing that his right to liberty (Article 5) had been breached. This is because he was being treated as if the procedures for detaining him had been used, but because they had not been used he was free to leave at anytime, despite what the staff said. Subsequently his treatment by the nurses greatly improved and he was permitted to leave when he wanted to. He was discharged from hospital soon afterwards.

Background: There are several articles in the Human Rights Act which ensure that public bodies have fair procedures for dealing with individuals. These include the right to a fair and public hearing (Article 6) and the right to liberty (Article 5). The right to a fair and public hearing is engaged when a person is charged with a criminal offence and/or they have to go to court. This right also applies to public body decision-making procedures when there is a significant impact on a person's civil rights or obligations, such as those in property law, family law and employment law. For example, the right to a fair hearing is relevant to public bodies making decisions about welfare benefits.

The right to liberty and security of person is a non-absolute right (see glossary, page 27). This means the right can only be restricted by detaining a person in certain circumstances, as set out in Article 5. In certain circumstances, people with mental health problems can be detained, but there are strict procedures that must be followed, including the detention being authorised by a lawful order. In the UK this is often referred to as being 'sectioned' under the Mental Health Act. However, in case study 31, the young man was an informal patient, which means he was there voluntarily. As there was no legal order detaining him in the hospital, he was in fact able to leave at any time. The staff telling him that he had to stay therefore breached his right to liberty.

Other real examples where human rights could have made a difference:

- People with dementia in hospitals as informal patients being told that the exit is somewhere else in order to prevent them from leaving
- Informal patients in hospitals having their windows and/or doors locked to prevent them from leaving
- Reports prepared in respect of care proceedings not being shared with parents until the day of the care conference
- A man whose first language was Welsh being involved in a housing appeal process where there were no Welsh speakers available to hear his appeal



Key learning

- 1. The language and ideas of human rights have a dynamic life beyond the courtroom.** We often associate human rights with lawyers. However, these examples show that a wide range of other individuals and organisations, including advocates, family members, user-led support groups, service users themselves, frontline service providers and managers, those responsible for commissioning services from the private and third sectors, and public sector service providers can use this language to improve people's experience of public services and their quality of life generally.
- 2. Human rights have a wide application, addressing people's lived and varied experiences in a range of circumstances.** Looking at the case studies as a whole shows how the language and ideas of human rights have a wide application. Many of the case studies in the first edition of Changing Lives focused on health and social care. This new edition of Changing Lives reveals that while the language and ideas of human rights is still important in this sector, it has wider resonance and value across a broad range of sectors, including in the provision of health services to people with mental health problems, balancing the rights of people with learning disabilities, and other areas such as challenging the response of public bodies to women and children who have fled domestic and sexual violence.
- 3. Human rights offer a vision of equality which can protect people from ill-treatment by 'plugging gaps' in our anti-discrimination framework.** Many of the case studies demonstrate the added value of a human rights vision of equality, which extends far beyond anti-discrimination to encompass fairness of treatment, dignity, and respect. People who belong to particular groups, including women, disabled people, people living with mental health problems and older people, can become vulnerable through experience of various forms of ill-treatment. However, these forms of ill-treatment may not be considered discriminatory and therefore fall outside the protection offered by anti-discrimination measures. For example, case study 2 illustrates how a health professional used human rights language to challenge the inadequacy of a learning disabled man's accommodation, which was being jointly paid for by the man and his social services department. Following the health professional's human rights arguments, the social services department agreed to seek alternative accommodation, demonstrating how human rights can be used to promote human dignity and challenge treatment that is inhuman or degrading, regardless of whether it is discriminatory.
- 4. Human rights provide a framework for balancing competing rights.** Human rights provide a framework, based on proportionality, to balance competing rights. With some notable exceptions such as the prohibition of torture, human rights are not absolute. Instead they contain within them a mechanism for weighing the rights of individuals against each other, or against the rights and interests of the community as a whole. Human rights can be a useful tool to assist public sector service providers to make decisions which balance competing rights. Case study 25 illustrates the potential of the human rights framework to balance competing rights and interests where the learning disabled couples' right to respect for private and family life was balanced against social services' need to fulfil its obligation to ensure the safety and welfare of their child and the couple.

5. **The language and ideas of human rights can be used by public sector organisations and staff to consider the needs of individual service users.** Human rights offer an effective framework for making decisions which take into consideration the needs of individual service users, leading to improved outcomes for those individuals. Many of the case studies in this second edition demonstrate how individuals or their advocates can use human rights to challenge the way they are treated by public bodies. However, many also show that once these public bodies are made aware of human rights they can use this knowledge to re-evaluate the services they are providing and ensure that the individual needs of service users can be taken into account. For example, in case study 29, staff at Mersey Care NHS Trust used the human rights framework to revisit the restraint practices used with a particular patient and respond proportionately to the risks associated with his behaviour.
6. **An emerging culture of human rights.** Many of the case studies in the first edition of Changing Lives were generated following human rights training sessions provided by BIHR, demonstrating how awareness of human rights can empower individuals and public sector agencies to take action. This second edition draws not only on evidence generated by BIHR training but also on evidence from wider sources, where possible cited in the case studies. Where sources are not cited, this is due to requests for anonymity. This is an important shift, which illustrates that the language and ideas of human rights are beginning to 'bed down', and are being adopted and implemented by a range of organisations in both the third sector and public sector. These are vital steps in the realisation of the goals of the Human Rights Act, namely the development of a culture of human rights.

BIHR – what we're doing

The first edition of Changing Lives emphasised that individuals, third sector organisations and the public sector all need to be adequately engaged and skilled in human rights in order to build a culture of human rights.

BIHR continues to play a key role in working towards achieving this. Our training with the third sector and public sector organisations has continued, and we are developing a new open course programme to begin in 2009 to provide individuals with more training opportunities on human rights. We have also established the *Principles to Practice* project to help develop the human rights capacity of the third sector.

BIHR has also worked in partnership with key public bodies to integrate human rights throughout their work, for example, the national Human Rights and Healthcare project, led by the Department of Health in partnership with BIHR and five NHS Trusts. Evaluation of the five NHS Trusts' human rights projects by Ipsos MORI concluded that a human rights based approach (see glossary, page 27): "goes above and beyond good practice in providing renewed quality of care for service users, and staff are empowered to challenge care decisions ... it defines a common shared value base more effectively than other guidelines about standards of care... [and is] an empowering tool for service users to hold organisations to account."¹ The Joint Committee on Human Rights has commended the framework produced by this project, stating: "... it is one of the best pieces of practical guidance on the impact of the Human Rights Act on public services that we have seen."²

¹ 'Human rights in healthcare evaluation' Ipsos Mori 2008, p.34, available from www.bihhr.org.uk

² 'The Human Rights of Older People in Healthcare', JCHR 2007, p. 28. The Joint Committee on Human Rights is a committee of both Houses of Parliament which undertakes inquiries on human rights issues, examines the human rights implications of proposed Government laws and produces reports of its findings and recommendations for Parliament.



Conclusions and recommendations

The new case studies in this edition provide a snapshot of the continued and evolving use of the principles, language and ideas of human rights. They are proving useful and effective in varied situations and circumstances across the UK for a range of individuals and organisations in the public and third sectors.

The case studies, many of which are drawn from outside of BIHR's own evidence, point to a culture of respect for human rights beginning to take root, supported by the Human Rights Act. Importantly, this publication shows how human rights change lives. The language and ideas of human rights have a real and tangible impact for many people in a wide range of everyday situations. The face of human rights is clearly a diverse one – it is one of women and children fleeing domestic and sexual violence, of people with mental health problems, of people living in care homes, and many others.

Highlighting the added value of human rights is an important part of BIHR's work, and even more so in light of the significant developments in the public arena since the publication of the first edition of *Changing Lives*. Importantly, the Equality and Human Rights Commission has been established, with a remit to promote and protect human rights in Britain. The Commission is currently undertaking a nationwide survey into the state of human rights in Britain, and BIHR has provided evidence of the impact of the Human Rights Act and human rights more generally, as highlighted in *Changing Lives*.

At the same time there are heightened calls for scrapping the Human Rights Act. Yet as the case studies in *Changing Lives* show, the Human Rights Act provides protection and empowers individuals and organisations to speak out against poor treatment. Human rights are starting to be integrated in the work of the public sector; improving the general quality of services and ensuring public authorities meet their **positive** obligations under the Human Rights Act; namely to take positive steps to ensure people can enjoy their human rights. Losing the Human Rights Act would mean losing this unique and vital tool.

Under the banner of our 'Changing the Face of Human Rights' initiative, BIHR is working to stimulate fresh thought and a vision of human rights that has relevance for us all and brings human rights to life. This edition of *Changing Lives* forms an important part of our campaign. To take forward the key learning points illustrated by the case studies, and in response to the current political climate, the following recommendations are made:

- A **major public awareness campaign** is needed to illustrate the benefits of the Human Rights Act to everyone, which demonstrates that human rights do not necessarily require direct recourse to the law and that human rights are relevant and beneficial to a wide range of people, situations and circumstances
- The Human Rights Act provides a framework for balancing people's rights against each other. People need to be encouraged and empowered to use the Human Rights Act, which not only can improve their individual circumstances, but would also generate further **good practice** in balancing rights and contribute to the promotion of a culture of human rights based on dignity, respect, equality, autonomy and fairness
- Public authorities should **proactively and strategically integrate** human rights throughout the delivery and design of services, policy and practice, as well as addressing individual human rights cases and challenges.

Glossary

Article

Human rights protected by the European Convention on Human Rights are divided into Articles. An Article is similar to a 'section' of legislation.

Absolute and non-absolute rights

The rights set out in the Human Rights Act are divided into absolute and non-absolute rights. This is an important distinction because absolute rights can never be interfered with, whereas non-absolute rights may, in certain circumstances, be interfered with.

Absolute rights may never be interfered with, not even in times of war or national emergency. Lack of resources is never an excuse for interfering with an absolute right.

Examples are Article 3 (the prohibition of torture, inhuman and degrading treatment) and Article 4 (1) (the prohibition of slavery and forced labour).

Non-absolute rights may be referred to as either **limited rights** and **qualified rights**.

Limited rights may be interfered with in certain **strictly defined circumstances** as set out in the legal explanation of the right. An example is Article 5 (the right to liberty and security), which can be interfered with in certain circumstances including where someone has committed a crime or where someone is experiencing serious mental health problems.

Qualified rights may be interfered with so long as the interference is (1) lawful, (2) for a legitimate purpose, (3) necessary, and (4) proportionate (see 'proportionality' below). Examples are Article 8 (the right to respect for private and family life), Article 9 (freedom of thought, conscience and religion), and Article 10 (freedom of expression).

Human rights based approaches (HRBA)

Human rights based approaches (HRBA) are the means and methods that organisations can utilise to realise the principles and standards of human rights in their everyday planning, policy and practice. HRBA have the following key elements (1) human rights principles and standards are explicitly stated as a central reference point in policy and planning; (2) all key stakeholders are empowered and can participate in achieving the realisation of rights; (3) accountability is clear; and (4) the most discriminated against, marginalised or excluded people are prioritised.

Positive obligations

These obligations require public bodies to take proactive steps to protect human rights, regardless of who or what is causing the harm. They require the organisation to be proactive rather than simply refrain from action that may violate human rights.

Positive obligations are created under a range of rights including Article 2 (the right to life), Article 3 (the prohibition of torture, inhuman and degrading treatment), Article 8 (the right to respect for private and family life) and the second part of Article 2 Protocol 1 (the right of parents to respect for their religious and philosophical convictions in the context of their children's education).

Proportionality

A proportionate response to a problem is one that is appropriate in the circumstances i.e. not excessive. An expression commonly used to capture this meaning is *you should not use a sledgehammer to crack a nut*.

Third sector

This is an umbrella term which is used to refer to the range of organisations which are defined as voluntary and community groups, charities, and other non-governmental organisations.



Rights protected by the Human Rights Act

The Human Rights Act makes part of UK law the following rights contained in the European Convention on Human Rights:

- The right to life (Article 2)
- The right not to be tortured or treated in an inhuman or degrading way (Article 3)
- The right to be free from slavery or forced labour (Article 4)
- The right to liberty (Article 5)
- The right to a fair trial (Article 6)
- The right to no punishment without law (Article 7)
- The right to respect for private and family life, home and correspondence (Article 8)
- The right to freedom of thought, conscience and religion (Article 9)
- The right to freedom of expression (Article 10)
- The right to freedom of assembly and association (Article 11)
- The right to marry and found a family (Article 12)
- The right not to be discriminated against in relation to any of the rights contained in the European Convention (Article 14)
- The right to peaceful enjoyment of possessions (Article 1 of Protocol 1)
- The right to education (Article 2 of Protocol 1)
- The right to free elections (Article 3 of Protocol 1)

Do you have an example of how human rights have been used to make a difference beyond the courtroom?
Contact Sanchita Hosali, Policy Officer, at shosali@bihr.org.uk

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