

The British Institute of Human Rights

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Embedding Human Rights in Mental Health Services

A Tool for Staff



About this tool

This tool was created by the British Institute of Human Rights alongside staff and leadership at Tees, Esk and Wear Valleys NHS Foundation Trust (TEWV). This was part of a 15-month, Health Foundation funded project called; “A Human Rights Based Approach to Mental Health Recovery”.

The project aimed to support TEWV NHS Trust to embed a human rights approach within their model of Mental Health Recovery.

The project included;



Working with people accessing TEWV mental health services to support them and their families to know and claim their rights. Through this part of the project we co-produced a tool with service users, their families, carers and advocates. It can be found on www.bihhr.org.uk by clicking, “Get our Resouces”.



Building the capacity of TEWV mental health staff to respect, protect and fulfil their legal duties under the Human Rights Act. This booklet was created together with staff as a tool to support them to operationalise human rights every day.



Supporting leadership with the knowledge and understanding of human rights law to create a human rights respecting environment for their staff and service users.

Who is this tool for?

This tool was created together with staff working in mental health and capacity services within TEWV NHS Foundation Trust. It is therefore aimed at staff working within these settings.

This resource will also be helpful for TEWV leadership in supporting staff to operationalise a human rights-based approach.

Lots of information here may also be useful for people using services, their families, carers, or advocates.

Note that the resource is best used and understood as an addition to human rights practice-based training.



Mental Health

We use the term “mental health” to include anyone who may have a “disorder” or “disability of mind” (definition in the Mental Health Act). This can include depression, dementia, eating disorders, autism-spectrum disorders, behaviour changes caused by brain damage and personality disorders.



Mental Capacity

Capacity is about your everyday ability to make decisions about what happens to you, including decisions about your care and treatment.

Your mental capacity can be impaired for several reasons such as mental illness, learning disability, dementia, brain damage or intoxication.

The Mental Capacity Act sets out a test to assess whether you have capacity to make a decision, if you are able to:

- Understand
- Remember
- Weigh up the pros and cons and communicate your decision

Finding your way around

What are human rights?	6
The Human Rights Act	8
How does Human Rights Act work with other laws?	10
Right to Life	12
Right to be Free from Inhuman and Degrading Treatment	14
Right to Liberty	16
Right to Respect for Private and Family life, Home and Correspondence	19
Right to Peaceful Enjoyment of Possessions	22
Right to be Free from Discrimination	24
How to use this Flowchart	26

What are human rights?

Human rights are the basic freedoms and protections that every person has simply because they are human. Human rights are about people being treated with dignity, respect and fairness, having a say over their lives and participating in decisions about their care, treatment and recovery.



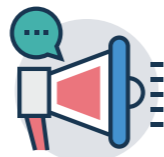
Treated with dignity



Treated with respect



Treated fairly



Listened to and have a say over their lives

Human rights, however, are more than a set of values or ideas. They provide a set of minimum standards and they come alongside a legal duty which is placed on public bodies and their officials.

Our law, the Human Rights Act 1998 (HRA), brings the rights in the European Convention on Human Rights into domestic law here in the UK. It is the Human Rights Act which guarantees these minimum standards for everyone accessing public services, including in mental health and mental capacity settings.

This is not a 'new' approach or an 'add on'. This is the law which as a public official in the UK you must be upholding in your practice every day.

How does the Human Rights Act Work?

When the Human Rights Act was introduced in 1998 it had two key aims:

1. Make the human rights in the Convention enforceable here at home through the UK courts
2. Help create a culture of respect for human rights across the UK

This tool seeks to help you as a public official make the second key aim of the HRA a reality and create a culture of respect for human rights in your practice by providing a practical tool to support your day to day work.

The content within this tool will support you to:

- ✓ recognise when rights might be at risk.
- ✓ identify which human rights are involved and whether these can or cannot be lawfully restricted.
- ✓ identify rights respecting changes.
- ✓ record and review using a human rights framework.

Being able to recognise the impact which a decision, policy or action will have on a person's human rights will support you to deliver good quality care that is person-centred.

What TEWV staff involved in the project said:

"I used the Human Rights Act to challenge a decision to detain someone for inappropriate verbal comments."

"After human rights training, I now always consider least restrictive practice and I encourage clients to challenge decisions."

"I now feel confident in ensuring a person's human rights are met even if this is not what the family want."

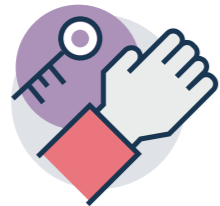
"In discussion with local services I have used Article 8 of the Human Rights Act to ensure a person can maintain contact with family."

The Human Rights Act

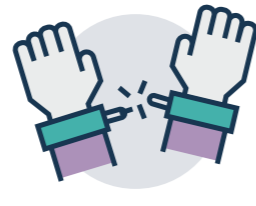
The Human Rights act contains 16 key rights, called articles.



Right to Life
Article 2



Right not to be tortured or treated in an inhuman or degrading way
Article 3



Right to be free from slavery or forced labour
Article 4



Right to liberty
Article 5



Right to a fair trial
Article 6



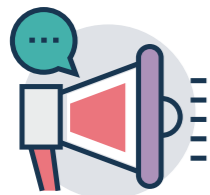
Right not to be punished for something which wasn't against the law when you did it
Article 7



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



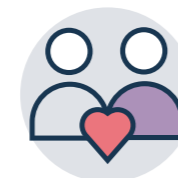
Right to freedom of thought, conscience and religion
Article 9



Right to freedom of expression
Article 10



Right to freedom of assembly and association
Article 11



Right to marry and found a family
Article 12



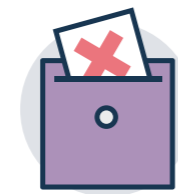
Right not to be discriminated against in relation to any of the human rights listed here
Article 14



Right to peaceful enjoyment of possessions
Article 1, Protocol 1



Right to education
Article 2, Protocol 1



Right to free elections
Article 3, Protocol 1



Abolition of the death penalty
Article 1, Protocol 13

The Human Rights Act works in three key ways:



1. The Human Rights Act puts a legal duty on public authorities to respect and protect human rights across their actions, decisions, policies, services, etc.



2. Other laws should be applied in a way that respects everyone's human rights, as far as possible.



3. If 1 and 2 are not complied with people can now bring legal cases in the UK courts.

What are my legal duties?

The Human Rights Act puts a legal duty on public services and all those who work for them, to respect and protect human rights across their actions, decisions, policies and services.

NHS Trusts such as TEWV are public authorities which means that all TEWV staff must respect and protect human rights in everything they do in their role.

Your legal duty under the Human Rights Act has three parts:



RESPECT people's human rights. To not restrict them or try to breach them. Staff should avoid interfering with someone's rights unless it is absolutely necessary to protect that person or others from harm.



PROTECT people's human rights. By law, staff must step in and take positive action to protect people from harm. This could include protecting a person from harm by another person such as a family member or carer. This is usually called safeguarding.



FULFILL people's human rights. This means investigating when things have gone wrong and putting measures in place to stop it from happening again.

How does Human Rights Act work with other laws?

Understanding how laws fit together



You use many different pieces of legislation in policy and practice. However, the Human Rights Act operates as a foundation law.

This means that all other legislation, policy and practice must be compatible with human rights or 'human rights compliant'.

All TEWV staff should apply and interpret other laws in ways that protect people's human rights.

This means that staff cannot apply the Mental Health Act in a way that is incompatible with human rights law.

The practical framework of absolute and non-absolute human rights

Some of the rights within the Human Rights Act are what we call "absolute" human rights which means they can never be taken away. Others are "non-absolute" human rights which means that sometimes they may be restricted. As a staff member, if you're putting a restriction on a non-absolute right you must ensure that your actions meet the three stage test:

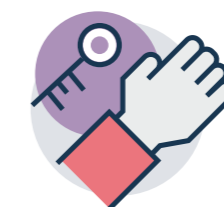
- ✓ **Lawful** – there must be a law which allows public officials to take that action (such as the Mental Health Act or Mental Capacity Act) and this information must be made accessible to the person (or their family, carer or advocate if capacity is an issue).
- ✓ **Legitimate** – there must be a good reason (for example to protect that person or others from harm you, this is known as public safety). A good reason could never solely be that you have no time or resource to do something differently.
- ✓ **Proportionate** – that you have thought about other things you could do, but there is no other way to protect the person or other people. Sometimes people use the phrase, "least restrictive option" to describe this. Ask yourself, is this the least restrictive option available to me?

Relevant rights

In this booklet we look at 6 different rights which were identified through the project as being the most relevant to mental health/capacity settings. We take each one in turn and explain whether it is absolute or non-absolute. Depending on the nature of the right, we then explain the test you must apply as a practitioner to ensure that your decision is rights respecting.



Right to Life
Article 2



Right not to be tortured or treated in an inhuman or degrading way
Article 3



Right to liberty
Article 5



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



Right not to be discriminated against in relation to any of the human rights listed here
Article 14



Right to peaceful enjoyment of possessions
Article 1, Protocol 1

Right to Life

This right is protected by Article 2 of the Human Rights Act.



Right to Life
Article 2

When might the right to life be relevant to your work?

- ✓ When a person's life may be a risk – including from themselves or from other people.
- ✓ Where decisions are being made about withdrawing life sustaining treatment or not resuscitating a person.
- ✓ If people with mental capacity/health issues have their physical health needs ignored which could risk their life.

Can a person's right to life be restricted by mental health/capacity services?

✗ No. A health or care professional cannot deliberately away a person's right to life. This right is called an 'absolute right', which means it must always be protected by health and care professionals.

What are my duties?



RESPECT: You cannot deliberately take away someone's life.



PROTECT: If you know that someone's life is at risk you must take reasonable steps to protect it. This does not mean providing treatment at all costs. See more in the box below.



FULFILL: There needs to be an independent investigation into a death where your organisation may be implicated or involved. Steps should be taken to ensure that this does not happen again.

What does my duty to take 'reasonable steps' to protect life involve?

As a staff member you have a duty to take reasonable steps where:

- You **know**, or **ought to have known** (for example because it has been reported to you), that there is a real, immediate and identifiable risk to someone's life, and
- There are **reasonable steps**, within the scope of your powers, you could take to avoid that risk.

The courts have set out what **reasonable steps** to protect life might include. These are not steps which put an impossible or disproportionate burden on the public authority, but could include:

- Obtaining access to additional information to help you make a decision.
- Undertaking risk assessments or mental health assessments.
- Observing a person known to be at risk of taking their life.
- Ensuring all public officials involved in the care of a person at risk have access to all relevant information.



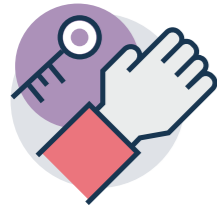
Real Life Human Rights Case from the Courts: Melanie's story

Melanie Rabone was 24 years old and voluntarily admitted herself to a mental health hospital after she'd attempted to take her own life. She was assessed as being at high risk of suicide and the Doctor advised ward staff that if Melanie asked to leave, she should be re-assessed and if necessary detained under the MHA to try and protect her right to life. At the weekend, Melanie left the hospital and whilst on leave from the ward took her own life. Her family took a human rights case to court, the court ruled that the hospital had failed in their duty to protect Melanie's right to life. The hospital had a duty to take reasonable steps to protect Melanie's right to life, including by re-assessing her and detaining her under the MHA if required to try and prevent suicide.

(Real life Court example from Rabone v Pennine Care NHS Foundation Trust, 2012)

Right to be Free from Inhuman and Degrading Treatment

This right is protected by Article 3 of the Human Rights Act.



Right not to be tortured or treated in an inhuman or degrading way
Article 3

When might the right to life be relevant to your work?

This right **protects against very serious abuse or neglect**, such as:

- ✓ Serious harm arising from a lack of care/support or self-neglect.
- ✓ Severe physical or mental abuse or ill-treatment by others (which could include practitioners, family members, carers).
- ✓ Use of excessive force to restrain someone.
- ✓ Leaving a person in their own bodily waste for long periods of time.
- ✓ Administering treatment that may be causing serious harm or suffering.
- ✓ Lack of food or fluids leading to malnutrition or dehydration.

When is treatment 'inhuman or degrading'?

This is treatment which:

- ✓ Makes a person feel very frightened or worried.
- ✓ Causes someone a lot of pain.
- ✓ Makes them feel worthless or hopeless.
- ✓ Causes extreme humiliation.

This right protects against very serious harm. Less severe abuse which has a less serious impact is protected by the right to respect for private life.

Because everybody is different, what is inhuman and degrading treatment for one person might not be inhuman and degrading for another person. It all depends on each person and how treatment affects them. So, staff must take into consideration things like:

- ✓ A person's age.
- ✓ Gender.
- ✓ Their mental health.
- ✓ Their mental capacity issue.
- ✓ How long they have been experiencing such treatment.

Can a person's right to be free from inhuman and degrading treatment be restricted by health and social care services?

✗ No. A health or care professional must never treat anyone in an inhuman or degrading way. This right is called an 'absolute right', which means it can never be lawfully taken away. If you are aware that someone is experiencing inhuman or degrading treatment you must raise this immediately.

What are my duties?



RESPECT: You cannot treat someone in an inhuman or degrading way. Whether or not this was your intention, it is the impact on the person that counts.



PROTECT: If you know that someone is at risk or may be subjected to such treatment, you must take reasonable steps to protect them (usually called safeguarding).



FULFILL: There needs to be an independent investigation where inhuman or degrading treatment has occurred and where your organisation may be implicated or involved. Steps should be taken to ensure that this does not happen again.



Real Life Human Rights Case from the Courts: Mandeep's Story

Mandeep 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, drank from the toilet and smeared himself with faeces. When Mandeep was transferred to a clinic to get treatment he was diagnosed as suffering from a manic episode with psychotic features. He took a human rights case to court challenging the conditions and time in police detention. The court took into account the impact the detention conditions had on Mandeep, including the fact that he was in real need of appropriate psychiatric treatment. The court decided this breached Mandeep's right to be free from inhuman and degrading treatment.

(Real life Court example from MS v UK, 2012. We made up the name.)

Right to Liberty

This right is protected by Article 5 of the Human Rights Act



Right to liberty
Article 5

When might the right to liberty be at relevant to your work?

- ✓ Where a person has restrictions placed on their movement as part of their care or treatment arrangements.
- ✓ Decisions preventing a person from leaving a place (such as a care home or hospital) and ensuring the correct processes are followed.
- ✓ When a person requires constant supervision or monitoring and ensuring that they have access to the relevant safeguards.
- ✓ Use of restraint techniques and/or medication which limit a person's ability to move about freely.
- ✓ Over restrictive policies or practices which lead to significant delays in a person being able to challenge restrictions on their liberty.

Can the right to liberty be restricted by mental health/capacity services?

Yes, the right to liberty can be limited where necessary but there is a test that you must go through if you are going to restrict this right. You must be able to show that it is:

- ✓ Lawful – there must be a law which allows you to take that action (such as the Mental Health Act or Mental Capacity Act) and this information must be made accessible to the person that is having their liberty restricted.
- ✓ Legitimate – there must be a good reason (for example to protect the person or other patients/residents/staff from harm, this is known as public safety). A person's liberty cannot be restricted if the only reason is lack of resources (such as not enough available staff).
- ✓ Proportionate- you have thought about other things that you could do, but there is no other way to protect the person or other people. Sometimes people use the phrase, "least restrictive option" to describe this.

Some examples:

- ✓ If a person has been detained under the Mental Health Act. Their detention must be justified by the authority detaining them as being necessary for their health or safety, or for the protection of others.
- ✓ If a person has been assessed as lacking capacity to consent to treatment for a mental health issue or to make a decision about leaving a care arrangement, and there is a concern about their safety or wellbeing. Restricting their liberty may be necessary but the formal process must be followed, called a 'Deprivation of Liberty Authorisation.'

Even if a restriction of liberty is for a lawful reason, the procedural safeguards must also be in place. Without these safeguards, the right to liberty might still be breached.

What are my duties?



RESPECT: You cannot deprive someone of their right to liberty apart from in the specific circumstances set out in the right to liberty and when the legal safeguards are followed.



PROTECT: If it becomes necessary to restrict the right to liberty of a person in your care, you have a legal obligation to apply the procedural safeguards by considering all the following questions:

- Has the person been informed of the reason for restricting their liberty?
- Is the person able to challenge or appeal the decision?
- Is the person being given the opportunity to tell their side of the story?
- Can the person see and comment on all relevant documents?
- Has the decision been taken with a reasonable period of time?



FULFILL: When a person's right to liberty has been lawfully or disproportionately breached it should be fully investigated. Steps should be taken to ensure that this does not happen again.

What is a deprivation of liberty? 'Cheshire West'

Practitioners may sometimes need to prevent a person from leaving a place (e.g. where they live or where they are receiving care and treatment) or remove them to another place. Doing this when a person has capacity to make decisions about their care, treatment and residence would be an unlawful deprivation of liberty. The situation for people who lacked capacity to make such decisions was clarified by the Supreme Court in 2014. The court ruled that deciding if a situation is a deprivation of liberty is an objective question. The standard is the same regardless of whether someone has capacity. The court was also clear that a deprivation of liberty may sometimes be necessary, but the legal safeguards must be in place.

There will be a deprivation of liberty if a person is subject to the following:

- under continuous supervision or control;
- and
- not free to leave;
- and
- public officials are involved in some way, e.g. through the funding arrangement, planning and/or delivery of the person's care. If this "acid test" is met then the person must have access to the safeguards required by the right to liberty in the Human Rights Act. This could include those set out in the Deprivation of Liberty Safeguards. Outside of a care home or hospital setting you will need to apply to the Court or Protection to authorise a deprivation of liberty.

Remember, the following issues are not relevant when deciding if a situation amounts to a deprivation of liberty:

- the relative “normality” of the situation.
- a person’s lack of objection / compliance.
- the reason or purpose of the placement (including it being in a person’s best interests; this is relevant to deciding if liberty should be restricted, not the factual question of if it had been restricted).

(Legal case: Cheshire West and Chester Council v P, 2014)



Human Rights in Real Life: Peter’s Story

Peter was admitted to a London mental health hospital. He is an informal patient, so he has not been “sectioned” under the Mental Health Act. This means he is entitled to leave the hospital whenever he likes. If staff have concerns about Peter’s health or safety, they could use powers under the Mental Health Act to detain him.

Peter wants to leave the ward to visit his sister and his friends. On the three occasions he tries to do this the nurses tell him it was not in his best interests to leave. So even though Peter was not detained and free to leave, in practice he was not able to.

Peter had access to an advocate, Rana, who had received human rights training from BIHR. After discussing the issue with Peter, Rana wrote to the hospital on his behalf flagging up concerns that this situation was breaching Peter’s right to liberty, protected by Article 5 in the Human Rights Act. Rana explained that although Peter is an informal patient, he was being treated as though the procedures for detaining him had been used. Rana raised that officials were not meeting the 3-stage test. The detention was not lawful or proportionate. Following this Peter’s relationship with the nurses greatly improved, and he was permitted to leave when he wanted to. Peter’s mental health improved greatly, and he was discharged shortly after.

(Real life example from our Know Your Human Rights Project, 2019).

Right to Respect for Private and Family life, Home and Correspondence

This right is protected by Article 8 of the Human Rights Act.



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

When might the right to respect for private and family life, home and correspondence be relevant to your work?

- ✓ When you have concerns about a person’s capacity to make an informed decision about treatment.
- ✓ Ensuring people are treated with respect and dignity when receiving care or treatment.
- ✓ Where a person in a hospital or a care home wishes to return home against the wishes of the care provider.
- ✓ Where care or treatment decisions are being made.
- ✓ Where care or treatment options impact on people’s ability to maintain or develop relationships, including with family or friends and sexual relationships.
- ✓ Ensuring that someone can participate in the life of their community. For example, being able to socialise with others and not be secluded without good reason.
- ✓ Developing family or other relationships and maintaining contact.
- ✓ Respect for the home you already have (not a right to housing).
- ✓ Being able to communicate with people (including by letter, email etc.).

Can the right to private and family life, home and correspondence be restricted by mental health/capacity services?

Yes. However, there is a test you must go through if you are planning to restrict this right. You must be able to show that the restriction is:

- ✓ Lawful – there must be a law which allows you to take that action (such as the Mental Health Act or Mental Capacity Act).
- ✓ Legitimate – there is a good reason (for example public safety or protecting the rights of other people, including other patients/residents and staff). This right cannot be restricted if the only reason is lack of resources (such as not enough available staff).
- ✓ Proportionate- you must have thought about other things they could do, but there is no other way to protect the person or other people. It is the least restrictive option.

What are my duties?



RESPECT: You should not interfere with this right as far as possible.



PROTECT: If a person in your care is at risk of having this right breached, you must take reasonable steps to protect this right.



FULFILL: For decisions that could impact on this right, your organisation must have procedures in place to ensure fair decision making.

Autonomy and 'unwise decision'

The right to respect for private life includes protecting people's autonomy. People have a right to make decisions about their own lives, care and treatment, including decisions that others might think unwise. This is explicitly recognised by the Mental Capacity Act.

As a person working in a mental health setting you may sometimes have concerns about an unwise decision that a person is making. Your approach to an unwise decision should be guided by the law, not your own moral compass, or what you would do in a similar situation.

You can only interfere with someone's decision if you:

- ✓ Have genuine concerns about the person's capacity to make that decision;
- and
- ✓ Have carried out a capacity assessment and found that the person lacks capacity to make decisions about this specific issue;
- and
- ✓ You have evaluated what would be in the person's best interests in line with the MCA (this included considering their human rights) and found that interfering with a person's decision is in their best interests.

Once you have decided to interfere with a person's decision a human rights approach and the requirements of the MCA establish that:

- ✓ A person should still be supported to take part in decision making about that issue as far as possible;
- and
- ✓ Any restriction should be explained to them in a language they can understand;
- and
- ✓ Any restriction must be compatible with the person's human rights.

You should also remember that capacity to make decisions is issue specific and may change over time. Any interferences should be regularly reviewed and adjusted in line with the person's wishes and capacity to make decisions on the issue.



Human Rights in Real Life: Erin's Story

Erin was in her late 70s and affected by dementia. She lived in a care home. Her partner, Patrick, visited her regularly. During a visit Patrick was seen touching Erin in a sexual way. Staff were concerned and raised it with the local authority, who began a safeguarding enquiry.

Erin was assessed as having capacity to decide if she wanted to have contact with Patrick (including kissing and hugging) but not sexual contact. Erin's friend was pressing the local authority to restrict Patrick's visits.

Erin's Care Act Advocate, Laticia, supported her through the enquiry. Laticia had been trained by BIHR and knew this was about Erin's right to family life. Laticia had seen the positive impact the relationship with Patrick appeared to have on Erin. Laticia met the social worker conducting the enquiry. The social worker agreed that Erin's right to family life was engaged and took this into account during her enquiry. It concluded that the local authority would not prevent Patrick from visiting Erin and that the care home staff would not intervene if they kiss and hug.

(Real life example from BIHR's Care and Support project)

Right to Peaceful Enjoyment of Possessions

This right is protected by Article 1, Protocol 1.



Right to peaceful enjoyment of possessions
Article 1, Protocol 1

When might the right to peaceful enjoyment of possessions be relevant to my work?

This right prevents mental health services from depriving people of their property, from interfering with people's property or putting restrictions on what people do with it, unless the three-stage test is met:

- ✓ Lawful – there must be a law which allows staff to interfere with a person's property (such as the Mental Health Act or Mental Capacity Act).
- ✓ Legitimate – there is a good reason (for example public safety or protecting the rights of other people, including other patients/residents and staff).
- ✓ Proportionate- you have thought about other things they could do, but there is no other way to protect you or other people. It is the least restrictive option and the decision is reviewed appropriately.

What are my duties?



RESPECT: You should not interfere with this right as far as possible.



PROTECT: If a person in your care is at risk of having this right breached, you must take reasonable steps to protect this right.



FULFILL: For decisions that could impact on this right, your organisation must have procedures in place to ensure fair decision making.



Human Rights in Real Life: Josh's Story

Josh was an inpatient in a mental health hospital for children and young people. One Friday afternoon, Josh was told he must hand over his notebook, a new ward policy as there had been an incident on another ward that day. Josh was distraught, his notebook was where he wrote down how he felt, a way of managing day to day feelings. It was also where he liked to draw, something which contributed hugely to his health and wellbeing.

Josh's mum arrived to visit Josh later that day and found him in tears. She had been involved in a BIHR training course and asked ward staff whether there was a legitimate aim for taking away Josh's journal? Staff explained it was a new ward policy. Josh's mum told staff this was not the least restrictive response and it must be reviewed immediately.

The following day Josh's journal was returned, and a less restrictive process was put in place. Staff should from now on manage and review possessions on an individual basis and only when the person or others is at risk of harm.

(Real life example from BIHR's Mental Health Recovery Project, 2020)

Right to be free from discrimination

This right is protected by Article 14.



Right not to be discriminated against in relation to any of the human rights listed here
Article 14

This is not a right to equality or a stand-alone right to be free from discrimination.

It means when a person is using the Human Rights Act, they must be treated the same as everyone else.

You can think of it as a 'piggy-back' right.

For example, if a doctor makes a decision about not treating a person's physical health problem because of their mental health issue, their right to wellbeing under Article 8 would be engaged and they can use non-discrimination arguments in their negotiations with the doctor/other public officials.

When might the right to be free from discrimination be relevant to my work?

- ✓ If staff are deciding not to treat a person's physical health problem because of their mental capacity or mental health issue.
- ✓ Someone is getting worse care than other patients because of their mental capacity or mental health issue.
- ✓ A decision is made that a person should live in an institution like a hospital or unit, just because of their mental capacity or mental health.
- ✓ Bullying or harassment.

Can the right to be free from discrimination be restricted by mental health/capacity services?

Yes, sometimes. Not all discrimination is against the law. Sometimes you may be treating someone differently, but this is not discrimination. It may be for a good reason. For example, if a local authority is running a women-only mental health facility, this would be discriminating based on gender. The good reason would be that this service is necessary to meet the needs of women patients. Very strong reasons are needed to justify discrimination based on disability (including mental health/capacity issues).

How might a person be discriminated against based on their mental health/capacity issue?

- If they are being **treated less favourably** than other people in the same situation based on their mental health/capacity.
- **Failing to treat a person differently** when they are in a very different situation to others, for example because of their mental health or mental capacity issue.
- Applying rules to a person that have a **worse impact** on them because of their mental capacity or mental health/capacity issue.



Human Rights in Real Life: Alice's Story

Alice was 18 years old and getting treatment for a mental health problem by her GP. Alice needed surgery on an injury after self-harming, but a doctor decided not to perform the operation. Her GP and psychiatrist believed the surgery was in her best interest and the delay was making Alice very upset and in a lot of pain. Joe, who worked for an advocacy charity, supported Alice and her family to challenge the doctor's decision as an interference with her human rights and discrimination based on her severe mental health needs. As a result, Alice received the surgery.

(Real life story, taken from our booklet 'Mental Health Advocacy and Human Rights', 2013)

How to use this Flowchart

This flowchart has been created by TEWV staff involved in the project to support human rights-based decisions.

