

A PRACTICAL INTRODUCTION TO HUMAN RIGHTS LEADERSHIP IN ADULT SOCIAL CARE

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If you didn't complete the **BEFORE**
survey, you can do it now



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BIHR: Enabling others to use the Human Rights Act in everyday ways



PEOPLE

Information and tools to support HRA knowledge and advocacy



COMMUNITIES

Programmes, training and co-developed resources to address issues using HRA



PUBLIC SERVICES

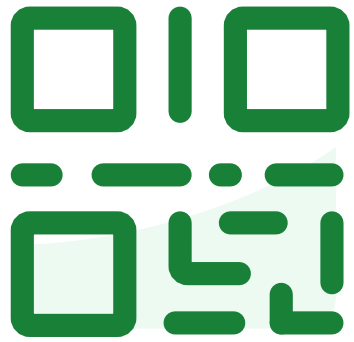
Programmes, training and resources to increase accountability using the HRA in approach



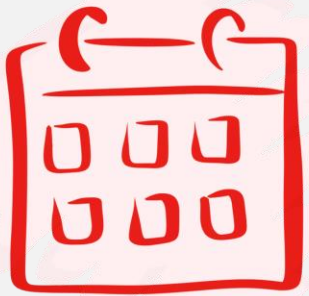
NATIONAL POLICY

Experience informed human rights law analysis to secure and mainstream HRA





**Join at slido.com
#3619779**



This morning ...

- ✓ Awareness of the Human Rights Act in adult social care
- ✓ Spotlight on the human rights legal duties for adult social care including how it works with other laws
- ✓ Understanding some illustrative human rights for adult social care

Throughout focussing on how HRA can be harnessed by leaders for positive change

(Slides pack available on the after session survey link)





Keeping safe and well

- We share stories and experiences about human rights; this might be confronting or upsetting. Please take a break if need and rejoin when and if you want to.
- We focus on the law as it is to support both rights holders and duty bearers to better understand the Human Rights Act in their lives and work, not on what the law could or should be. Please be mindful of this during any activities to ensure they are as useful as possible for today's learning.
- If you are sharing information, please ensure you maintain confidentiality.
- **BIHR does not give legal advice or do casework**, you can find signposting for legal, practical and mental health support at the end of the Guide.
- **And remember, if someone you support or are aware of is at risk of immediate harm please follow your safeguarding protocols.**

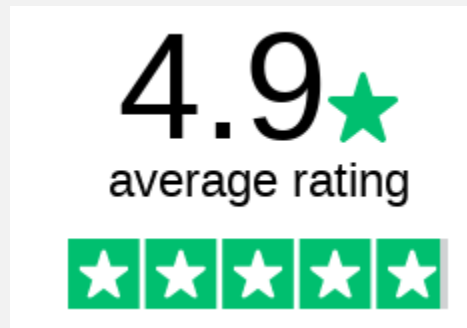


WHAT ARE HUMAN RIGHTS?

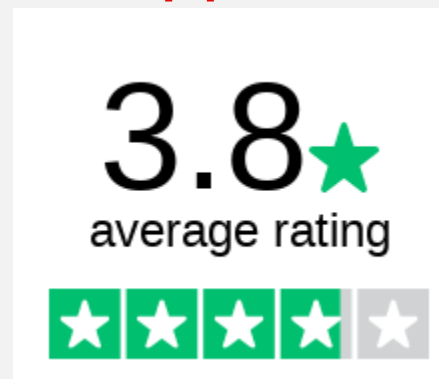


Where are we starting?

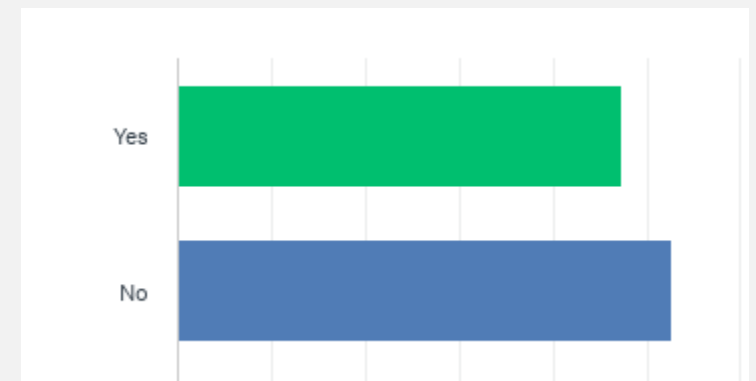
How important or relevant do you think the Human Rights Act is to your life and/or work?



How confident do you feel discussing your human rights or the human rights of the people you support?



Have you ever relied on the Human Rights Act to make positive changes in your life or work?



First Thoughts ...

Going to put you in breakout rooms for **3 mins** to discuss:



1. What does the term “human rights” make you think or feel?
2. How could they relevant to the people you support and how you work? Do you have explicit examples.



You have 3 mins, make a note and we'll share together as a group



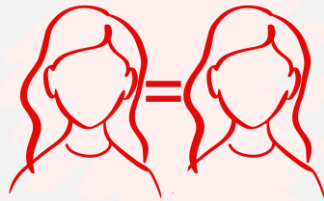
Human rights: values but also law



Treated
with
dignity



Treated
with
respect



Treated
fairly



Listened to and
have a say
over our lives



But human rights
are more than
values, human
rights are the law.



History and context



- Human rights as legal standards emerged from World War II
- Long history but after WWII focus on universal human rights for **everyone** and legal duties on all **governments**.



- The rulebook about how state/government power treat people (not about individual to individual)



In the UK's **Human Rights Act** state means everyday public bodies and services in health, care, education, social services as much as prisons or central government departments.



Universal: For everyone

Human rights
belong to **all of us**,
all of the time



“ People with disabilities, both mental and physical, have the same human rights as the rest of the human race. It may be that those rights have sometimes to be limited or restricted because of their disabilities, but the starting point should be the same as that for everyone else. This flows inexorably from the universal character of human rights, founded on the inherent dignity of all human beings ... Far from disability entitling the state to deny such people human rights: rather it places upon the state (and upon others) the duty to make reasonable accommodation to cater for the special needs of those with disabilities. ”

Baroness Hale in the Supreme Court: P v Cheshire West & Chester Council
and P & Q v Surrey County Council (2014)



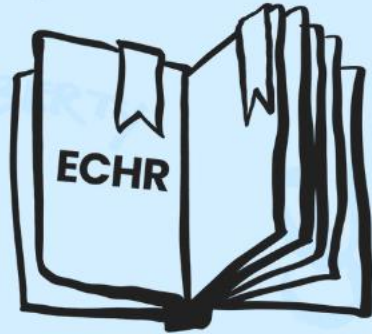
EVERYONE!

People you
know and like
and people you
don't





United Nations
creates
UDHR in 1948,
followed by
range of
international
human rights
laws



Council of Europe
creates the ECHR
and Court, a
strong regional
system of human
rights protection
NOT THE EU!



Our domestic law to "bring
human rights home" covers
whole of UK (GB & NI)

Devolution Acts which provide
additional protections for human
rights in our systems in Northern
Ireland, Wales & Scotland



WHERE OUR HUMAN RIGHTS LAWS COME FROM



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Human Rights Act: 2 aims

1 To make the human rights in the Convention accessible in the UK courts.

2 To help develop a culture of respect for human rights – where these are interwoven into the way public services are developed, delivered and experienced.



A human rights culture is:

“... one that fosters basic respect for human rights and creates a climate in which such respect becomes an **integral part of our way of life** and a **reference point for our dealing with public authorities** ... in which all our institutional policies and practices are influenced by these ideas...The **building of a human rights culture** ...[depends] **not just on courts** awarding remedies for violations of individuals' rights, **but on decision-makers in all public services internalising the requirements of human rights law**, integrating those standards into their policy and decision-making processes, and ensuring that the **delivery of public services in all fields is fully informed by human rights considerations**. ”

UK Parliament's Joint Committee of Human Rights (our emphasis)



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Do you see this culture of respect for human rights - where the rights and duties in the Human Rights Act are explicitly an integral part of how people interact with services, and are part of decision-making at all levels?

Reflection points to consider ...

If you rated at 2 or above, do you see ...



- Consistent understanding of the specific legal duties in the Human Rights Act – **WHAT ARE THEY?**
- Consistent and correct use of specific human rights legally protected in the HRA – **HOW MANY ARE THERE, WHAT ARE THEY?**
- Is it more about the values? If so, how does that shape actions and decisions where personal values can differ? – **HOW ARE WE ASSURED WE'RE MEETING OUR LEGAL DUTIES?**



Our 16 human rights ...

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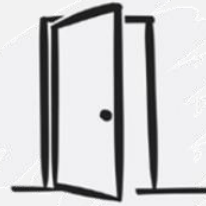
Article 2
The right to life



Article 3
The right to be free from
torture and inhuman or
degrading treatment



Article 4
The right to be free from
slavery and forced
labour



Article 5
The right to liberty



Article 6
The right to a fair trial



Article 7
The right not to be punished for
something that wasn't against
the law when you did it



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



Article 9
The right to freedom of
thought, conscience and
religion



Article 10
The right to freedom of
expression



Article 11
The right to freedom of
assembly and association



Article 12
The right to marry
and start a family



Article 14
The right to be free
from discrimination



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



Article 2, Protocol 1
The right to education



Article 3, Protocol 1
The right to free elections



Article 1, Protocol 13
Abolition of the death
penalty



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Key messages

Human rights: law not niceties



Human rights as **legal**
standards **ARE:**

- for every person
- defined by the law, developing in line with society (“living instrument” principle)
- matched by legal duties on those with public power must uphold



Human rights as **legal**
standards **ARE NOT:**

- optional extras, they are the law
- about being nice, kind, or based on our own morality (are person-centred focused on equal dignity)
- duties on everyone, only duties for those with public power



Human rights in adult social care

(And public services broadly!)



- When decisions are being made about a person's life, the law is clear that their human rights must be supported.
- Based on agreed legal definitions not a battle of moral compasses.
- Counter risk-adverse approaches, focus on rights maximisation.
- Person-centred service development and delivery, and policy.
- Gives frontline staff practical decision-making tools, leaders with prioritisation tools, and people a lever to challenge.



Any questions?

(... Next up how the Human Rights Act works and then a focus on some human rights...)



HOW THE UK's HUMAN RIGHTS ACT WORKS



3 WAYS OUR HUMAN RIGHTS ACT WORKS



1. The Human Rights Act puts a legal duty on **public authorities** to respect, protect and fulfil **people's** human rights across all of their actions, decisions, policies, services, etc.



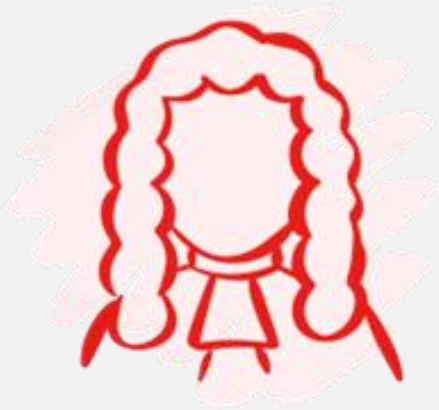
2. Other **laws and policies** should be applied in a way that respects **people's** human rights, as far as possible



3. If 1 and 2 are not complied with **people** can now bring cases in the UK courts (or **authorities** can ask for a court decision)



HRA 3: Legal cases



- Before the HRA there was no way to take a legal case on the human rights it contains.
- Now any person can bring a human rights case (must still pass general admissibility tests).
- Public authorities can also seek the guidance or declarations of a court, particularly on difficult or contested issues.
- Because courts and tribunals are also public authorities, they need to consider people's human rights in their operation, e.g. if at a SEND Housing, Mental Health Tribunals must consider the person's HRA rights.



Legal accountability: Zane



Zane is 19. He is autistic and has epilepsy and learning disabilities. He was at a swimming pool for a familiarisation visit with his specialist school when he became fixated on the water.



The pool manager called the police. Ignoring Zane's carer, officers approached and touched Zane; he jumped into the pool.



5 officers forcibly removed Zane from the water. Zane's carer tried to comfort him but was ordered to move away. Zane was put in handcuffs and leg restraints and placed in a cage in the back of a police van for around 40 minutes. Zane developed PTSD and his epilepsy became more prevalent.



Important for practice: Human rights can be breached even if no ill-intent



Although the police officers were acting in what they thought to be the best interests of ZH they made serious errors which led them to treat this vulnerable young man in a way which caused him great distress and anguish ... the threshold of article 3 had been crossed on the particular facts of this case...

The officers' responses were "over-hasty and ill-informed" ... matters escalated to the point where "a wholly inappropriate restraint of an epileptic autistic boy took place". The officers did not consult properly with the carer ... although the case against the police was established .. satisfied that no-one involved was at any time acting in an ill-intentioned way towards a disabled person.



[Court of Appeal in ZH v MET Police Commissioner \(2013\)](#)



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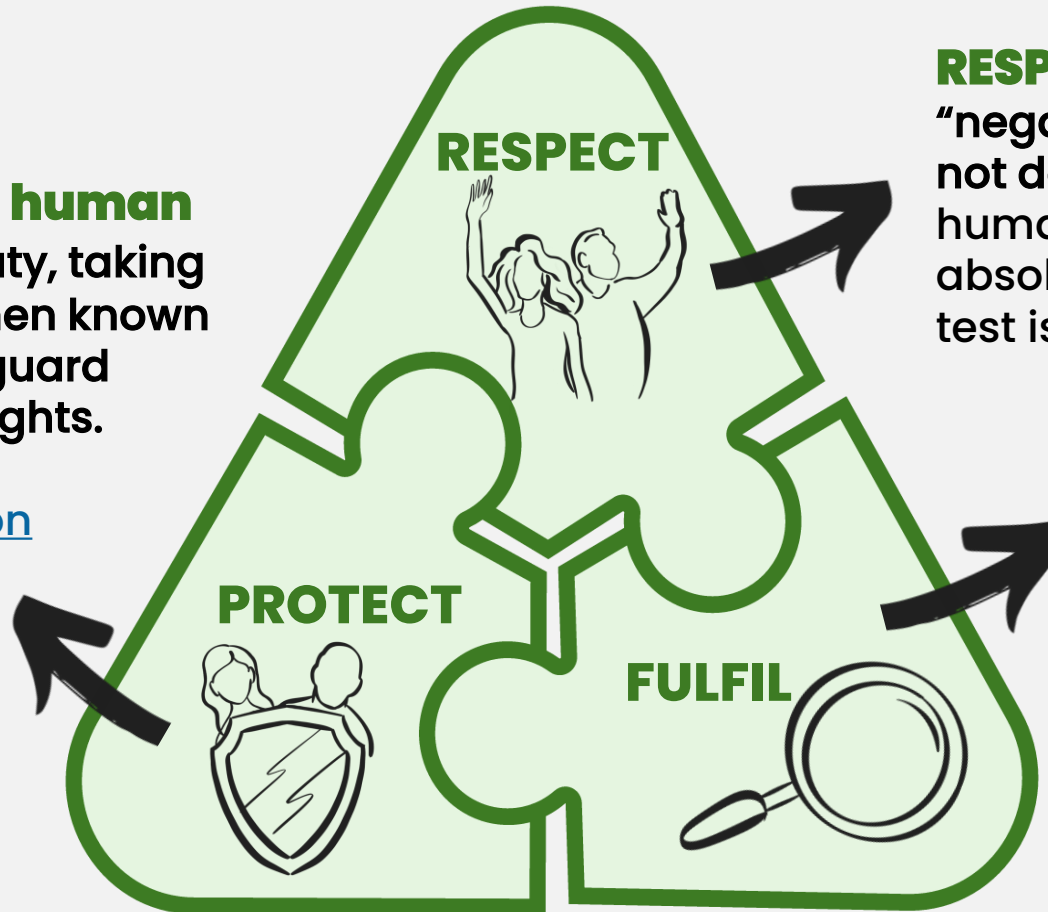


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The Human Rights Act legal duty for staff in public authorities

PROTECT people's human rights: A positive duty, taking reasonable steps when known risk of harm, to safeguard someone's human rights.

[Watch BIHR's video on positive obligations](#)



RESPECT people's human rights: A "negative" duty, i.e., taking a step back or not doing something. Do not breach human rights and only restrict non-absolute human rights when the 3-part test is passed.

FULFIL people's human rights: A procedural duty, unpick what has happened and stop it from happening again.



HRA 1: Who has the human rights legal duty: what is a public authority ?

Core Public Authorities

“**public authorities**” including courts and tribunals. And ...



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Functional or Hybrid Public Authorities

Private or charitable bodies
performing “**public functions**”
For example ...


Private Companies

Charities


Not for profits

Adam's story

Adam has a learning disability affecting his ability to make some decisions for himself. He lives in residential care home run by a care provider, commissioned and funded by the local council. Adam's parents complained that he was excessively and unnecessarily given sleeping tablets. The care provider said Adam's GP had prescribed the medication to take 'when needed', but it had directed its staff to give it every other night to sedate him. This lasted for seven months.



What the Local Government & Social Care Ombudsman (LGO) decided: Adam received unfavourable and unsafe treatment, which was discrimination impacting his right to a private life in Articles 14 and 8 of the Human Rights Act. The care home failed to formally apologise to Adam for 1 year+, and its communication with the family lacked empathy or contrition. LGO decided the council had ultimately failed to take account of Adam's human rights when it provided this care.



Putting it right: When the council became aware of the issues, it started a safeguarding investigation into the care home, contacted the CQC, and made positive changes to the way it monitored its third-party contractors. In addition, the council agreed to make a payment to the family for the avoidable distress they were caused.

[Equal justice: Learning lessons from complaints about human rights - 2022](#)



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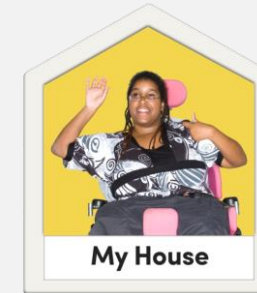
Public bodies, services and staff need to uphold human rights in ...



Education
support



Welfare,
Benefits &
money support



Housing
and support

Social care



Health care
(hospitals,
GPs, CAMHS,
community)

Safeguarding



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Reflection point



Thinking about your role as a leader where could you be harnessing the duty on public bodies to respect, protect, and fulfil people's human rights?





Thinking about your role as a leader where could you be harnessing the duty on public bodies to respect, protect, and fulfil people's human rights?

HRA 2: A foundation law

- The Human Rights Act operates as a foundation law; section 3.
- Other laws must be compatible with human rights or applied in a way that upholds (so far as possible) – apply using the lens of the Human Rights Act
- Policy, Guidance and Regulations (+ law not passed by parliament) can be disapplied.



HRA2: Applying other Acts



Public bodies and staff **legal duty** to apply other Acts of Parliament in a way that **upholds people's human rights** so far as possible.

EXAMPLE: health staff must still consider people's human rights when making decisions using the Mental Health Act such as sectioning or the use of restraint or compulsory treatment; whilst the MHA permits these, they cannot breach human rights.

Courts can't strike out Acts of parliament but can issue a Declaration of Incompatibility with human rights, up to parliament to change the law if courts make a declaration.



HRA2: Applying Regulations, Guidance, Policies, etc.



- Legal duty on public bodies and courts to apply Regulations, Guidance, policies etc. in a way that upholds people's human rights.
- If a policy or Regulations risks people's human rights, the policy or its application changes **NOT** the protection of people's human rights, that isn't optional.

"The Human Rights Act...takes precedence over subordinate legislation such as the regulation in question ... incompatible subordinate legislation must simply be ignored ... There is nothing unconstitutional about disapplying a provision of subordinate legislation which would otherwise result in their acting incompatibly with a Convention right, where this is necessary in order to comply with the HRA."

[R v Secretary of State for Work and Pensions \(2019\)](#)



HRA 2: Foundation law

Mary's story of practice

- Mary, is the Mental Capacity Act Lead for the Integrated Care Board and chairs a national community of practice, she was part of a BIHR human rights practice leadership programme and set herself the goal of being able to use the Human Rights Act to inform strategy.
- The Trust needed to rewrite an MCA policy; despite significant push back due to time restraints, Mary was able to use the knowledge gained during the course to ensure that human rights were reflected in these new policies.
- Mary explained that it was the legal language that was instrumental in explaining to colleagues that a human rights approach was not an option, but a necessity.



HRA 2: Foundation law

Mary's story of practice

“ The BIHR training has been really useful and supported me to influence a Mental Capacity Act Strategy and Policy that is human rights-based, and from this the Safeguarding and Domestic Abuse policies for our ICB. I took a greater part in formulating the MCA policy and ensured it had a greater emphasis on the need to have a human rights approach. This was taken on board not only for the MCA policy but for our Domestic Abuse and Safeguarding policies as well.

I am currently working with others in our city and ICB to review our MCA strategy and it will be human-rights-heavy. I carry this mentality in the way I chair the [national community of practice] ... We have reviewed Level 3 training for ICB and ensured a greater emphasis on human rights. ”



Reflection point

Thinking about your role as a leader
where could you be harnessing the
duty on public bodies to apply other
laws and policies?





Thinking about your role as a leader where could you be harnessing the duty on public bodies to apply other laws and policies?

Any questions?

(... Next up a spotlight
on some of the human
rights in our Human
Rights Act relevant to
adult social care...)



OUR HUMAN RIGHTS IN THE HUMAN RIGHTS ACT



People's physical and
mental wellbeing



Significant harm to
a person.



HUMAN RIGHTS IN THE HRA: SUPPORTING WELLBEING AND PROTECTING AGAINST SERIOUS HARM

**RIGHT TO RESPECT FOR PRIVATE
AND FAMILY LIFE**

Article 8.

A non-absolute human right



**RIGHT TO BE FREE FROM INHUMAN
OR DEGRADING TREATMENT**

Article 3

An absolute human right



RIGHT TO NON-DISCRIMINATION

(Article 14, enjoying all the rights in the Human Rights Act without being discriminated against)



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Right to non-discrimination



Article 14
The right to be free
from discrimination

- Needs to link (“piggy back”) to one of the other human rights, e.g., being discriminated against in your private life (Article 8) – **always consider if discrimination is an issue when thinking about the other human rights.**
- There is a list of reasons (like sex, race, political opinion) plus “other status” >> includes mental and physical health, capacity issues, homelessness, immigration status, receiving certain benefits, etc.
- **Not all differences of treatment are discrimination >> can the difference be reasonably and objectively justified?**
- Sometimes different treatment is needed to uphold people’s human rights, e.g. an autistic person may need different support to the usual measures to meet their wellbeing rights in Article 8



People's physical and
mental wellbeing



Significant harm to
a person.



HUMAN RIGHTS IN THE HRA: SUPPORTING WELLBEING AND PROTECTING AGAINST SERIOUS HARM

**RIGHT TO RESPECT FOR PRIVATE
AND FAMILY LIFE**

Article 8.

A non-absolute human right



**RIGHT TO BE FREE FROM INHUMAN
OR DEGRADING TREATMENT**

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An absolute human right



RIGHT TO NON-DISCRIMINATION

(Article 14, enjoying all the rights in the Human Rights Act without being discriminated against)



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The right to respect for private and family life (Article 8)

PRIVATE LIFE

physical and mental
well-being

autonomy over self and
involvement in decisions
about life

participation in
community

relationships

confidentiality

FAMILY LIFE

develop ordinary family
relations

presumption of ongoing
contact if split up

About the real existence
in practice of close
personal ties

HOME

not a right to housing,
it's the enjoyment of
current home

"home" not about what
UK law says it is, based
on the existence of
sufficient and
continuous links with a
specific place
E.g. where people are
living in provided
accommodation /
service is their home

CORRESPONDENCE

uncensored
communication with
others

letters and modern
communication
methods (texts, etc.)

Screening of
correspondence, data on
devices, data
interception, internet use,
etc.



Absolute and non absolute rights

Absolute rights:



Can never be
restricted by public
bodies or their staff

Non-absolute rights: 3 stage test



- 1** **LAWFUL**
don't assume lawfulness,
especial of a "usual" practice
- 2** **LEGITIMATE REASON**
in the right itself, not a
personal reason
- 3** **PROPORTIONATE**
MUST be the least restrictive
option actively explored



A real-life check

Colin, in his late 30s. He has been married to Wendy for just over 5 years, and they live in his parents' home. Colin has Down's Syndrome and a learning difficulty. He and Wendy want to start a family. They have sought fertility treatment, after which a consultant psychologist assessed Colin's mental capacity and found he lacked capacity to consent to sexual relationships.

The LA advised Wendy to abstain from sexual intercourse, advising her it would be a criminal offense due to Colin's lack of capacity. Wendy moved to a separate bedroom and minimised physical affection between her and Colin. The psychologist recommended sex education for Colin to help him gain capacity, but this has not happened.

QUESTIONS (Chat or Unmute)

- Whose human rights may be risk and which human rights?
- If a non-absolute human rights do you think any of the restrictions that have happened meet the 3 tests of **lawful; legitimate aims; proportionate?**
- Who has human rights duties, and which part of the duties are needed for action?





Where might the right to respect for private & family life, home & correspondence come up in social services?



Freedom from inhuman & degrading treatment: 2 tests

- Not all harm will be inhuman and degrading treatment – what's inhuman for one person may not be for another, i.e. **focus on impact and the person**
- 2 tests to help decide if the harm is inhuman or degrading



LEVEL OF SERIOUS PHYSICAL OR MENTAL HARM

This takes into consideration the severity of harm, how long it lasted, the effects and how long they have lasted, and whether the impact of treatment is more severe because of age, sex, disability or health status.



SPECIFIC IMPACT OF HARM ON THE PERSON

This can include the purpose or motivation (if intentional treatment), but importantly it's person-centred about the effect and any vulnerabilities of those affected.



A real-life check

Ben, in his 20s, is autistic and has learning disabilities. He lives in a care home to help meet his support needs. After experiencing abuse at his previous home which was closed down, he moved to another. Here he was frequently subjected to used physical restraint, had some of his toys and clothes taken away for not being "age inappropriate," and was punished by being locked in a "quiet room" without light, bed, or toilet. Ben often cried, self-harmed, and was left unattended for long periods.

Ben's family visits with his mum Claire were sometimes restricted, and his private calls were monitored, with staff telling Claire she was babying Ben. At one point, Ben was not allowed to see Claire for 42 days, during which he was told she had died.

QUESTIONS (Chat or Unmute)

- Whose human rights may be risk and which human rights?
- If a non-absolute human rights do you think any of the restrictions that have happened meet the 3 tests of **lawful; legitimate aims; proportionate?**
- Who has human rights duties, and which part of the duties are needed for action?



Relationships between the rights

A reminder that human rights often don't exist in isolation of each other; for example:

- if the right to liberty (Article 5) is restricted that will likely impact protections in private and family life (Article 8) including relationships with others, wellbeing etc.
- When the right to liberty (Article 5) is restricted, it may have serious mental and/or physical consequences (Article 3), e.g. from any restraint used, or the impact of the used.
- If serious mental and/or physical harm (Article 3) is caused, taking action which reduces the serious impact on the person, could move the issue to private and family life (Article 8) including autonomy and wellbeing etc.
- When someone has their wellbeing impacted but this has passed the 3-stage test for restricting the right (Article 8), a continued build up could lead to serious mental and/or physical harm (Article 3).





Where might the right to be free from inhuman and degrading treatment come up in social services?

Any questions?

(... Will look at some final points on integrating into leadership and where to find more information ...)



A human rights approach, built on our Human Rights Act:

The British Institute
of **Human Rights** 



empowering
people to know
& claim their
human rights

increasing the
accountability
& ability of
those
with legal
duties to uphold
people's human
rights



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How can you as leaders put human rights into practice?

Policies & processes explicitly refer to the rights and duties in the Human Rights Act, guiding actions on when to step back, when to step in, and what restrictions are permitted.



Training and learning support for staff making frontline decisions that impact human rights, building confidence to critically consider how applying other legal frameworks



Building a bank of human rights practice support resources for your staff to draw on

Incorporating into quality frameworks for service delivery and commissioning of providers

Using the Human Rights Act rights and duties as the language for partnership and confronting barriers between services, departments etc – it's a shared legal duty.

Setting out your vision and strategic direction – about upholding people's human rights

Incorporation into team meetings and supervisions – understanding both individual and potential systems issues in upholding human rights

Building the capacity of your community to understand their human rights when accessing services and support.

FAIR model: A human rights approach for decision-making at all levels

*** AFTER PRACTICAL TRAINING AND SUPPORT ON HUMAN RIGHTS ACT PRACTICE ***

F **FACTS:** Establish the facts, what is the policy/decision? Who is impacted by the policy/decision? What is the impact on those affected? Have staff been involved in making the policy/decision? Have people impacted been involved?

A **ANALYSIS OF THE RIGHTS AT STAKE:** Which rights are risk when applying and using this policy/decision? Are these rights absolute or non-absolute? If non-absolute, work through Lawful? Legitimate? Proportionate?

I **IDENTIFY WHAT CHANGES NEED TO BE MADE AND WHY.** Who is responsible for making these and how will they do it?

R **RECORD AND REVIEW.** Be explicit about human rights and duties and monitoring arrangements.



The difference it makes

"I don't think I knew how much the Human Rights Act truly impacted my life as an inpatient, and I believe that inpatients and unit staff need to know more about the rights of those in units. Even now, I learn more every day about what I deserved to have access to, that I didn't. If I had been properly educated rather than picking it up myself, I could have advocated more and had a less traumatic experience." – Charli, Lived Experience Expert, young person

"There have been times when I have had to resort to legislation such as the Human Rights Act to fight my son's corner. Human Rights are a vital part of the safety net that we all need to make sure that standards don't slip." – Ian, parent and family carer

"The Human Rights Act means that I am obligated to act in a way that protects the dignity of the people I work with, particularly when I am carrying out Mental Health Act assessments. I treat people with dignity, but the HRA enshrines this in law and gives people a framework of protection, so they can challenge me, if they feel I have behaved otherwise." – Deborah, social worker

"To incorporate human rights into our practice. It has given the whole staff team a boost to be involved in something so innovative and has given us a new perspective. It has started an evolutionary process for us and our service users are telling us they feel the benefit." – Healthcare team member

"Using a human rights approach has revolutionised decision-making. Staff are thinking differently and making decisions differently. It needs to be rights based, not just risk based." – Clinical Lead, NHS Trust

"Using human rights has improved the culture of our organisation. I started off sceptical about what difference it would make, but there has been a big turn around and the service is better as a result." – Regional Quality Leader

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What one word or action will you take away from today?

Thank you!



“ Where, after all, do universal human rights begin? In small places, close to home, so close and so small that they cannot be seen on any map of the world. Yet they are the world of the individual person: the neighborhood he lives in; the school or college he attends; the factory, farm or office where he works. Such are the places where every man, woman and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world. ”

Eleanor Roosevelt, holding the Universal Declaration of Human Rights

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