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Human Rights Act

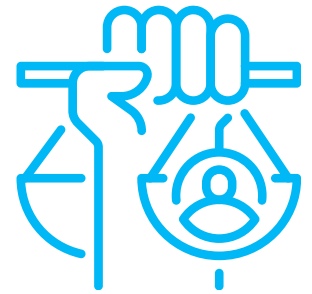
Human rights are the basic rights and freedoms that belong to every person in the world

This section of the Family Carer Advocacy Pack outlines the legal basis of human rights in the UK (the Human Rights Act), the rights that this Act protects, along with examples and resources for how the Act should work to protect your relative's rights in health and social care.

The European Convention on Human Rights (ECHR) protects the human rights of people in countries that belong to the Council of Europe. (This is different to the European Union (EU) so although the UK has left the EU, the ECHR still applies.) It is an international human rights agreement established

between members of the Council of Europe, including the UK. It brings rights within the ECHR into UK domestic law and protects everyone in the UK, no matter what their nationality or immigration status is.

A bill was being proposed by the government to change the Human Rights Act to the Bill of Rights. There were major concerns about how this new law would reduce people's rights. Through campaigning, the government has now [decided not to pursue the Bill of Rights](#).



Key Message

Knowledge of the Human Rights Act and its individual articles will ensure you can identify if the care and support and/or treatment your relative receives breaches their rights (when the law is broken) and what you and/or your relative can do to resolve this. The Human Rights Act is being used more and more by people with a learning disability, autism or both and their family carers to successfully challenge poor care and support and/or treatment when other ways have failed. If your human rights are breached you can use the Act to take action by raising a concern or making a complaint to the relevant organisation or you may be able to seek justice in the UK courts

The Act sets out your human rights in a series of 'Articles'. Each Article deals with a different right. These are all taken from the European Convention on Human Rights and are commonly known as 'the Convention Rights'

- **Article 2:** Right to life (absolute)
- **Article 3:** Freedom from torture and inhuman or degrading treatment (absolute)
- **Article 4:** Freedom from slavery and forced labour (absolute)
- **Article 5:** Right to liberty and security (non-absolute)
- **Article 6:** Right to a fair trial (absolute)
- **Article 7:** No punishment without law (absolute)
- **Article 8:** Respect for your private and family life, home and correspondence (non-absolute)
- **Article 9:** Freedom of thought, belief and religion (part absolute/non-absolute)
- **Article 10:** Freedom of expression (absolute)
- **Article 11:** Freedom of assembly and association (absolute)
- **Article 12:** Right to marry and start a family (non-absolute)
- **Article 14:** Protection from discrimination in respect of these rights and freedoms (non-absolute)
- **Protocol 1, Article 1:** Right to peaceful enjoyment of your property (non-absolute)
- **Protocol 1, Article 2:** Right to education (absolute)
- **Protocol 1, Article 3:** Right to participate in free elections (non-absolute)
- **Protocol 13, Article 1:** Abolition of the death penalty (absolute)

Absolute rights (like the right not to be tortured) apply in all situations without exception and cannot be restricted in any way.

Non-absolute rights (like the right to liberty) can be restricted in certain circumstances as specified in the relevant Article of the European Convention on Human Rights. For example, if a person is

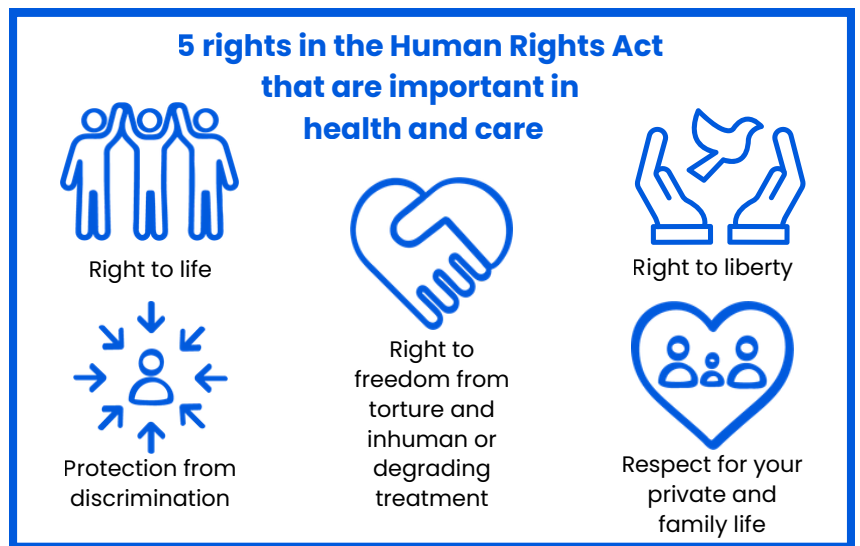
convicted and sentenced to prison.

Whenever a non-absolute right is restricted, this restriction must be:

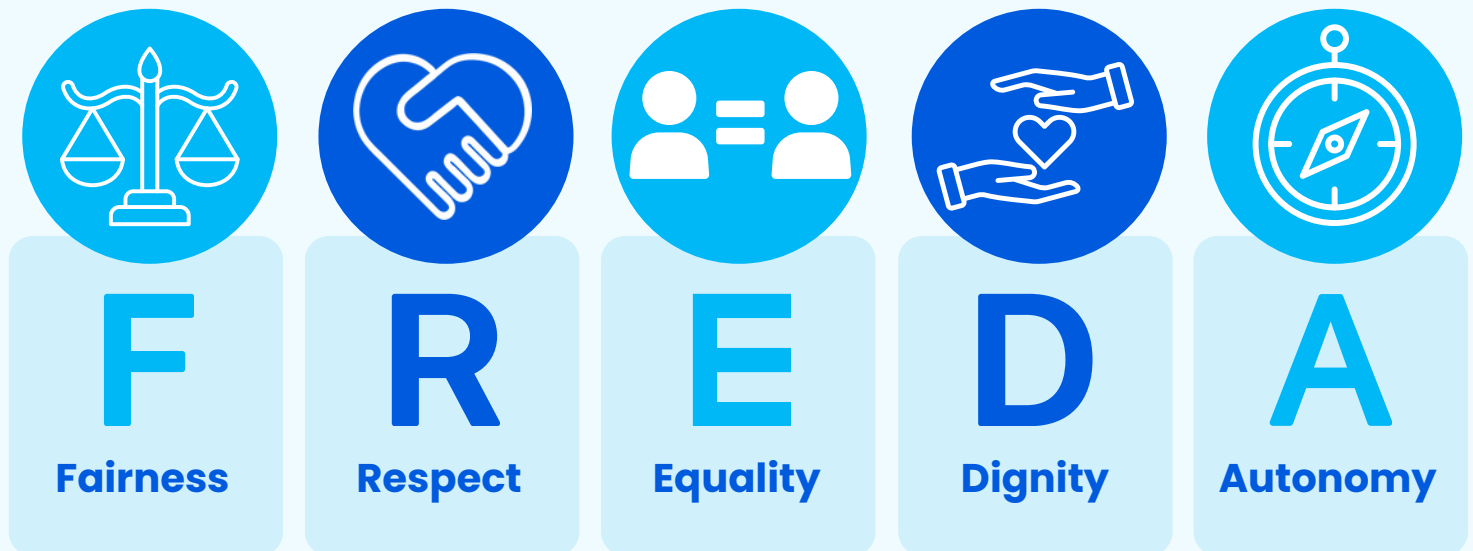
- lawful (there is a law allowing it)
- legitimate (there is a genuine aim or reason for doing it)
- proportionate (it is the least restrictive way to meet that aim)

The Act applies to:

- All public authorities such as central government departments, local authorities and NHS Trusts,
- And all other private bodies performing functions such as delivering publicly funded care (e.g. independent mental health hospitals) and prisons



The Human Rights Act can be summarised under five core principles using the acronym (abbreviation) FRED A which stands for:

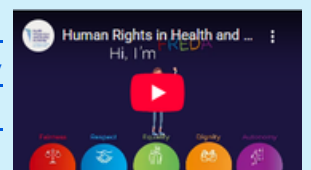


These principles protect you in your everyday life regardless of who you are, where you live and how you choose to live your life.

[Read how CQC use the Human Rights Act to support the regulation of services and inspection process](#)



[This video by the Health Information and Quality Authority shows what these principles mean in Health and Social Care](#)



Article 2 of the Act protects your right to life

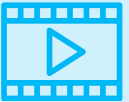
This means that nobody, including the government, can try to end your relative's life. Public authorities should consider your relative's right to life when making decisions that might put them in danger or that affect their life expectancy. Examples of where there could be a breach of Article 2 include:

- If someone dies because of negligence/neglect, for example in a hospital or care home
- If someone is refused life-saving treatment
- Refusal to investigate a death caused by a public authority

If someone is killed by a public authority or dies because a public authority has failed to protect their life, the state has a duty to investigate the death

[Watch this video about Article 2](#),

co-produced by the British Institute of Human Rights and Mencap Liverpool



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

- Torture (mental or physical) occurs when someone deliberately causes very serious and cruel suffering (physical or mental) to another person. This might be to punish someone, or to intimidate or obtain information from them.
- Inhuman treatment or punishment is treatment which causes intense physical or mental suffering. It includes:
 - serious physical assault
 - psychological interrogation
 - cruel or barbaric detention conditions or restraints
 - serious physical or psychological abuse in a health or care setting
 - threatening to torture someone, if the threat is real and immediate
- Degrading treatment means treatment that is extremely humiliating and undignified. Whether treatment reaches a level that can be defined as degrading depends on a number of factors. These include:
 - the duration of the treatment
 - its physical or mental effects
 - the sex, age, vulnerability and health of the victim

Public authorities must not inflict this sort of treatment on your relative. They must also protect your relative if someone else is treating them in this way. If they know Article 3 is being breached, they must intervene to stop it and also investigate any allegations of such treatment.

[Watch this video](#) to see an example of how the Act was used to challenge Susan's treatment



Article 4 protects your right not to be held in slavery, servitude, or to be made to do forced labour

This right protects you against:

- Slavery (when someone actually owns you like a piece of property)
- Servitude (similar to slavery - you might live on the person's premises, work for them and be unable to leave, but they don't own you)
- Forced labour (forced to do work that you have not agreed to, under the threat of punishment)

This right can be used to protect your relative if they are being made to work for nothing or an illegal wage, either against their will or unknowingly.

For more information on Article 4 read [this resource](#)



Article 5 protects your right to liberty and security

It aims to protect people's freedom from unreasonable detention. Your relative has a right to personal freedom. This means they must not be imprisoned or detained without good reason. If arrested, the Act says that you have the right to:

- Be told in a language you understand why you have been arrested and what charges you face
- Be taken to court promptly
- Bail (temporary release while the court process continues) subject to certain conditions
- Have a trial within a reasonable time
- Go to court to challenge your detention if you think it is unlawful
- Compensation if you have been unlawfully detained

Are there any restrictions to this right? In certain circumstances public authorities

can legally detain you relative, for example if they:

- Have been found guilty of a crime and sent to prison
- Have not done something a court has ordered them to do
- Are under suspicion of committing a crime, someone is trying to stop them committing a crime, or they are trying to stop them running away from a crime
- Have a diagnosed mental health condition which makes it necessary to detain them

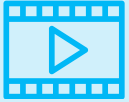
Read this well-known case study

Steven, a young autistic man, needed temporary care while his dad (Mark) was unwell. Mark assumed Steven would stay at his usual respite care home, but the local council placed Steven in a specialist unit because of concerns about his behaviour. Mark expected this to be a temporary move and for Steven to be home again within weeks. When the council insisted on keeping Steven in the unit for longer, Mark challenged this decision. Steven had been detained in the unit for almost a year when the Court of Protection (a specialist court at the High Court which deals with issues concerning people who have been assessed as lacking the mental capacity to make decisions for themselves) ruled

that the council had breached his Article 5 rights and unlawfully deprived him of his liberty. The court order enabled Steven to return home.

(Re Steven Neary; LB Hillingdon v Steven Neary (2011) EWHC 1377 (COP))

[Watch this video of Steven and Mark Neary.](#)



Article 8 protects your right to respect for your private life, your family life, your home and your correspondence (letters, telephone calls and emails)

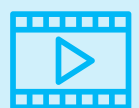
What is meant by private life?

Your relative has the right to live their life privately without the government interfering, including the right to determine their sexual orientation, lifestyle, and the way they choose to look and dress. It also includes your relative's right to control who sees and touches their body. This means that public authorities cannot do things like leave your relative undressed in a busy ward, or take a blood sample without consent. The concept of private life also covers the right to develop a personal identity, friendships and other relationships. This includes a right to participate in essential economic, social, cultural and leisure activities. Your relative may require support to exercise this right, for example from support staff to help them access their local swimming pool.

What is meant by family life?

Your relative has the right to enjoy family relationships without interference from government. This includes the right to live with their family and, where this is not possible, the right to regular contact. ('Family life' can include the relationship between an unmarried couple, an adopted child and adoptive parent, and a foster parent and fostered child.)

Visit the BIHR page for more information about Article 8 Right to respect for private and family life, home and correspondence. If you scroll down you can read Nina's story which is about a young woman who was moved from a mental health service 200 miles from home. Nina's IMHA advocate used Article 8 to argue for a move closer to home and this was successful without the need to go to court. [Read more](#) or [watch this video](#)



People with learning disabilities, autism or both are entitled to develop and have intimate relationships just like everyone else. It is a basic human right, but they often face barriers.

What is meant by home?

The right to respect your home does not give you a right to housing. It is a right to enjoy your existing home peacefully. This means that public authorities should not stop you from entering or living in your home without very good reason and they should not enter without your consent. This applies whether or not you own your home.



Watch this video which was part of research carried out by NDTi looking at the barriers people with a learning disability, autism or both can face. [Read more](#) or [watch this video](#)

Are there restrictions to this right?

There are situations when public authorities can interfere with your relative's right to respect for private and family life, home and correspondence. This is only allowed where the authority can show that its action is lawful, necessary and proportionate, for example to:

- protect public safety
- prevent disorder or crime, or
- protect the rights and freedoms of other people

[There's no place like home: the right to respect for private life and home in social care:](#)



Article 14 requires that all of the rights and freedoms set out in the Act must be protected and applied without discrimination

Discrimination occurs when you are treated differently compared to another person in a similar situation and this treatment cannot be fairly and reasonably justified.

Discrimination can also occur if you are disadvantaged by being treated the same as another person when your circumstances are different (for example people with a learning disability, autism or both). The act does not protect you from discrimination in all areas of your life. There are other laws that you can rely on to be treated fairly such as the [Equality Act 2010](#)

What type of discrimination does the Act protect you from?

The Human Rights Act makes it illegal to discriminate on a wide range of grounds including sex, race, colour, language, religion, birth or other status. The term 'other status' includes sexual orientation, illegitimacy, marital status, transsexual status, language and religion. It can also be used to challenge discrimination based on age or disability.

Does the right cover indirect discrimination?

The courts have also ruled that the human rights protection from discrimination includes indirect discrimination. This happens when a rule or policy, supposedly applying to everyone equally, works to the disadvantage of one or more groups. For example, if an organisation has a requirement that all employees must be able to drive. People with a learning disability, autism or both may be disadvantaged. To be justified being able to drive would need to be a strict requirement for the job, e.g. a bus or delivery driver.

The Human Rights Act and Advocacy



[Share this link](#) with your relative for all the British Institute of Human Rights easy read resources including postcards co-produced with Warrington Speak UP



[Read how the postcards were developed here](#)

Professional Advocates

The term 'rights-based approach' is a phrase used by professional independent advocates to confirm that when they are advocating on behalf of someone they always ensure that the Human Rights Act is being upheld.

Independent



[Read this article](#) including a section on 'How can human rights be used in advocacy'



[This case study from the Advonet Group](#) demonstrates how Article 8 Respect for your private and family life, home and correspondence and Article 9 Freedom of thought, belief and religion was used successfully to allow the person they were representing to celebrate a cultural festival, important to them, with their family

Further information



The British Institute of Human Rights

The main source of information for this section is from the British Institute of Human Rights.

<https://www.bihhr.org.uk/>

This document includes a flow chart to help family carers identify whether their relative's human rights are at risk

<https://knowyourhumanrights.co.uk/resources/Learning%20Disability,%20Autism%20and%20Human%20Rights%20Accessible%20Resource%20HighRes.pdf>

If the answer is yes, you can use this template letter to formally raise this

<https://knowyourhumanrights.co.uk/wp-content/uploads/2019/05/KYHR-letter-template-FD.pdf>

Although this resource has been developed for refugees, it includes information which is relevant to everyone and includes useful template letters, e.g. how to formally raise concerns about somebody's human rights, it has information about how to follow through a concern, e.g. what to do if you do not receive a response or are not satisfied with a response.

<http://drive.google.com/drive/folders/1x-e0hTTCINMQPlolpkgW9vtFUcSPIJBF>

This BIHR resource summarises the Human Rights Act in an easy read format

<http://www.bihhr.org.uk/media/1h0hk4cm/easyreadhra.pdf>

Equality and Human Rights Commission

Visit the Equality and Human Rights Commission website for more information including case study examples <https://www.equalityhumanrights.com/en>



We are the charity for people with severe learning disabilities who display challenging behaviour. We make a difference to the lives of children and adults across the UK by:

- Providing information about challenging behaviour
- Organising peer support for family carers and professionals
- Giving information and support by phone or email
- Running workshops which reduce challenging behaviour

To access our information and support, call 01634 838739, email info@thecbf.org.uk, or visit our website: www.challengingbehaviour.org.uk

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