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bringing rights to life

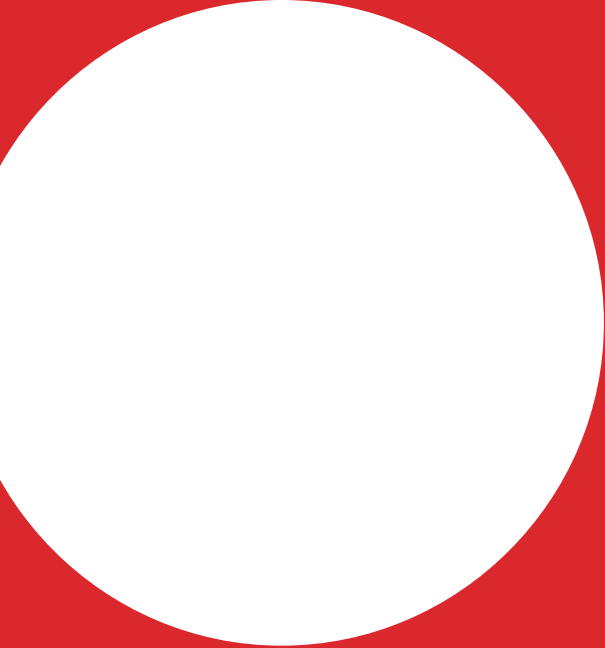
Your Human Rights

A Pocket Guide for Carers

n|compass

looking towards a brighter future

Advocacy
Care
Counselling
Health & Wellbeing
Volunteering



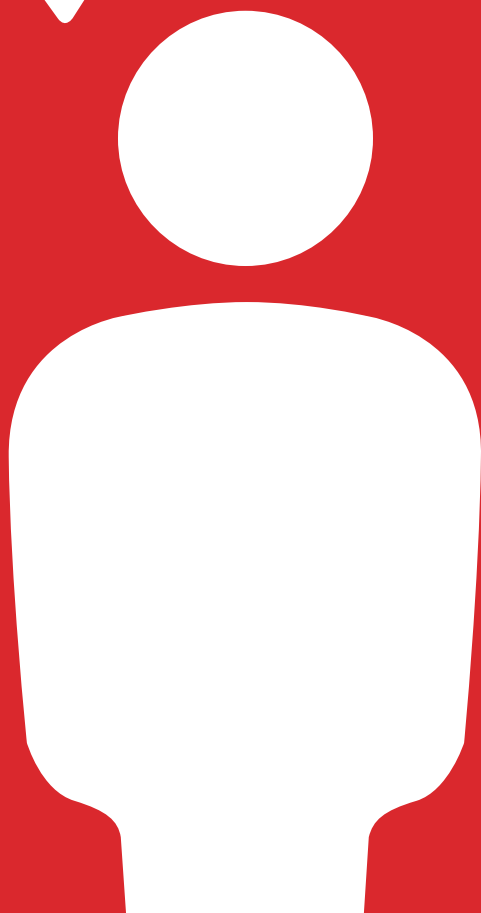
The guide was developed in partnership with n-compass and the British Institute of Human Rights as part of the Human Rights in the Community Project. This is a three year project (2010 – 2013) that was designed to empower individuals and communities with human rights know-how and support them with a range of practical tools and resources, tested by pilot organisations in their everyday work. The project is funded by the Equality and Human Rights Commission.

BIHR would like to thank Nick Gradwell, Dame Phillippa Russell and the Standing Commission of Carers for invaluable input and advice in putting together this guide.

N:compass would like to thank East Lancs Advocacy Service, Blackpool Advocacy and the Carers Centres across Lancashire and Blackpool for their support and involvement with this project.

This pocket guide outlines and explains the human rights of carers and those who are cared for, as protected by the Human Rights Act 1998 and the Equality Act 2010.

It should help in understanding how human rights relate to people in a caring role, and how they can be used to stand up for the rights of carers and the rights of those who are cared for.



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About the Guide

Who is this guide for?

This guide is for carers. It is for anyone who provides or intends to provide a substantial and regular amount of care for their husband, wife or partner, a parent or a child, a relative, friend or neighbour and does not provide that care through paid employment.

Much of the guide – in particular, Sections 2 and 3 – will also be relevant to paid care workers.

Why do you need to know about your rights?

In a survey of carers conducted by n-compass:

- 45% of respondents felt that human rights are very important or important to their caring role.
- Less than 30% felt confident that they knew what their rights were.
- Only 15% felt confident in advocating for the rights of those they care for.

Source: Carers' human rights consultation (September 2011)

Important human rights relating to the work of carers are protected under UK law. Human rights law imposes duties on the state and on those who provide services to ensure that carers and the people they care for are treated fairly and with proper respect for their dignity.

There is still little awareness of how human rights relate to issues faced by people in a caring role and how they relate to people who are cared for. This guide was put together to fill that gap and provide some basic information on the protection that human rights can offer. It was the idea of a group of carers from the North West who had attended training sessions on human rights and had seen for themselves the benefits that such knowledge could bring.



Gaps in protection

- The Equality and Human Rights Commission's (EHRC) recent inquiry into older people and human rights in home care uncovered serious, systemic threats to the basic human rights of older people who are getting home care services.
- The EHRC report, 'Close To Home', discussed the gaps in human rights protection for people receiving their home care from private and voluntary sector providers.
- The Human Rights Act places duties on public authorities to protect rights where they know, or should know, that rights are not being respected.
- Therefore, it is important to let social services, or any other public authority, know of any difficulties or problems that arise (for you, or the person you are caring for) and to keep them informed about it.
- Remember that if you are employed as a carer by a local authority or NHS body, or by an organisation providing care services arranged by a public body, you and your employer will have legal responsibilities to respect, protect and promote the rights of those you care for. See pages 26 for more information about who has responsibilities under the Human Rights Act.

Key things about human rights:

- Human rights are basic rights which belong to everyone.
- They are based on universally agreed values. They ensure that every individual's self-respect and dignity is not abused by those with the power to do so.
- Their roots lie deep in the histories of many different civilisations and cultures.
- Human rights were first internationally agreed after the Second World War in the Universal Declaration of Human Rights.
- Human rights have now been set down in national and international law. The UK Government has agreed to abide by these laws.
- Two key national laws protecting human rights are the Human Rights Act and the Equality Act.



- The Government and certain bodies and individuals have duties under these two laws which means they must act to ensure that your rights are respected and protected.
- Everyone is equal for the purposes of human rights. A human being's beliefs, their ethnic origin, gender, age, sexual orientation, or any other characteristic should never be a reason for their self-respect and dignity to be ignored.

Section 1 – The Rights of Carers

As a carer you are likely to face a number of challenges. You should not be put in a position where your life, dignity or sense of self-respect are put at serious risk by your role as a carer. In such cases, some of the rights in the Human Rights Act may be able to assist you. You can find more detailed information on the Human Rights Act towards the end of this guide beginning on page 26.

Many of the rights listed in the Human Rights Act may be relevant to you or the person you care for. However, the following rights are likely to be especially important to you in your caring role:

- The right to respect for private and family life, home and correspondence (Article 8)
- Freedom from inhuman and degrading treatment (Article 3)
- The right to be free from discrimination - protected by both the Human Rights Act (Article 14) and Equality Act 2010.
- In extreme circumstances, your right to life (Article 2).

Knowing your rights is an important first step in protecting them. The examples on the following pages illustrate some of the areas relevant to caring which are covered by the rights listed above.

Knowing who is responsible for ensuring your rights are protected is also important because it means you can take concrete action in cases where rights are not being properly respected. In general, the Government is responsible for ensuring that human rights are respected, protected and promoted. However, the Human Rights Act also imposes legal obligations on 'public authorities' to look after human rights. It is this feature which makes it particularly powerful – and of great practical use.



If you think a human rights issue has arisen in your role as a carer, it is important to make sure that you raise this with a public authority, as they have responsibilities under the Human Rights Act to protect rights.

You can find more information on what counts as a public authority on page 26. Public authorities may include local authorities, NHS Trusts and other public bodies. Private or voluntary service providers and even individuals may also count as public authorities.

Page 21-25 of this Guide provide further information on how you can use your human rights in cases where you feel they are not being properly respected.

About the rights

There is a list of all the rights contained in the Human Rights Act at the end of this guide and further information on the details of the Act on page 26-30.

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

This right is far broader than simply protecting your personal privacy. It also covers issues such as:

- being able to maintain and establish relationships with others (including family relationships)
- being able to participate in the life of your community
- being able to access medical treatment
- respecting the confidentiality of your personal information
- respecting your physical and mental well-being
- respecting your right to make choices about things that affect you
- being able access your personal information



If your local authority does not provide you with the proper support – for example, with adequate respite care and an appropriate carer’s assessment when you need it – this may seriously impact on your private and family life and could constitute a violation of your Article 8 rights. Examples include:

- **Poor health**, as a result of not being able to access medical treatment or not being able to recover fully from medical treatment because of your caring responsibilities. You might also develop health issues as a result of the physical and mental consequences of caring.
- **Loneliness and isolation**, because caring means you may have few opportunities to participate in social life.
- **Loss of privacy and family life**, for example if a loved one or family member is moved into residential care against your wishes or theirs, or moved into a home far from where you live.

Remember, it is important to keep social services (or any other public authority) informed about any difficulties you face in your caring role, as they have responsibilities under the Human Rights Act to protect rights.

Case study

Dora had Alzheimer’s and was blind. She was temporarily moved into a local nursing home after a fall, in which her husband Simon was also injured. Social Services decided Dora should be moved to a permanent care home but the home was too far for Simon and other family members to travel to see Dora.

Simon contacted Counsel and Care. They helped Simon to challenge this decision using information about community care laws and the argument that the local authority needed to consider his right to private and family life under the Human Rights Act. This helped Simon persuade Social Services to allow Dora to remain in the nursing home close to her family.

Counsel and Care

Source: BIHR & EDF ‘Human Rights and Equality in the Voluntary Sector’ (2010)

Article 8 is not an ‘absolute’ right. It is a **‘qualified’ right**, which means that it may sometimes be limited or restricted, for example in order to protect the rights of others. But the right can never be taken away or ignored completely, and any restriction has to be carefully justified by those responsible.



For further information on **absolute rights** and the kind of considerations that need to be taken into account see page 20

Article 3: Right to be free from inhuman and degrading treatment

Article 3 covers treatment which causes you to experience extreme pain and suffering – either physical or mental. Public authorities must not allow you to be treated in a way which causes you to suffer to this extent. If they are aware that this may be a risk – or if they should be aware – they have a duty to step in and take action. It is therefore important to make sure that you raise any potential human rights issues with a public authority. Because this right is **absolute**, there can never be any justification for failing to take action.

For something to count as an Article 3 violation, the suffering does need to be severe. Whether something is serious enough to be inhuman or degrading will always depend on the particular circumstances of the case, and in particular, on how it affects the person in question.

An example of this right being affected might be a lack of support for a carer who suffers severe physical or mental illness as a result of caring (when the authorities know about this).

Case study:

“I’m waiting for surgery for a serious back problem yet I am forced to continue to help my daughter to shower, even though this puts me at risk of permanent back damage. I am forced to do this because my local authority withdrew the two care staff who had previously provided help after an assessment said it was too risky for the health of their backs. All this could be avoided if we could have an adapted shower, but we have been on the waiting list over a year.”

Carers UK

Source: ‘Human Rights practice briefing’ (2006)



Article 2: Right to life

This article gives you the right to have your life protected by law. This means that public authorities must:

1. Not take away your life (apart from in very limited circumstances relating to protecting other people's lives)
2. Take reasonable steps to protect your life (where they know it may be in danger)

The right to life is fundamental and the state has a strong duty to protect it. Not being able to access essential medical treatment (particularly emergency medical treatment) because of inadequate support services may in extreme circumstances affect your right to life.

Case study:

An older woman is admitted to hospital with a chest infection. Medical staff place a 'Do Not Resuscitate' order on her file, because they consider that as an older person, she has a low quality of life which should not be prolonged. They have not consulted with her or any of her family members. This kind of situation could be challenged as a breach of the right to life.

Source: BIHR, 'Your Human Rights: A Guide for Older People' (2010)

Article 14: Right not to be discriminated against

Your right not to be discriminated against is protected both by the Human Rights Act and by the Equality Act 2010. In practice, the Equality Act may be most useful to you.

Non-discrimination under the Human Rights Act

Article 14 says that you have the right not to be discriminated against on any grounds, including your sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or 'other status'. The phrase 'other status' means that other causes of discrimination, apart from those listed in the article, are also forbidden – for example, age, disability, sexual orientation, or caring status.

This Article only protects you from discrimination in relation to the other human rights protected by the Human Rights Act. It needs to be linked to one

of the other rights in order to be considered – in other words, there has to be a strong enough chance that other human rights are being violated, in addition to your right to be free from discrimination. You might, for example, make a claim that your right to private life has not been respected, and you have been discriminated against on the grounds of your caring activities.

Equality Act 2010

The Equality Act forbids discrimination on a number of specific grounds, including age, disability, race, religion or belief, gender reassignment, sex, sexual orientation, marriage or civil partnership or pregnancy and maternity. Age discrimination under the Equality Act does not protect young people under the age of 18. At the time of writing, the ban on age discrimination under the Equality Act does not include goods and services like health and social care. This is due to change at the end of 2012, so it is important to check whether this has happened.

Unlike Article 14 of the Human Rights Act, the Equality Act can only be used to cover the listed groups - and the groups do not include carers. However, the Act does also say that you cannot be discriminated against by 'association', so it could be used to cover a relationship with someone who is protected by the Equality Act - for example a disabled or older person. That means that your caring responsibilities towards someone who is in a protected group may mean you are also protected by the Act. You could use it, for example, if you were being treated unfavourably at work because you were caring for an older person or a disabled person.

Case study: Challenging discrimination in the workplace

Sharon Coleman's son Oliver was born with a rare condition affecting his breathing and also has a hearing impairment. Ms Coleman brought a case claiming that she was forced to resign from her job as a legal secretary because she was being harassed by her employers and had been refused flexible working which other employees were granted. Ms Coleman argued that she was targeted because she has a child with a disability, and was denied flexible work arrangements offered to her colleagues without disabled children. She won and the court ruled that discrimination by association with a disabled person was unlawful.

This is a case that went to court: *Coleman v Attridge Law & Steve Law* (2008)

Other examples of potential discrimination where you could use the Equality Act might include:

- If you were being treated less favourably when receiving or asking for support services
- If you were not given promotion or responsibilities at work because it was assumed that you would not be able to fulfil these as a result of your caring responsibilities
- If you were refused flexible working hours when other staff were accommodated

Section 2: The human rights of the person you care for

Case study:

“Carers were supposed to feed and give drinks but simply left them beside a person who was physically unable to feed herself because the carers had to go to their next client. My mother went down to 7 stone. Someone with Huntington’s needs an hour per meal to swallow food/drink, and special care when it all falls out of their mouth and they get very damp and dirty. They also need 4,000 calories per day to maintain body weight due to the chorea movements that constantly burn energy.”

Source: EHRC, ‘Close to home: An inquiry into older people and human rights in home care’ (2011)

People who are in a vulnerable position – such as those being cared for – are most at risk of having their human rights abused. Carers have a key role to play in protecting the human rights of the person they care for. A carer can help to ensure that the support someone receives from the local authority and NHS services is appropriate and that they are treated with dignity and respect. A carer can also help to ensure that a public authority is made aware of any potential human rights issues regarding the person they are caring for, which is

important as public authorities have responsibilities under the Human Rights Act to protect rights.

How the person you are caring for is treated by local authority staff or care workers may affect many of their human rights. The most relevant rights are likely to be:

- Right to respect for private and family life, home and correspondence (Article 8)
- Right not to be treated in an inhuman and degrading way (Article 3)
- Right to life (Article 2)
- Right not to be discriminated against (Article 14)
- Right to liberty (Article 5)

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

This right might be affected if:

- The person you care for is disabled and support staff do not consult or communicate with them appropriately.
- You are not properly consulted when decisions are being made about their care. This might result in decisions being made that do not properly respect their rights, for example if they are moved into residential care away from you or their family.
- If they are treated poorly by paid support staff or in respite care, e.g. are washed or dressed without regard to their dignity
- If the person you care for is very isolated because they do not have the opportunity to have meaningful contact with other people in the community

Case study:

A young man with severe learning disabilities had been living with his foster carer for 10 years when he was removed from her care by the local authority. The court found that the local authority had violated his right to liberty as they had failed to follow the required process under the Deprivation of Liberty Safeguards. They also breached his right to private and family life as they had not considered the impact of removing him from his foster carer and her family, which had caused him a great deal of distress. He was returned to her care.

This is a case that went to court: *G v E and Others* (2010)

Article 3: Right to be free from inhuman or degrading treatment

This right might be affected if:

- The person you care for is severely bullied or harassed
- They are physically or mentally abused
- They are not helped with feeding or drinking while in respite care
- Excessive force is used in restraint

Case study:

Jan cares for her mother who is bed ridden. Jan has half an hour's respite care each day to enable her to do essential things like get her children ready for school. However the carers often arrive late, sometimes up to 3 hours late. This not only means that Jan is unable to plan her day but also that she cannot toilet her doubly incontinent mother as she needs help to carry her. This can mean that her mother is left in a soiled bed for hours, a humiliation not just for her, but also for Jan who is unable to do anything about it. This risks affecting the mother's right not to be treated in a degrading way.

Source: n-compass

Article 14: Right not to be discriminated against

This right may be affected if:

- The person you care for is verbally or physically bullied because of their race, disability, sexual orientation, age or on other grounds.
- Support staff refuse to perform care tasks for them because of their age, sexual orientation etc.
- Support staff refuse to take account of their specific needs, e.g. religious/ cultural needs

Case study:

An older gay man with dementia decided to stop receiving services because of the homophobic reaction of care staff. This led to him having to move into residential care earlier than necessary as his older partner had struggled to cope alone with caring responsibilities.

Source: EHRC, 'Close to home: An inquiry into older people and human rights in home care' (2011)

Article 2: Right to life

The right to life might be affected for those you care for if:

- A 'do not resuscitate order' is placed on their file while they are in hospital care without their knowledge or consent (or yours)
- Staff do not take steps to make sure they have enough to eat and drink while in respite or hospital care
- They are given inappropriate medication or they are over-medicated
- A threat or danger to their life is not taken seriously by the relevant authorities

Case study:

An older man staying in a care home was having difficulty breathing. The doctor, who did not know this man properly, would not put him on a ventilator. He suggested to the man's daughter that perhaps it was her father's "time". The family told the doctor that they did not agree with his decision as the man had rallied round several times before from the "brink of death". His daughter was distraught at the doctor's refusal to reconsider his decision. After trying everything else, she asked a support worker for help. The support worker advised her to challenge the doctor's decision and ask whether he had considered her father's right to life in coming to his decision. As a result of her challenge, the doctor re-assessed the decision and provided her father with a ventilator without the need for a second opinion. Two months later, the man was alive and well and off the ventilator.

Example from a local advocacy group that received BIHR training

Article 5: Right to liberty

Everyone has the right to liberty – but this is not a right to be free to do whatever you want. The right to liberty means you have a right not to be locked in a cell or a room, or have your movement restricted in any other extreme way. But there are specific circumstances in which the right to liberty can be limited, for example if someone is detained under the Mental Health Act.

The right to liberty of the person you care for might be affected in situations where they are excessively restrained, for example by support staff or the police, or where they are kept in a care home or a support unit against their wishes.

Case study:

A severely autistic teenager was handcuffed and held in leg restraints by police whilst on a school trip to a swimming pool. As a result he suffered moderate post-traumatic stress disorder. The court held that his right to liberty had been violated. They accepted that officers may have been acting as they genuinely thought best, but said the restraint of the boy, who has a mental age of five and cannot communicate by speech, was nonetheless "wholly inappropriate". By not consulting his carers the police failed to understand the potentially serious consequences of applying force and restraint to his physical and mental health.

This is a case that went to court: *ZH v Commissioner of Police for the Metropolis* (2012)

Case study

Steven has childhood autism and a severe learning disability. He lives at home with his father Mark and is cared for by his parents with support from a care package. Mark requested a short period of respite care to get over a bout of illness and Steven was accepted into a local authority support unit for a few days. However when Mark went to collect Steven he was told that they were keeping him in for longer in order to assess his needs. Mark told the local authority that he did not consent to Steven being held in the unit and that he wanted him home. His requests were not listened to and Steven became highly agitated in the home and his behaviour worsened.

The local authority then made a series of Deprivation of Liberty orders without communicating with Mark. After almost seven months Mark was told that Steven would not be allowed home and that the local authority was considering a residential placement a long distance away from the family home.

After a long legal battle a judge held that Steven had been denied his rights to liberty and to respect for private and family life. He was returned home and has remained there ever since.

This is a case that went to court: London Borough of Hillingdon v Steven Neary and Mark Neary (2011)

Your rights and theirs

Decisions which involve or should involve the intervention of public authorities will need to take into account both your rights and the rights of the person you care for. In these circumstances, your human rights may need to be balanced against the human rights of the person you care for, or against the interests of the wider community. The Human Rights Act provides a framework for this balancing to take place. Decisions should take into account the rights of both the carer and the person they care for, and any restrictions on the rights of either should be lawful, legitimate and **proportionate**.

Case study:

Two disabled sisters lived with their parents in a specially adapted house. Both needed assistance in order to move but the local authority had introduced a new policy which banned all manual lifting of people. This ban was challenged in the courts. They concluded that a complete ban on manual lifting was unlikely to be lawful, because it would not consider a person's individual circumstances. The judgment noted that such a ban might lead to inhuman or degrading treatment, for example if the women were left in their own bodily waste or stuck on the lavatory for hours.

The Court in this case noted that manual lifting policies need to ensure a proper balance between the needs and rights of disabled people on the one hand, and the rights of carers on the other hand.

This is a case that went to court: *A and others v East Sussex County Council and other* (2003)



Section 3 – Using Your Human Rights

If you feel that your human rights or the human rights of the person you are caring for are not being properly respected, there are a number of practical steps you can take.

Raise the issue informally with your local authority

If you have concerns about a service you are receiving from your local authority – either directly, or through a private or voluntary group commissioned by them – you may want to begin by raising the issue informally. This could either be with the service provider or with the local authority. You could set out your concerns in writing or by arranging a meeting.

Think about:

- Which rights you think have been breached and why?
- What evidence do you have?
- How has it affected you or the person you care for?

Try to discuss the issue with friends or family before you make a complaint or raise a concern. It will help you to clarify your case. If at all possible, try to get outside advice on a human rights claim. There are free helplines or advice centres available: use some of the contacts in the final section for suggestions.

When you raise a complaint:

- Make your case – be specific about the rights concerned and provide them with evidence to back up your case
- Tell them what needs doing to change the situation.
- If you cannot get a satisfactory answer, ask to speak to someone else – or write to someone else..

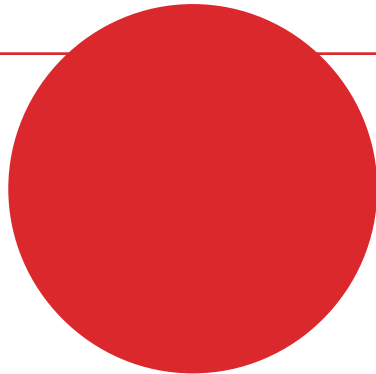
If the problem is with a private care agency that you have hired directly then they are unlikely to be covered by the Human Rights Act. However, it is still worth raising your concerns directly with them informally first and it may help your case to refer to human rights. You could point out that since the Care Quality Commission inspects all providers on standards that include human rights, you are considering alerting them to your case.

Case study

Anna had multiple sclerosis and a 13-year-old son, David. David had Down's syndrome and disruptive behaviour disorders. He had a long history of self-harming and violent attacks on his family. The family received some very limited respite care, but had not had any support in putting in place a behaviour management programme for David despite repeated requests. As a result, David had not been out of the family home for the whole of the summer break. Anna was extremely concerned that David was going to harm himself or a member of the family.

The Down's Syndrome Association wrote to the local authority asking whether the family's right to respect for private and family life had been properly considered. They argued that the lack of support to manage David's behaviour risked infringing both Anna's and David's right to participate in social and community life, as neither could access essential economic, social, cultural and recreational activities. Within two weeks David's respite care was increased, he was referred to the local behaviour team for assessment and support and his parents were offered the opportunity to receive training on safe methods of restraint and behaviour management.

Source: Down's Syndrome Association available at: www.ourhumanrightstories.org.uk (accessed Sept 2012)



Remember!

Whether a decision or action has breached a person's human rights often depends on the particular facts of the case. This means it is important to be able to show how the decision or action is affecting you, or the person you care for. If you feel that your human rights or the rights of the person you care for are being affected think about how you can demonstrate this. For example:

- keep a diary of any incidents that you think are impacting on human rights
- keep a record of your communications with the local authority and/or care provider/hospital
- seek medical care for related health problems and keep a record
- if you are a child or young person, make a note of any impact on attendance and lateness at school, any impact on academic achievements or your ability to take part in wider school life

Make a formal complaint

If you have been unable to resolve the matter informally, you could consider making a formal complaint. All providers of public services are required by law to have a formal procedure for people to make complaints.

Your first step in making a formal complaint should be to complain to the organisation involved via their complaints procedure.

If the situation remains unresolved, there are other organisations that will receive complaints:

- You could complain to the Local Government Ombudsman which investigates complaints about most local government matters, including Social Services.
- The Parliamentary and Health Service Ombudsman considers complaints that certain public bodies in the UK and the NHS in England have not acted properly or fairly or have provided a poor service. The Ombudsmen are also public bodies which means they have to consider people's human rights in their investigations.

- The Care Quality Commission also receives complaints, about both public and private providers of social care services. Their contact details are on page 30.

Use an advocate

Getting the support of an advocate can be especially useful in difficult situations. For example at meetings with local authority staff when you are outnumbered or when important decisions need to be taken about a patient's discharge from hospital. Advocates can help you tackle a situation with which you need help, support or information. They can help you to get your voice heard and help you with practical things like writing a complaint letter. You can find links to finding an advocate on page 30.

What is an advocate?

An advocate is someone who can represent and defend your views, needs, wishes, worries and rights if you do not feel able to do this yourself. Advocates can also help you to participate in and make decisions. They are wholly independent – they will represent you without taking a view about your best interests. They are not to be confused with legal advocates who are people with specialist legal knowledge and training, such as lawyers. Legal advocates represent people in formal settings such as courts or tribunals.

Take a legal case

Many cases may be resolved without needing to go to court, but sometimes a court case will be the only way to get your issue resolved. The more serious the issue, the more likely it is that you may need to go to court. If you think this may be the only solution, you should seek legal advice as soon as possible.

Remember!

- Talking through your problem with someone you trust can often help you find solutions.
- Seek professional advice whenever you can. There are several organisations that may be able to give you free advice – see the useful contacts section for details.
- Taking a case to court is usually a last resort. It is often much easier, quicker and cheaper to resolve issues before they end up in court.
- Human rights may not always be the solution – there may be other laws that would be more appropriate to use. An adviser can help you decide.



The Human Rights Act: key concepts

The Human Rights Act contains sixteen basic rights, listed on the back page of this pocket book. It came into force in the UK on 2 October 2000 and brought the rights contained in the European Convention on Human Rights into UK law.

The UK Government had already signed up to the European Convention but the passing of the Act brought about two significant changes:

- It placed all **public authorities** in the UK – such as the NHS, local authorities and central government departments – under a duty to respect the rights in the Act in everything that they do;
- It made it possible for individuals to raise human rights concerns in UK courts, tribunals and complaints systems, rather than having to take them to the European Court of Human Rights in Strasbourg.

Public authorities

The term 'public authority' is not fully defined in the Human Rights Act, but it should be interpreted broadly. It includes all central and local Government agencies as well as courts and tribunals. The National Health Service (NHS), social services departments, regulators (e.g. the Care Quality Commission) and ombudsmen (e.g. the Local Authority Ombudsman) are included and, more generally, any person or organisation 'whose functions are of a public nature'. This includes some private and voluntary organisations that have been contracted by the local authority to provide public services, e.g. private residential care homes providing services to people under an agreement with the local authority. The Government has also recently said they believe all publicly funded health and care services, including contracted and commissioned services, should consider themselves bound by the Human Rights Act.

Private or voluntary home care agencies

If a private or voluntary home care agency is providing your support services under contract to a local authority they are likely to have direct obligations under the Human Rights Act. But if you employ them directly and they have no relationship to your local authority they might not be directly bound by the Act.

However, all home care providers must be registered with the Care Quality Commission (CQC) whether they are public, private or voluntary. The CQC check that they are complying with essential standards of quality and safety and have powers to take action if they are not. Human rights are an integral part of the essential standards and these state that staff must respect your human rights. You may be able to appeal to the CQC if you cannot complain directly to your provider. The CQC's contact details are given in section 3 of this pocket book

Absolute, limited and qualified rights

Some of the Convention rights are absolute, but most of them can be restricted in certain circumstances in order to protect others rights or in the interests of wider society. For example decisions which involve or should involve the intervention of public authorities will need to take into account both your rights and the rights of the person you care for.

Absolute rights

There are very few absolute rights and they can never be restricted under any circumstances. The right to be free from inhuman and degrading treatment is absolute. Public authorities must not allow people to be subjected to treatment which reaches this level of severity. They cannot use the excuse that resources are limited or staffing is insufficient.

Limited rights

The right to liberty is the key limited right. It may sometimes be restricted, but only under very specific circumstances. Liberty is a very fundamental right, but there are occasions when it needs to be restricted - e.g. when a person is detained under the Mental Health Act, either in order to ensure their own safety or to ensure the safety of others.

Qualified rights

These rights need to be balanced against the rights of other people and 'the interests of the wider community'. Your right to respect for private and family life is a qualified right, so it can be restricted for example if you or a member of your family needs to be taken into care. However, even restrictions of qualified rights have to be carefully made, with the least possible impact on the individuals concerned. Restrictions must be sanctioned by law, they must be necessary – in other words, no other methods could achieve the same end – and they must be **proportionate**.

Proportionality

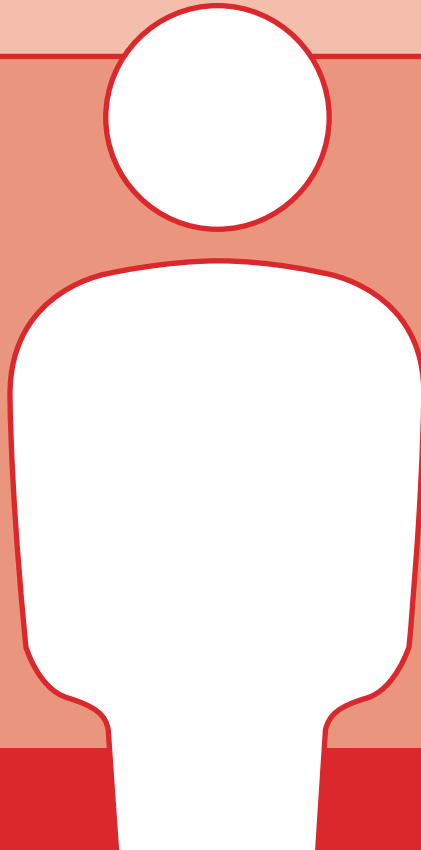
'Proportionate' means that actions or decisions must be **appropriate** and **not excessive** in the circumstances. A straightforward way of thinking about proportionality is that you must not use a sledgehammer to crack a nut!

Explaining proportionality

Certain questions can be asked to help decide if an action is proportionate, such as whether alternative approaches to the problem were considered that were less drastic.

As an example, suppose an older woman who is cared for at home by her daughter is forced to move into residential care because her daughter is no longer able to care for her alone. Depending on the circumstances, this may not be a proportionate response. The authorities would need to have considered other less restrictive options, such as a care package which enables the woman to continue living at home.

Sometimes, however, an interference with your right may be justified. If the authorities had clear evidence that the woman in the above case was being abused by her daughter, placing the woman in residential care may be an appropriate response in order to protect her.



Where to go for more information

Action for Advocacy has an online database of advocacy services in England and Wales: www.actionforadvocacy.org.uk

The British Institute of Human Rights provide a range of information resources on human rights www.bihhr.org.uk

The Care Quality Commission regulate, inspect, and review adult social care services. For information about their complaints process <http://www.cqc.org.uk/>

Carers UK have a short briefing on human rights and a detailed Carers UK guide 'Whose rights are they anyway? Carers and the Human Rights Act' www.carers.org.uk

Carers Direct provides information, advice and support for carers www.nhs.uk/carersdirect

Citizens Advice Bureau provides a range of advice guides including 'Guide to the Equality Act for Carers': www.adviceguide.org.uk. They can also help you to find a lawyer www.citizensadvice.org.uk

Counsel and Care have a booklet on support services available for carers www.counselandcare.org.uk

The Equality and Human Rights Commission provide a range of resources on human rights and equality laws and a helpline for advice www.equalityhumanrights.com

Liberty provides information on human rights at www.yourrights.org.uk and runs a free legal advice line at www.liberty-human-rights.org.uk

The rights contained in the Human Rights Act:

Article 2: The right to life

Article 3: The right not to be tortured or treated in an inhuman or degrading way

Article 4: The right to be free from slavery or 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 which was not illegal at the time it was carried out

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 found a family

Article 14: The right not to be discriminated against in relation to any of these rights

Protocol 1, Article 1: The right to education

Protocol 1, Article 2: The right to peaceful enjoyment of possessions

Protocol 1, Article 3: The right to free elections

Protocol 13, Article 1: The right not to be subjected to the death penalty



bringing rights to life

About the Guide

This pocket guide was the idea of a group of carers from the North West, who felt that there was a lack of understanding about how the Human Rights Act protects them and those they care for. It contains a concise summary of key information and links to further resources which will provide a valuable first step for carers in getting to grip with their human rights.

The guide was developed in partnership with **n-compass** and the **British Institute of Human Rights (BIHR)** as part of the 'Human Rights in the Community' project. The project is funded by the **Equality and Human Rights Commission**. BIHR and n-compass would like to thank the Equality and Human Rights Commission for their grant which supported the production of this guide.

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