

The Human Rights Act 1998 & Mental Health

A general guide to the Human Rights Act, with information about your human rights and what you can do if someone doesn't respect them.

Applies to England and Wales.



Overview

- In the UK, our human rights are protected by law. This law is called the Human Rights Act 1998.
- **Quick facts**
- The Human Rights Act gives you legal protection of your human rights, like your right to life, or your right to a fair trial.
- There are 16 rights in total, and each one is referred to as a separate article, for example, Article 2: Right to life.
- You are protected under the Human Rights Act if you live in the UK. This includes if you are a foreign national, detained in hospital or in prison.



Overview #2

- All public authorities or bodies exercising public functions need to follow the Human Rights Act. However, individual and private companies do not.
- If your human rights haven't been respected, you should first try to resolve it informally, then use a formal complaints procedure, and if that fails you can take legal action by going to court. You should always get legal advice before going to court.
- If a court agrees that your human rights have been breached, it can make a declaration of incompatibility. The government would then decide whether the law needs changing as a result.
- **Please note**
- This presentation only covers the Human Rights Act from the point of view of a person with a mental health issue.
- This presentation applies to England and Wales.
- This presentation contains general legal information, not legal advice. We recommend you get advice from a specialist legal adviser or solicitor who will help you with your specific situation and needs.



What is the Human Rights Act 1998?

- The Human Rights Act is important because:
- It sets out a minimum standard of how Public Authorities should treat you. It makes sure that they think about meeting your basic rights when they do their job. This includes when they use other laws.
- Parliament must think about whether a new law follows the Human Rights Act before it comes into force.



- **Example**

- Andrei is from South Africa but lives in London. He can use the Human Rights Act to protect his rights.
- He cannot be locked up without reason. If he is sectioned, the hospital must make sure that:
- The Mental Health Act is followed
- He is given reasons why he has been detained and an opportunity to challenge it
- This is because of Article 5: Right to liberty and security.



Who needs to follow the Human Rights Act?

Who needs to follow the Human Rights Act?

All public authorities or bodies exercising public functions.

This includes:

- Police
- NHS employees
- Local authorities and their employees
- Some nursing and personal care accommodation providers
- Prison staff
- Courts and tribunals, including First Tier Tribunals (Mental Health)
- Government departments and their employees
- Statutory bodies and their employees (e.g. Information Commissioner's Office)

You can bring a claim against public authorities or public bodies exercising public functions if you think they have not respected your human rights.

Who doesn't need to follow the Human Rights Act?

- ❑ Individual people
- ❑ Private companies (such as employers)

If you feel that your employer has discriminated against you because of your mental health problem, see our information on discrimination at work.

Why is the Human Rights Act important for someone with a mental health issue?

In 2012/13, more people were detained under the Mental Health Act than in any other year.

Nearly half of respondents to a Mind survey who had been detained in hospital said they have received degrading treatment.

Understanding your human rights can be a powerful way to question and change the treatment you are receiving.

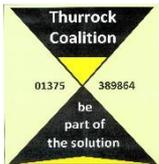
Article 2: Right to life

- This requires that everyone's right to life shall be protected by law. This is not an absolute right in that although no one can be deprived of life intentionally there are exceptions where it would be legal to do so – where absolutely necessary, for example:
- To protect someone from unlawful violence
- To prevent someone escaping from detention
- To stop a riot



- **Examples**

- Ellie is detained in a psychiatric hospital because there was a risk that she would take her own life or harm herself. The hospital has a duty to protect Ellie's life, which includes making sure that:
 - There are no areas in her rooms which could easily support a noose
 - The windows are secured
 - She is not easily able to leave the building
 - Crisis rooms are on the lower floors of the building
- This duty also applies to people who are informal patients.



Article 3: Prohibition of torture and inhuman or degrading treatment

- This is an absolute right. However a situation has to be very serious before it will be seen as inhuman or degrading treatment. This will depend on the circumstances of your situation, for example: age, health and how long you've been treated this way.
- **Example**
- Richard is detained under section 3 of the Mental Health Act 1983 because he has schizophrenia. His doctor thinks it is necessary for him to take anti-psychotics which give him very unpleasant side-effects. An independent psychiatrist (also known as a SOAD) has been to visit him and has agreed to the treatment plan. This would not breach Article 3.
- Restraint will generally not be seen as torture unless too much force is used, or it is used to limit your movement in a way other than to protect or prevent further damage.



- **Example**

- Joan lives in a care home. She is unable to get out of bed. The staff do not change her bedding regularly so they are soiled. She is unable to lift herself up and the staff leave trays of food without helping her to eat. Both are examples of possible breaches of Article 3: Prohibition of torture and inhuman or degrading treatment.



Article 5: Right to liberty and security

- This is a limited right. You have a right to move around as you want and not be locked in a room or building. However, this right can sometimes be limited by the law, for example if a person is arrested or detained on mental health grounds. Even if you are arrested or detained on mental health grounds, you still have these rights:



What are your rights?

If...	What are your rights?
Your liberty is taken away (for example if you are sectioned)	You can go to court to challenge whether or not the decision was lawful. So if you are detained under the Mental Health Act 1983, you can ask the Mental Health Tribunal to look at whether your detention was fair.
You are arrested	You must be given the reasons why in a language that you can understand.
You are arrested or detained on suspicion of committing an offence	You are entitled to be brought in front of a judge promptly.

Article 6: Right to a fair trial:

This is an absolute right

Independent and impartial	The hearing must be fair and free from bias.
Notice	You must be given notice of the time and place of a hearing
Public or private hearings	Hearings are normally in public but can be in private for many reasons. Mental Health Tribunal hearings are normally held in private.
As soon as practicable	The hearing should take place as soon as is practicable.
Representation	If your hearing is at the Tribunal, you can present your case either by yourself, with an advocate or a specialist legal adviser
Right to see documents	You have a right to see all the documents in the proceedings. This doesn't necessarily mean you can all documents related to you – only those that assist you

- **Example:**

- Jean was transferred to a psychiatric home and the Local Authority went to the Court of Protection for an order to keep her there without consulting her or her family. This could be a breach of Article 6: Right to a fair trial.



Article 8: Right to a private and family life

- This is a qualified right, which includes:
- The right to make choices for yourself, and the right to have your body and mind respected
- Respect for private and confidential information, particularly the storing and sharing of this information (in the UK this is largely covered by the Data Protection Act 1998)
- The right not to be followed or recorded by the government, when the government has no legal right to do so
- The right to have confidential and unlimited communication with others
- The right to control how information about your private life is shared, including photographs that have been taken secretly



- **Examples**

- Jenny was promised that her care home would be her 'home for life' but the council decided to close it down and to move her somewhere else.
- Juan was detained in hospital under section 3. He was not given any information about the section or his right to go to a Tribunal to challenge the decision to keep him in hospital.
- Jon was not allowed to see his partner while he was in hospital.
- These are all possible breaches of Article 8: Right to a private and family life.



Article 9: Freedom of thought, conscience and religion

- This is a qualified right which includes:
 - The right not to believe in anything
 - Non-religious beliefs like veganism and pacifism
 - The freedom to change your beliefs at any time
 - Not being forced to believe in something
- It can be limited where it is necessary and fair in order to protect:
 - Public safety
 - Public order
 - Health or morals
 - The rights and freedoms of other people



- **Examples**

- Jade has been told that the only bed available is on a mixed ward and that the only doctor available to give her a medical examination is male. This is against her religion.
- Lawrence is detained under section 3. The hospital has not provided him with kosher food.
- These could be breaches of Article 9: Freedom of thought, conscience and religion.



Article 10: Freedom of expression

- This is a qualified right which lets you hold opinions and express them freely:
 - Verbally
 - In writing
 - Through television, radio or the internet
- Freedom of expression includes freedom of the media to report court proceedings.
- However, this freedom may be restricted for health reasons, or if it affects other human rights such as privacy or fair trial. Proceedings involving people with mental health issues, for example in the Court of Protection or the Mental Health Tribunal, are usually in private.



- **Example**

- Marco was due to have a hearing in the Court of Protection. These normally take place in private. However, the media wanted to attend and apply to the court to publish details.
- The Court has to balance Marco's right to privacy with the media's right to report the information.



Article 12: Right to marry

- Article 12 is a qualified right which allows people to marry under English law.
- Certain patients who are detained under the Mental Health Act 1983 are not able to get married or enter into a civil partnership.
- **Example**
- Julian was detained under Section 2. He was not able to enter into a civil partnership until he was allowed to go back into the community or put on a Section 3.
- This is not a breach of his rights under Article 12: The right to marry.



Article 14: Right not to be discriminated against

- This is a limited right which protects you from discrimination on any of the following grounds:
 - Sex
 - Race
 - Language
 - Religion
 - Political or other opinion
 - National or social origin
 - **Other status** - this includes disability
- But you can only use this Article if another human rights Article has been engaged.



- **Examples**

- Jeanie has been detained under Section 3. She is not allowed to smoke while in hospital. She is not allowed to leave the hospital grounds. The ban on smoking in hospitals is not discrimination because it does not breach Article 8: the right to private and family life.
- Jessica is detained under section 47/49 and does not receive Employment and Support Allowance. This is because patients under this section are not allowed to get statutory benefits whilst in hospital. This is not discrimination as it did not breach Article 8: the right to private and family life.
- If you feel that you have been discriminated against because of your mental health issue, you would normally use **the Equality Act 2010**



Article 1 of Protocol 1: Right to property

- This is a qualified right that protects your right to property. Property includes:
 - land
 - houses
 - money
 - pensions
 - some welfare benefits
- If you have a mental health issue, the right to property may be relevant to you in the following situations:
 - Where public sector landlords or local authorities are discriminating against you in relation to housing.
 - Where your benefits assessments and/or payments are carried out incorrectly or in a discriminatory way.
 - Where your possessions are lost by state institutions, such as in care homes or hospitals.

- **Example** Janelle has been told by the local authority landlord that she is not allowed to stay in her flat because she has depression.
- This could be a breach of her rights under Article 1 of Protocol 1: Right to property.



Article 2 of Protocol 1: Right to education

- This is a qualified right which protects the right to education and makes sure that students have access to education and teaching. This includes:
 - The right to go to school, university or other education institution
 - The right to get official recognition when studies have been completed, like a certificate of completion or university degree
- The right to education is particularly important when it comes to children and young people with mental health problems.
- No child or young person below the school leaving age should be denied access to education just because they are receiving medical treatment for a mental health issue.



- **Example** James is a 14 year old boy detained under Section 3. He is not allowed to go to school and does not receive any education. This could be a breach of his right to education.



Article 3 of Protocol 1: Right to vote

- This right can be restricted by law, for example, the minimum age to vote is 18 and people serving a prison sentence are not able to vote. If you have mental health issue or are detained under the Mental Health Act 1983, you have the right to vote.
- **Example** Joseph is detained under section 3. He has been told that he is not allowed to vote in the next elections. This could be a breach of his right to vote.



What can I do if my human rights haven't been respected?

- If you think that a public authority or a body exercising public functions has not respected your human rights in one of the ways listed in the Human Rights Act, there are several things you can do.
- **i) Resolve it informally**
- Sometimes a problem can be sorted out by speaking with the person or organisation involved, with the aim of resolving it without having to follow a formal process.
- An advocate may be able to help you if you would like support in doing this.



- **ii) Use a complaints procedure**

- All public authorities have formal complaints procedures. For example, the NHS and local authority social services have complaints procedures, which allow a person to go to the Ombudsman if the complaint cannot be resolved: see our information on complaining about health and social care.

- **iii) Take legal action**

- You can take a case to a court or tribunal, or you could rely on your human rights in another legal proceedings involving a public authority that you are already involved in, for example, a judicial review of their decision.



How do I take legal action?

- **Show that you are a 'victim'**
- To bring a claim, firstly you need to show you are a 'victim'. This is a legal term, which means you must show your human rights have been directly affected by:
 - Something that someone has done (an act), or Something they haven't done (an omission)
- **Taking legal action**
- If you want to take legal action, you should:



Taking Legal Action

- **Seek advice.** It is always important to get good legal advice about your situation before going to court. See Useful contacts for information on how to find legal help.
- **Get advice as soon as possible.** There are very strict deadlines for bringing a claim. It is very important that you get advice as soon as possible.
- **See if you can get legal aid.** In some cases, legal aid is available. This means that you can get help paying for your legal fees. To see whether you can get legal aid, you should speak to a specialist legal adviser, or you could also use this online legal aid check from the gov.uk website
- **See if you can get support.** Taking legal action can be complicated and stressful. If you want assistance and support, you could ask an advocate to help you

What happens if my human rights claim is successful?

- If you have gone to court to challenge a particular law that has breached your human rights, and the court agrees with you, it can make a **Declaration of incompatibility**. This means that the law has not obeyed the Human Rights Act 1998. The government then looks at the law and decides whether it needs to be changed.
- The Court can grant Judicial Review
- The Court can award appropriate compensation



Real Life Example

- **Real life example**
- In 2001, a court decided that the Mental Health Act 1983 did not follow the Human Rights Act. Under that law, it was up to a patient to show that they no longer needed to be detained because of their mental health problem. This meant that it was up to the patient to prove that they could leave the hospital, otherwise they had to stay.
- After the court's decision, the government changed the law so that it was up to hospitals to prove that a patient should stay in detention. This means that now, you are free to leave the hospital unless the hospital can show that you need to stay.
- If the court has found that a public authority has made a decision that doesn't follow the Human Rights Act, the court can:
 - cancel the decision, or
 - prevent a public authority from acting in a certain way
- In most situations, if a decision is found to be unlawful, the court will send the issue back to the public authority to make the decision again. They can also award you money, though this depends on the facts of the case.