



The Human Rights Act 1998

A general guide to the Human Rights Act 1998 is, with information about your human rights and what you can do if someone doesn't respect them.

Please note:

- This guide covers the Human Rights Act 1998 from the point of view of a person with a mental health problem.
- This guide applies to England and Wales.
- This guide 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. See [Useful contacts](#) for more information.
- The legal information in this guide does not apply to children unless specifically stated.

If you require this information in Word document format for compatibility with screen readers, please email: publications@mind.org.uk

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Quick facts

- The Human Rights Act gives you legal protection of your human rights, such as 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.
- 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 award you compensation, make a declaration that your rights have been breached, overturn decisions made by a public authority or order them to do something.

About the Human Rights Act

What are human rights?

Human rights are basic rights and freedoms which we all have. They cannot be taken away, although they can be restricted in certain circumstances.

What is the Human Rights Act 1998?

The Human Rights Act gives you legal protection of your human rights, such as your [right to a fair trial](#). Each right is referred to as a separate article, for example, [Article 2: Right to life](#).

These rights come from the European Convention on Human Rights. You can find out more about this on the [Equality and Human Rights Commission website](#).

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.

The Human Rights Act is important because:

- It sets out a minimum standard of how the government 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?

All [public authorities](#) or bodies exercising [public functions](#), including:

- police
- NHS employees
- local authorities and their employees
- some nursing and personal care accommodation providers
- prisons
- 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 problem?

If you are living with a mental health problem, it's important for you to know your rights under the Human Rights Act because:

- the law should comply with human rights
- you should be looked after and treated in a way which complies with human rights

- mental health, emergency services and social services must comply with human rights – this includes police and ambulance staff as well as doctors and nurses and social workers.

For example, knowing your rights under the Human Rights Act can be important if you are detained, or kept in hospital, under the [Mental Health Act](#).

Every year, more and more people are detained under the Mental Health Act. More than half of respondents to a [2017 survey](#) who had been detained in hospital said they felt they had received degrading treatment.

Understanding your human rights can be a powerful way to question and change how you are looked after.

What are my rights under the Human Rights Act?

In total, there are 16 rights set out in the Human Rights Act, which are listed below. The articles which are particularly important to people with mental health problems are linked to more information:

- [Article 2: Right to life](#)
- [Article 3: Prohibition of torture](#)
- [Article 4: Prohibition of slavery and forced labour](#)
- [Article 5: Right to liberty and security](#)
- [Article 6: Right to a fair trial](#)
- [Article 7: No punishment without law](#)
- [Article 8: Respect for your private and family life](#)
- [Article 9: Freedom of thought, conscience and religion](#)
- [Article 10: Freedom of expression](#)
- [Article 11: Freedom of assembly and association](#)
- [Article 12: Right to marry](#)
- [Article 14: Prohibition of discrimination](#)
- [Article 1 of Protocol 1: Protection of property](#)
- [Article 2 of Protocol 1: Right to education](#)
- [Article 3 of Protocol 1: Right to free elections](#)
- [Article 1 of Protocol 13: Abolition of the death penalty](#)

Articles 2, 3, 5, 6

Article 2: Right to life

This is sometimes said to be an [absolute right](#). However, it will not be a breach of a person's right to life if the state uses necessary force, for example:

- to protect someone from unlawful violence

- to prevent someone escaping from detention
- to stop a riot.

Public authorities must also take reasonable steps to protect your life.

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:
 - there are no areas in her room 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](#).

- Melanie was an informal patient in a psychiatric hospital after attempting to take her own life. She was given home leave even though she was still unwell. She took her own life while on home leave and her parents brought a case. The court found that the hospital had failed in its duty to protect their daughter under Article 2.

If there has been a death involving public authorities, an independent investigation must be held, which is usually an inquest.

Example

Jane died while detained under [section 3](#) of the Mental Health Act 1983. This meant that there had to be a coroner's inquest so that the inquiry was independent of the hospital.

Article 3: Prohibition of torture and inhuman or degrading treatment

This is an [absolute right](#). 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 [antipsychotics](#) 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 and ill-treatment 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

Elspeth was strapped into a wheelchair for long periods of time to prevent her wandering off and leaving the hospital. She was very distressed and the nurses were informed that this could be degrading treatment.

The government must make an independent investigation if there are allegations of abuse by people working in [public authorities](#). An example of this was the [Winterbourne Inquiry](#).

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.

These may be 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.

If you are not free to leave, and you are under continuous control and supervision, then you are likely deprived of your liberty (i.e. your right to liberty has been limited).

If this happens:

- it must be done lawfully; and
- there must be safeguards so you can challenge whether it is lawful or not to deprive you of your liberty.

For example, a safeguard for when you are sectioned under the Mental Health Act is being able to apply to the [Mental Health Tribunal \(MHT\)](#) to challenge your detention.

Even if you are arrested or detained on mental health grounds, you still have the following rights:

What are your rights if 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.

For more information about this, you should contact your advocate or find a solicitor. See [Useful contacts](#) for more information.

What are your rights if you are arrested?

You must be given the reasons why in a language that you can understand.

What are your rights if you are arrested or detained on suspicion of committing an offence?

You are entitled to be brought in front of a judge promptly.

Examples

- Jason applied for a Mental Health Tribunal whilst on a [section 3](#) of the Mental Health Act 1983. Tribunals normally take place 8 weeks after an application is made, but Jason's case was not heard for 20 weeks after he applied.
- Jessica was detained on section 3 despite her father, who was acting as her [nearest relative](#), having objected to it.
- John was discharged from his section by a Tribunal but there were very long delays in returning him to the community because accommodation could not be found.

These could all amount to breaches of Article 5: Right to liberty and security.

Article 6: Right to a fair trial

This is an [absolute right](#). To be considered **fair**, a hearing should address the following:

- **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](#) 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. You can normally get legal representation for free. See [Useful contacts](#) for more information.
- **Right to see documents:** You have a right to see all the documents in the proceedings. This doesn't necessarily mean you can see all documents related to you – only those that assist you in effectively challenging your detention. For example, if you are being medicated without your knowledge because the doctor thinks it is for your own health and safety, you may not see documents related to this, as it would be bad for your health. You may only be able to see them if you needed to in order to effectively challenge your detention.
- **Reasons for decision:** You have a right to be given reasons for a decision so that you can understand why the decision was made.

Examples

- 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.
- A doctor who was working on a Tribunal went to see a patient before the hearing. However, he also worked as a [responsible clinician](#) for a different hospital in the same trust. This is not a breach of Article 6: Right to a fair trial.

Articles 8, 9, 10, 12, 14

Article 8: Right to a private and family life

This is a [qualified right](#), which includes:

- respect for your sexuality
- 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: see [our information on accessing your personal information](#))
- 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
- being able to see friends and family
- respect for your home.

It can be limited if it is part of the law, 'necessary in a democratic society' and for one of the following 'legitimate aims':

- in the interests of national security
- in the interest of public safety
- for the economic wellbeing of the country
- for the prevention of disorder or crime
- for the protection of health or morals
- for the protection of the rights and freedoms of others.

The ban on smoking in hospitals is not a breach of Article 8.

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.
- Julie was detained in hospital under [section 2](#). Her neighbour telephoned her doctor to see how she was. The doctor gave her neighbour information about her diagnosis, medication and treatment.
- 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

- Jada 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.
- Amy is a [voluntary patient](#) in an eating disorder unit. Her treatment plan involves her receiving oral nutritional supplements. She has been a vegan for a number of years, but the unit says that they can only offer non-vegan nutritional supplements.

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 problems, for example at the [Mental Health Tribunal](#), are usually in private.

Example

Marco is due to have a hearing in the [Court of Protection](#). These normally take place in public, so if it wants to protect Marco's right to privacy the Court of Protection has to make an order for anonymity (an order to stop anyone using details which might identify the parties in a case, such as their name). An order of anonymity might be used if someone involved in a case is particularly vulnerable. 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: 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 in the enjoyment of your other human rights:

- sex
- race
- colour
- language
- religion
- political or other opinion
- national or social origin
- **other status** – this is a very flexible concept and includes disability and mental health problems.

Discrimination under Article 14 is less favourable treatment by the public authority that cannot be objectively and reasonably justified. You can only use this Article if another human rights Article has been engaged.

Example

- 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 engage [Article 8: Right to private and family life](#).

Real life example

New benefits regulations meant that people who were unable to plan a journey because of overwhelming psychological distress were entitled to a lower level of support than those who couldn't plan a journey for other reasons. The court found that the regulations engaged rights under [Article 1 Protocol 1](#) and that people with mental health problems were discriminated against in comparison with people with other health problems in enjoying these rights.

[Read how Mind supported the Claimants in this case.](#)

If you feel that you have been discriminated against because of your mental health problem, you would normally use the Equality Act 2010: [see our information on discrimination](#).

Articles 1, 2, 3 of Protocol 1

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 problem, the right to property may be relevant to you in the following situations:

- 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.

Article 2 of Protocol 1: Right to education

This is a non-absolute 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 problem.

Example

Alex is a 14-year-old girl who has several mental health problems, and she has been excluded from school because of behavioural issues. The local authority has accepted that they need to find her a suitable place to be educated, but have failed to put in place any arrangements for her education for a number of weeks.

This could be a breach of her 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 problems or are detained under the [Mental Health Act 1983](#), you do 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.

Make a complaint

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.

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. You can get more information about finding an advocate in [Useful contacts](#).

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. You can find out more from our [information on complaining about health and social care](#).

Take legal action

You can take a case to a court or tribunal, or you could rely on your human rights in other legal proceedings involving a [public authority](#) that you are already involved in. For example, if the local authority takes possession proceeding to evict you from your home, you can raise a breach of your rights under [Article 8: Respect for your private and family life](#) and [Article 14: Prohibition of discrimination](#) in your defence.

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).

You cannot make a claim that someone else's human rights have been affected.

Taking legal action

If you want to take legal action, you should:

- **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 [Useful contacts](#) for information on how to find a specialist legal adviser.
- **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. Read more about advocacy, and other ways you can get support and assistance, in [Useful contacts](#).

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 do a number of things depending on the facts of the case. It can:

- award you compensation

- make a declaration that your rights have been breached
- overturn decisions made by a public authority
- order a public authority to do something, or not to do something
- make the public authority take a decision again.

Sometimes a court can find that the law itself does not comply with the Human Rights Act. If that is the case, the court can make a [declaration of incompatibility](#). The government then looks at the law and decides whether it needs to be changed.

Example

Andre was on welfare benefits under the old system. He received Severe Disability Premium (SDP) and Enhanced Disability Premium (EDP) because of his serious mental health problems. He had to move house to another local authority which meant that he had to make a new claim for Universal Credit. Under Universal Credit he was no longer entitled to SDP and EDP and lost around £180 a month.

The court made a declaration that the Department for Work and Pensions (DWP) had discriminated against Andre contrary to Article 14 in association with Article 1 Protocol 1. The DWP then compensated him for the lost benefits.

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.

Useful contacts

Mind's services

- **Legal Line** – provides legal information and general advice by phone (0300 446 6463) or email (legal@mind.org.uk).
- **Local Minds** – provide face-to-face services, such as talking therapies, peer support and advocacy, across England and Wales.

Find an advocate

To find [advocacy](#) services and groups in your area, you could call Mind's Legal Line or contact your local Mind.

If you're in hospital, you can also contact:

- the [Patient Advice Liaison Service \(PALS\)](#) in England
- the [Community Health Council](#) in Wales.

In some circumstances, you may be legally entitled to get the support of an advocate. See our page on [your legal rights to advocacy](#) for more information.

Other organisations

Civil Legal Advice (CLA)

gov.uk/civil-legal-advice

Can tell you if you're eligible for legal aid, and give you free and confidential legal advice if so.

Equality Advisory & Support Service

equalityadvisoryservice.com

Advice on issues relating to equality and human rights.

Equality and Human Rights Commission (EHRC)

equalityhumanrights.com

Promotes and monitors human rights and equality.

Inquest

020 7263 1111

inquest.org.uk

Provides free and independent advice to bereaved people following a death in state care or detention in England and Wales.

Law Society

lawsociety.org.uk

Professional association for solicitors in England and Wales. Includes a searchable directory of solicitors.

Liberty

0845 123 2307

liberty-human-rights.org.uk/

Provides advice about human rights.

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References are available on request.