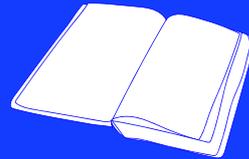




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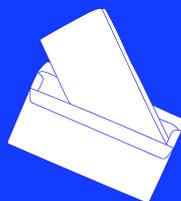
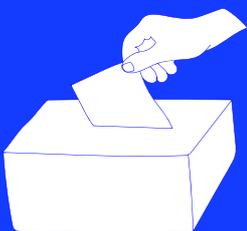
Inclusion  
London

Supporting London's Deaf and  
Disabled People's Organisations



# Human Rights: Our Rights

How to use the Human Rights Act  
A practical guide for DDPOs



**Inclusion London** is run by and for Deaf and Disabled people. We promote Deaf and Disabled people's equality and inclusion by supporting Deaf and Disabled People's Organisations (DDPOs) in London.

**The Disability Justice Project** brings together lawyers with London Deaf and Disabled People's Organisations. Together, we use the law to help Deaf/Disabled people make our rights to independent living and access to goods and services a reality.

The Disability Justice Project is supported by **The Baring Foundation**. Please note the contents in this document are the sole responsibility of Inclusion London and do not necessarily reflect the position of the Baring Foundation.

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# What are human rights and why do they matter for Disabled people?

Human rights are freedoms and protections we all have because we are human beings. They set a minimum standard of how all people everywhere in the world should be treated.

Human rights are interdependent: they are linked to one another. They belong to everyone everywhere and they cannot be taken away.

Human rights are based on principles of dignity, autonomy, equality and respect.

Disabled people enjoy human rights when we can make choices about our life, have the right support to live in dignity and be included in the community, and when we can have a family or take part in political life. However, our rights are also breached every day when we are placed in segregated institutions or left without essential support to meet our basic needs.

Human rights are about protecting individual people from the abusive powers of governments, but also about ensuring that governments take action to enable us to enjoy those basic freedoms and protections.



More information about human rights and why they matter, including Myth Busters, at Rights Info:  
[rightsinfo.org/explainers/](https://rightsinfo.org/explainers/)

## Human rights and Disabled people

Although general human rights protections have always, in theory, applied to Disabled people, it took many years before the world saw that we are human too and our experiences of segregation, discrimination and lack of voice are human rights breaches.

### The social model

The main reason Disabled people have been left off the rights agenda has been the definition of disability as a medical outcome. During the 1970s, UPIAS (the Union of Physically Impaired Against Segregation) in the UK and other Disabled people's organisations around the world articulated a [social model of disability](#). The notion that it was society that had to change to ensure equality and participation – not the Disabled person – has liberated many of us and helped to move from a charity based model to a rights based approach to the support we need to be equal.

Although for many Disabled people inclusion, independent living and equality are still dreams, the human rights framework offers a useful tool to describe and challenge the injustice we face.

This framework enables us to describe and challenge our experiences as violations of human rights, and see the support we need and get as something the government has a duty to provide to enable us to enjoy our human rights. The framework enables us to shift from being objects of pity to active subjects who have rights, and to therefore demand inclusion, independent living, and respect for our dignity and choices; it gives recognition that we are human beings like everybody else and should enjoy our human rights like everybody else.

The use of human rights in a social care or healthcare context, for example, can help to focus more on our dignity, our everyday experiences and self-determination rather than our bodily functions and support needs. In education, human

RIGHTS  
NOT  
CHARITY!

rights can help to challenge segregation and in social security human rights can help move from the language of “deserving” and “non-deserving” to ensuring everyone can enjoy a decent standard of living. Human rights can help us fight against structural barriers in society that prevent us from having the same opportunities as non-Disabled people.

Human rights are an evolving concept that we need to use and own in order to define how they should apply to us.



## How are Disabled people's human rights protected?

Human rights are protected at international and UK levels. The idea of human rights in some shape or form has existed for centuries, but after the horrors of the Second World War the need for a formal international protection of human rights was recognised and supported. In 1949 [The Universal Declaration of Human Rights](#) outlined the fundamental rights everyone in the world should enjoy.

*All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.*

The Universal Declaration of Human Rights was followed by international human rights treaties – international agreements aimed to protect human rights. By signing and ratifying those international agreements, states promised to other states that they would protect and respect human rights as outlined in those treaties. There are a number of human rights treaties at the United Nations level, including the [UN Convention on the Rights of Persons with Disabilities](#) and at regional level, for example the [European Convention on Human Rights and Fundamental Freedoms](#).

With the exception of the European Convention on Human Rights and Fundamental Freedoms, these documents impose obligations on the government, but they do not give enforceable rights to individuals in the UK. This means a person cannot rely on the Convention on the Rights of Persons with Disabilities alone to challenge certain decisions or actions in court. However, these international documents have been used by courts to interpret existing law and they have been extremely useful in campaigning work.

At the UK level, human rights are protected by the Human Rights Act 1998, which gives direct effect to the European Convention on Human Rights and Fundamental Freedoms in the UK. This means that any public body in the UK can be held responsible for breaching those rights.

#### UN Human Rights treaties



#### European Convention on Human Rights



#### Human Rights Act



## The UN Convention on the Rights of Persons with Disabilities

The [Convention on the Rights of Persons with Disabilities](#) (CRPD) is an international treaty which sets out what governments need to do to ensure Disabled people can enjoy their human rights. The text was adopted by the United Nations General Assembly on 13 December 2006 and came into force on 3 May 2008. The United Kingdom signed the Convention on 30 March 2007 and ratified it on 8 June 2009. By ratifying this Convention the UK government agreed to promote, protect and ensure the full realisation of all human rights by Disabled people. The convention covers a broad range of rights from the right to life, access to justice and equality before the law, to the right to education, independent living, employment and adequate standard of living.

The UK government did not make the CRPD part of the UK law, so it does not give individual Disabled people legal rights. However, since the UK agreed to fulfil its obligations under the Convention, this document can be extremely useful in campaigning and lobbying. It also has been used to interpret other laws, including the Human Rights Act. When ratifying the Convention the UK Government made reservations in relation to the Articles about employment and education. Reservations limit or clarify the UK obligations under those Articles.

The CRPD is monitored by the UN Committee on the Rights of Persons with Disabilities. This committee conducts periodic reviews, which look at how well the countries which ratified the Convention are fulfilling their obligations.

The UK has also ratified an Optional Protocol to the CRPD, which enables the Committee on the Rights of Persons with Disabilities to consider complaints from Disabled people who think their rights under the Convention have been breached. The Optional Protocol also gives the Committee a right to hold an inquiry when there is evidence of gross and systematic violations of Disabled people's rights.

In 2015 the UK was the first country to be investigated under the inquiry procedure. See the [inquiry report](#).

### For more information about the CRPD



[The Equality and Human Rights Commission's CRPD Guide](#) describes what the Convention says and how it is relevant to the UK



[The EHRC's Easy-Read Guide to CRPD](#)



[How to make individual complaints to Human Rights Treaty Bodies](#)



[Know Your Rights, Use Your Rights, Live Your Rights Guide](#) by Disability Wales has detailed information about the UN CRPD and how it can be used by DDPOs and Disabled people in the UK. This guide is available in [Easy-Read](#).



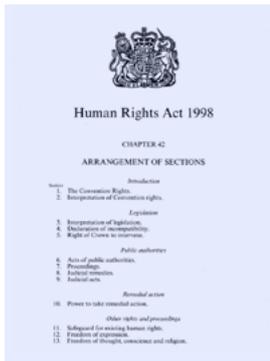
The [Committee's website](#) has information on how the UK is complying with its obligations including reports from the UK government to the Committee on the Rights of Persons with Disabilities, along with shadow reports.

### The European Convention on Human Rights (ECHR)

[The European Convention on Human Rights](#) (ECHR), which was agreed by member states of the Council of Europe (not to be confused with the European Union), has been in force since 1953 and contains a number of rights, primarily civil and political, set out in a series of Articles. The Convention established European Court of Human Rights which is based in Strasbourg. Individuals whose rights have been breached can take their case against their country to the European Court of Human Rights. However, ECtHR will only look at a case if a person has used all possible ways to resolve the issue using their country's legal system.

The Council of Europe is different from the European Union and membership of the EU does not directly affect the UK's obligations under the European Convention on Human Rights.

# What is the Human Rights Act?



The Human Rights Act 1998 is the law which ‘gives further effect’ to rights and freedoms guaranteed under the European Convention on Human Rights.

It does 3 things:

- Requires judges to read and give effect to legislation (other laws) in a way which is compatible with the Convention rights;
- Requires all public bodies to act in a way that respects the Convention Rights;
- Requires that when passing new laws Parliament should consider their compatibility with the Convention rights.

The Human Rights Act makes it possible for people who believe their rights have been breached to take legal action in the UK courts.



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Read more about how the Human Rights Act works on [Liberty's website](#).



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A guide to the Human Rights Act is available in [easy read](#).

## Who has duties under the Human Rights Act?

The Human Rights Act (HRA) imposed duties on the government, its departments and other public bodies, such as the NHS or police. Public bodies have to abide by the HRA in everything they do. Private organisations and charities have to abide by the HRA when carrying out public functions. For example, a housing association will have duties under the HRA when managing and allocating social housing, but not in relation to people who rent privately.

All registered care providers have to abide by the HRA when delivering care and support arranged or paid for by local authority.<sup>1</sup> But they do not have human rights duties towards self-funders who arrange their own care and support.

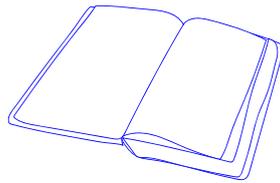
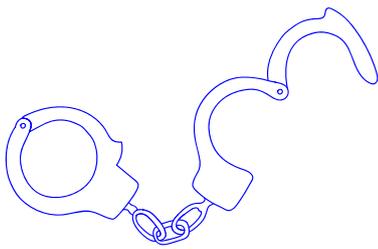
Not all organisations and individuals are bound by the Human Rights Act and sometimes deciding whether or not it applies to a particular situation can be complicated. If you are not sure, get advice.

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<sup>1</sup> The Care Act 2014, s 73



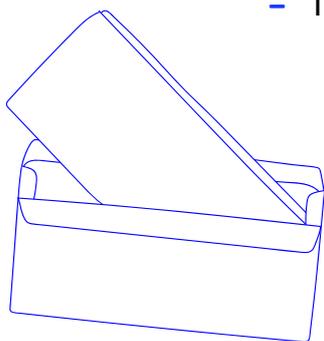
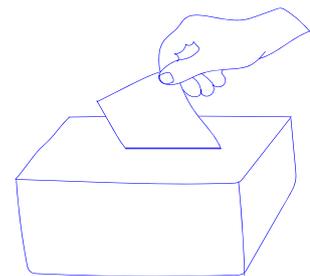
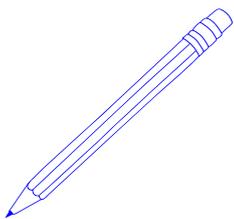
Liberty offers free legal advice about issues related to the Human Rights Act: [www.liberty-human-rights.org.uk/get-advice](http://www.liberty-human-rights.org.uk/get-advice)



## What rights are protected?



- The right to life
- Prohibition of torture and inhuman or degrading treatment or punishment
- Prohibition of slavery and forced labour
- The right to liberty
- The right to a fair trial
- No punishment without law
- Respect for privacy and family life
- Freedom of thought, conscience and religion
- Freedom of expression
- Freedom of assembly and association
- Right to marry
- Right to effective remedy
- No discrimination
- Protection of property
- The right to an education
- The right to free elections



## Absolute, limited and qualified rights and how to balance interests

Most rights are not absolute and there are situations when the rights of one person can clash with the rights of others or the wider interests of society.

### **Absolute rights**

There are very few **absolute rights**. In the Human Rights Act those are: freedom from torture and inhuman or degrading treatment; and freedom from slavery. There can never be a justification for interfering with those rights. Therefore, when arguing a case about those rights it is enough to prove that just one of those rights is relevant in the situation. For example, if you are using freedom from inhuman or degrading treatment when advocating for a person to be re-housed, you will only need to show that the conditions in which a person lives amount to inhuman **or** degrading treatment.

### **Limited rights**

There are also **limited rights**, which can only be interfered with in certain cases described in human rights instruments themselves. For example, a right to liberty is a limited right. Article 5 of the European Convention on Human Rights lists circumstances when a person could be deprived of their liberty, for example going to prison after being found guilty of a crime by a court. This Article also includes a number of safeguards, such as a right to challenge the lawfulness of detention in an independent court or tribunal.

### **Qualified rights**

The majority of rights are **qualified rights**. It means they can be interfered with in more general circumstances; however, public bodies have to follow strict rules and justify their interference carefully.

Any interference with a qualified right must:

- have a **legal basis** – provided for in existing legislation;
- have a **legitimate aim** – to protect the rights of others or wider society;
- be **necessary** in a democratic society – the measure is necessary to achieve the legitimate aim and there is no less restrictive alternative;
- be **proportionate** – when balancing the interests of the person concerned with wider interests, the restriction is appropriate and not excessive. The greater the restriction of the right – and the greater the impact on the individual – the more serious the reasons will need to be to meet a proportionality test. However, in cases related to social care, judges have so far allowed more freedom to local authorities to make decisions and interfere with someone's rights, especially when there is a question of resources.

### When dealing with cases which involve qualified rights

1. Check whether a public body followed the law when making their decision.

For example:

- have they done the assessment of care needs before cutting a support package?
- does the way the assessment was done comply with the requirements of the Care Act?

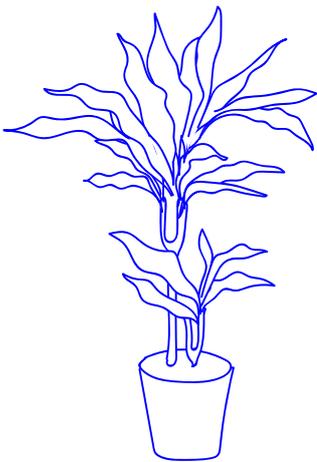
2. Check whether the aim they are trying to achieve is legitimate. Why do they say they need to interfere with the rights?

3. Suggest alternative options which are less restrictive:

- Could the local authority provide more support for Disabled parents rather than removing their child?
- Is there a way the person could be supported at home rather than moving to a care home?

4. Clearly describe the impact of the decision on the person's human rights and ask a public body to justify that they acted proportionately. This will enable you to challenge their justification if necessary.

# Rights protected by the Human Rights Act: a closer look at some Articles



## Article 2: Right to life

This right protects a person's life and ensures it cannot be taken away, including by a public body.

This means the public bodies cannot take away anyone's life intentionally or by negligence. They have to take reasonable steps to protect a person's life when they are aware it is in danger.

If someone is killed by a public authority, or as a result of the authority's failure to act, the state has a duty to investigate this death.

The right to life is protected from when a person is born and it does not include a right to die or a right to euthanasia.

### **Examples of situations when this right would be involved:**

- A person dies in a hospital or a care home as a result of neglect or abuse.
- A public body is aware that a person has suicidal thoughts and fails to take action to protect them; this is especially relevant for people who are in hospitals or care homes.
- The police are aware a person is constantly subjected to hate crime, including death threats, and does nothing to protect that person.
- Failure to investigate benefit related deaths.
- A person is not given appropriate medical treatment because of their disability – e.g. do not resuscitate notes where a sole reason for the note is the person's disability.

## Cases

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### **RABONE AND ANOR V PENNINE CARE NHS FOUNDATION TRUST (2012)**

[See the judgment](#)

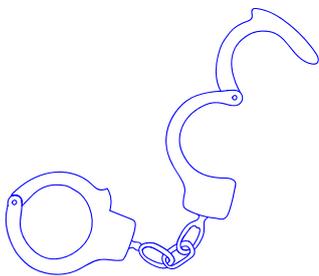
This case concerned a mental health service user, who was a voluntary in-patient. She committed suicide after being allowed to go home for 2 days at a time when the hospital knew there was an imminent risk to her life. The Supreme Court ruled that when a person is known to be at real and immediate risk of suicide, the hospital has a positive operational duty under Article 2 to take preventative measures to safeguard life.

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### **R (ON THE APPLICATION OF BURKE) V GMC [2004]**

[See the judgment](#)

This case was about clarifying how much an individual's advance wishes to maintain artificial hydration and nutrition should be taken into account when decisions to maintain life-sustaining treatment are made. The court decided that in a situation when a doctor withdraws life-saving treatment with a purpose of bringing death of a patient Article 2 would be engaged. However existing common law and criminal law already prohibits this.



## **Article 3: freedom from torture, inhuman and degrading treatment and punishment**

This Article ensures no one is subjected to serious abuse or neglect. Usually the treatment has to have a very severe negative impact on a person's mental or physical health in order to be considered under this Article. The level of severity will be decided in each individual case and will depend on the situation a person is in, the impact on their physical and mental

health, gender, age, etc. Treatment that does not cross the level of severity for Article 3 could still be a breach of someone's human rights under Article 8.

### **Public bodies have a duty:**

- Not to subject Disabled people to inhuman or degrading treatment;
- To take reasonable steps to protect Disabled people from inhuman or degrading treatment by others;
- To investigate situations when Disabled people are subjected to such treatment.

### **Examples of breaches may include:**

- A stay at hospital leaves a person with dehydration and malnutrition;
- Cuts to care packages leave a person without support to meet basic personal care needs, which has serious implications for their health;
- A person lives in a totally inaccessible home where they cannot access basic facilities, such as the bathroom, or cannot use their mobility aids, such as a wheelchair, and this is having a serious impact on the person's mental or physical health;
- A person is continuously subjected to mental or physical abuse from carers and a care provider or a local authority fails to do anything about it;
- A person is left in their bodily waste for a long time;
- Mobility aids are taken away, so a person is unable to move;
- The use of excessive force or restraint;
- Police failing to take reasonable steps to investigate hate crime or protect a person from hate crime.

## Cases

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### PRICE V UK

[See the judgment](#)

Adele Price was committed to prison by a judge for refusing to answer questions about her finances in debt proceedings. She had to spend one night in a police station, where she slept in her wheelchair. There and later in prison she was not able to use a toilet and relied on help from male officers.

The European Court of Human Rights found that the conditions of her detention amounted to inhuman and degrading treatment.

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### MS V UK, 2012

[See the judgment](#)

A prolonged police detention of a person with mental health support needs without ensuring he had access to medical treatment was a violation of Article 3.

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### R (GS) V LONDON BOROUGH OF CAMDEN [2016] EWHC 1762 (ADMIN) (UNREPORTED, 27TH JULY 2016)

[See the judgment](#)

Camden Council's refusal to provide accommodation for a severely Disabled destitute Swiss national was in breach of Article 3.

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### ZH V THE COMMISSIONER OF POLICE FOR THE METROPOLIS, 2012

[See the judgment](#)

The police's actions when taking a person with Autism from a swimming pool and restraining him amounted to breaches of Article 3 and Article 5.

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### DORĐEVIĆ V. CROATIA 24 JULY 2012

[See the judgment](#)

The European Court of Human Rights found that the police and other authorities' failure to protect a mother and her Disabled son from prolonged physical and verbal abuse by children who lived nearby was a breach of Article 3.



## Article 5: Right to Liberty

This right ensures no one is arbitrarily deprived of their liberty.

This right is about personal freedom and not being deprived of liberty without a good reason. In practice, for Disabled people the meaning of deprivation of liberty is not always clear-cut. It is, for example, unclear whether this article could apply to situations when a person is not able to leave a place, not because someone put them behind a locked door, but because of the lack of access and support.

The Convention allows the right to liberty to be restricted. For example, a person can be legally deprived of their liberty when they receive a prison sentence or when they are detained under the Mental Health Act or Deprivation of Liberty Safeguards.

However, Article 5 also includes additional rights for people who are detained. The most relevant of those are:

- The right to be told about the reasons for detention in the language that a person can understand – for Deaf people this will mean having a BSL interpreter and for people with learning difficulties it may mean receiving explanation in a way that is easy to understand;
- To be able to challenge the detention before an independent tribunal, which can give a speedy decision and order a release;
- To receive compensation if an Article 5 right has been breached.

### **Examples of potential breaches**

- A person with physical impairments is placed in a care home as a temporary measure and not able to get out;
- Conditions depriving a person of their liberty remain the same even after a Deprivation of Liberty (DOL) authorisation has expired;
- A Deaf person detained by police not getting a BSL interpreter to explain the reasons for detention.

## Cases

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### **RE STEVEN NEARY; LB HILLINGDON V STEVEN NEARY [2011] EWHC 1377 (COP)**

[See the summary](#)

The court decided that the local authority breached Steven Near's right to liberty by keeping him away from his home, and delaying Deprivation of Liberty Safeguards (DOLS) authorisations, by failing to refer the case to the Court of Protection sooner, by failing to appoint an Independent Mental Capacity Advocate sooner, and by failing to conduct an effective review of the best interests assessments.

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### **H, R (ON THE APPLICATION OF) V MENTAL HEALTH REVIEW TRIBUNAL, NORTH & EAST LONDON REGION & ANOR [2001] EWCA**

[See the judgment](#)

This case reversed a burden of proof for patients detained under the Mental Health Act. It should be up to medical professionals to prove that all conditions for detention are met at a tribunal hearing, and not for a person to show that none of the conditions apply.

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### **P (BY HIS LITIGATION FRIEND THE OFFICIAL SOLICITOR) (APPELLANT) V CHESHIRE WEST AND CHESTER COUNCIL AND ANOTHER (RESPONDENTS), [2014] UKSC 19 ON APPEAL FROM [2011] EWCA CIV 1257; [2011] EWCA CIV 190**

[See the judgment](#)

The Supreme Court clarified what deprivation of liberty meant for people who lacked capacity and were not objecting to being detained. P is deprived of his liberty if he is "under continuous supervision and control and is not free to leave".



## Article 6: Right to a fair hearing

This Article is about real and effective access to courts, tribunals and a fair trial. It covers criminal proceedings and civil proceedings, such as employment, family, contract, and discrimination disputes. It also extends to some other proceedings, such as disciplinary hearings.

The trial is fair if it is public, heard by an independent impartial court or tribunal, and held within a reasonable period of time.

The person must have a genuine opportunity to present his or her case. This can mean adjustments to ensure a Disabled person can effectively take part in proceedings. Both parties should have equal chances to put forward their arguments, examine evidence, question witnesses and the court should give reasons for its decision.

### Examples of potential breaches

- The access needs of a person are not met, so they cannot participate fully in proceedings;
- A person cannot access all the evidence in the format they need;
- A judge refuses to make changes to the proceedings to ensure a person can effectively take part.

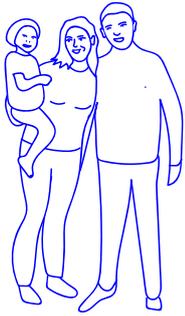
### Cases

#### **DG V SECRETARY OF STATE FOR WORK AND PENSIONS (ESA) [2010]**

[See the judgment](#)

The tribunal's and the DWP's failure to consult the person's GP when considering an ESA appeal, in spite of repeated requests, was a breach of the right to fair hearing.

The Equal Treatment Bench Book is guidance that judges should use to make sure Disabled people can effectively participate in proceedings. [See the Guidance.](#)



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

Article 8 is one of the most open-ended of the Convention rights, covering a growing number of issues and extending to protect a range of interests that do not fit into other Convention categories.

### **Private life**

Private life is an ability to live life the way a person wants with privacy and without interference by the state. It includes things such as:

- control over the body
- personal identity
- sexuality
- forming and maintaining relationships with other people
- taking part in the community
- making decisions about important things in life, including care and support
- wellbeing
- protection of personal information.

The right to private life is relevant to complaints about public funding to facilitate access or better quality of life for Disabled people. However, there needs to be a special link between the measure sought and a specific need regarding private or family life. For example, if you are complaining about access, you will have to show how being unable to access a building or a service would have an impact on a Disabled person's private life.

### **Family life**

Family life is about a person's right to form and maintain family relationships. It includes the right not to be separated from the family and the right to maintain regular contact with them.

Respect for home is about protecting a home that a person already has. This right does not give a person housing rights. It means public authorities must not prevent a person from entering, living in their home or enjoying their home peacefully. This right may be relevant for people who live in a care home or a hospital for a long time and consider those places to be their home, for example, when that place is closing down.

## Correspondence

Correspondence includes different ways of communication. This includes getting private correspondence, such as medical correspondence in accessible formats.

## Examples of potential breaches

- Failure to include a person in important decisions about their life;
- Failure to arrange communication support for medical appointments;
- Lack of support to the point where a person is extremely limited in their choices or ability to take part in the community or maintain their role as a parent;
- Lack of support meaning that a person has to live in particular living arrangements;
- Children are taken away from Disabled parents without considering the support for parents in their parenting role;
- A support plan only includes support for personal care, nothing for maintaining or developing relationships or social life;
- The local authority insists a person has to be observed 24/7 for 3 weeks as part of their social care needs assessment;
- A blind person receives his medical appointment letters in standard print in spite of asking for braille many times;
- A person being placed in a care home far away from their family.

## Cases

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### **GOUTNER V. SW STAFFORDSHIRE PCT**

[See the judgment](#)

When making decisions about placing a person in residential care, the primary care trust (PCT) should have taken into account that person's right to private and family life.

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### **R (A & B) V. EAST SUSSEX COUNTY COUNCIL (DISABILITY RIGHTS COMMISSION INTERESTED PARTY) HIGH COURT (10 FEB 2003)**

A blanket policy which prohibited manual lifting and handling in social care support provision was found to be breaching Disabled people's Article 8 rights.

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### **MCDONALD V. THE UNITED KINGDOM - 4241/12 - CHAMBER JUDGMENT [2014] ECHR 492 (20 MAY 2014)**

[See the judgment](#)

A cut to a social care support can potentially interfere with a person's rights. When it is done not in accordance with the procedure set out in law, there will be a violation of a person's rights. The case was about the use of incontinence pads for a person who was continent, but needed assistance to get to the toilet. The court found that when the local authority followed the procedure set out by law (i.e carried out a new assessment of needs) there was no violation of Article 8.

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### **R V. DEVON HEALTH AUTHORITY EX P COUGHLAN 2000**

[See the judgment](#)

This case concerned Ms Coughlan, who was a resident in a care home, which the local authority wanted to close. The Court of Appeal decided that because of its promise of a home for life, in this instance the health authority had breached Article 8 and the interference in this case was not necessary in a democratic society.

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**GLASS V. THE UNITED KINGDOM - 61827/00 [2004] ECHR 103 (9 MARCH 2004)**

[See the judgment](#)

When there is a disagreement about medical treatment for a child or a person who lacks capacity, medical professionals should refer the case to court. Failure to consult with relatives or refer a case to court may result in a breach of Article 8.

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**R (TRACEY) V. CAMBRIDGE UNIVERSITY HOSPITALS NHS FOUNDATION TRUST & ORS**

[See the judgment](#)

When medical staff make decisions about do not resuscitate (DNR) notices, the presumption should be to involve the person.

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**R (ON THE APPLICATION OF BERNARD) V. ENFIELD LONDON BOROUGH COUNCIL (2002)**

[See the judgment](#)

The failure by the council to provide suitably adapted accommodation for Mrs Bernard and her family, long after it admitted the family needed to be re-housed, amounted to a violation of her Article 8 rights.

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**P V. M (ALSO KNOWN AS FP V. GM), COURT OF PROTECTION, 2011**

Where a person in a care home has a relatively short life expectancy (1-2 years), wants to be with their family and has the mental capacity to decide, they should spend their remaining time with their family, rather than in a care home.

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**ASSISTED DYING CASES**

Article 8 was used a lot by campaigners seeking to change the law on assisted dying. However, so far they have been largely unsuccessful.

[See the judgment in Pretty v the UK](#)

[See the judgment in the Nicklinson case](#)

[See the judgment in the Conway case](#)

## Article 14: Non-Discrimination

This right protects Disabled people from discrimination, however only in relation to the enjoyment of other rights in the European Convention. Discrimination means unfavourable treatment. This article has often been used in policy challenges.

### **Obligations:**

- Not to treat Disabled people unfavourably because they are Disabled
- Treat Disabled people differently when their situation is materially different
- Make reasonable adjustments to alleviate disadvantage

Disabled people are also protected against discrimination by the Equality Act 2010. However, Article 14 may be particularly useful in areas which are not covered by the Equality Act, for example it has been used to challenge regulations and could be used to challenge discriminatory acts of Parliament. It can also protect Disabled people with moderate impairments who may not always be protected by the Equality Act.

You can find detailed analyses of how Article 14 can enhance the protection of the Equality Act with examples of potential breaches and decided cases on [www.stammeringlaw.org.uk/hra/hra.htm](http://www.stammeringlaw.org.uk/hra/hra.htm)

### **Cases**

#### **RF V SECRETARY OF STATE FOR WORK AND PENSIONS**

[See the judgement](#)

The High Court quashed changes to the personal independence Payment regulations, which excluded people experiencing psychological distress from qualifying for higher rates of PIP. The court found those changes discriminatory contrary to Article 14.

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### **MATHIESON V SECRETARY OF STATE FOR WORK AND PENSIONS**

[See the judgment](#)

A court found that the suspension of Disability Living Allowance for children in hospital was unlawfully discriminatory.

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### **BURNIP V BIRMINGHAM CITY COUNCIL & ANOR [2012] EWCA CIV 629 (15 MAY 2012),**

[See the judgment](#)

A court found that size criteria for housing benefit discriminated against Disabled people who need overnight care.

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### **R (ON THE APPLICATION OF CARMICHAEL AND ROURKE) (FORMERLY KNOWN AS MA AND OTHERS)**

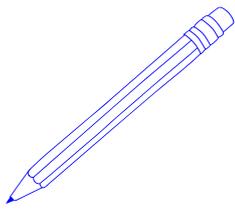
[See the judgment](#)

The Supreme court found that bedroom tax size criteria was discriminatory against Disabled people who cannot share a room.



## **Article 1, protocol 1**

This Article gives a right to peaceful enjoyment of possessions, which includes land, homes, money, other things you own. This Article prevents public bodies from taking away the things you own or restricting the way in which you could use them, unless they have a good reason for doing so. Entitlement to benefits falls within the scope of this article. This Article has been used successfully by Disabled people together with Article 14 to challenge some benefits related policies.



## Article 2 protocol 1: The right to education

This Article says that no one should be denied the right to education. It also requires the government to respect the right of parents to ensure such education and teaching conform with their own religious and philosophical convictions. However, the UK has accepted the right of parents to ensure education of their children conforms to their beliefs “only in so far as it is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure.”

The right to education includes the following:

- the right of access to educational institutions existing at a given time;
- the right to an effective education; and
- the right to obtain official recognition of the studies which one has completed.

There has been very little jurisprudence on this Article in relation to Disabled children. It is also worth remembering that future potential cases about access to mainstream schools and inclusive education would be supported by the framework of Article 24 of the UN Convention on the Rights of Persons with Disabilities.

[ECtHR’s Factsheet on the Rights to Education](#) gives a detailed overview of this right and past jurisprudence.

# What to do when things go wrong

If you think a Disabled person's human rights have been breached, think of the following questions before starting any action to challenge this:

1. Does the Human Rights Act apply to the organisation/ individual who in your view is breaching Disabled person's human rights? [See more on who the HRA applies to.](#)
2. Which right have been breached?
3. Is this right absolute, limited or qualified? In other words, can there be a lawful justification for interfering with this right and can you make an argument that this wasn't done in the right way?
4. What evidence do you have or you can get to support your arguments?

Voiceability's [Guidance on supporting advocates in challenging decisions with or on behalf of individuals](#) has a lot of practical tips and templates on different ways to challenge decisions for advocates.

## Raising the issue

It is important to use the Human Rights Act preventatively. Talk about human rights before the decision has been made. For example, when supporting a Disabled person during an assessments of social care needs or best interest assessments, when negotiating support worker shifts with a care agency or when taking part in discussions or consultations about future policies.

For example, you could speak about the right to live independently and be included in the community or the right to respect for private life when a social worker suggests that a Disabled person you support moves to a care home because this is a cheaper option for local authority. Or talk about the right to private life when a care agency imposes support worker shifts which significantly restrict a Disabled person's choices.

If the decision has been made or you come across a practice that already exists you should consider raising the issue. Here are some steps to take to do it effectively:

**1.** Establish the facts of the matter and collect relevant evidence (ideally ask to see a copy of the decision or talk to the people concerned to establish a reason behind a certain practice). If necessary, write a timeline of key actions/decisions with dates.



**2.** Identify what exactly the problem is and how it affects the individual.



**3.** Look up what the law says and how it can be applied to the situation.



**4.** Identify a person who is able to resolve the problem or reconsider the decision.



**5.** Think of a possible solution.



**6.** Consider if raising the issue informally is the best way forward. If the situation is urgent or someone is at risk of harm or a deadline for a legal challenge is fast approaching, raising the issue informally may not be the best way forward.

## What to say when raising the issue

- Remind them about the Human Rights Act and their duties under the HRA.
- Tell them what they have done and how their actions or inactions breach the human rights of a person you represent and the impact this has had on them.
- Tell them what you would like them to do or how you would like them to behave in the future.
- If you do it in writing give a deadline by which they should respond.
- Ask for evidence which they might have and you don't. Copies of decisions, minutes of meetings for example.

## Making a formal complaint

Each public body should have a complaints procedure. Ask for a copy of it. If you need this document in alternative formats make sure you let them know. Providing a policy in alternative formats should be considered as a reasonable adjustment under the Equality Act 2010. Complaints procedures usually involve two stages: initial investigation and a review. Complaints are usually investigated by a different person to the one whose actions or decisions you are complaining about. They will usually ask the person concerned to explain their actions or decisions., Check if these are reasonable and that they communicate their opinion to you.

When making a complaint you should:

- Make it clear this is a formal complaint and ensure it is registered as such.
- Set out the facts and be clear what you are complaining about. Is it about a decision, or the way a Disabled person you support has been treated?
- Set out the law or local policy and explain how the organisation in question did not follow it.

- Say what you would like to be done as a result of this complaint: a decision to be changed, an apology, a change in practice.

When thinking about the outcome you want to achieve, think about the possible wider implications of your complaint, for example if other people are likely to be affected by the issue you are complaining about, or if it is possible to do something to prevent the same problem from happening again.

### Examples of wider outcomes

- Asking the local authority to publish information on its website or to change the wording of the information it already has;
- Asking to make changes to their policy or practice;
- Asking to inform individuals who are affected by the same issue about their rights.



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The Public Law Project's guide [Making an Effective Complaint to a Public Body](#) for more practical tips about making a complaint.

## Ombudsman schemes

An ombudsman is a person appointed to investigate complaints in a particular area of public body decision-making. Their service is free, independent and impartial. A complaint to an ombudsman could be a way to resolve an issue. An ombudsman does not have the power to force a public body to change its decision, but their recommendations are usually followed. Most commonly when experiencing a breach of their human rights, Disabled people will complain to the Local Government Ombudsman or the Parliamentary and Health Service Ombudsman. Their procedures are similar.

## Local Government Ombudsman

The Local Government Ombudsman (LGO) can investigate complaints about the decisions, actions or inactions of local authorities. It can also investigate complaints about private care providers, such as care agencies, care homes, etc., even in cases when a person pays for their care. If a package is funded by both the local authority and the Clinical Commissioning Group, you can still complain as the LGO has a joint team with the Health Service Ombudsman. So both aspects of your complaint will be considered and you will have a single point of contact.

You cannot complain to the ombudsman before you go through the local authority's complaints procedure. You have to complain within to the Ombudsman 12 months of the original decision.

A Disabled person you support has to be personally affected and experience an injustice. If, for example, their particular problem has been resolved by a local authority but you want them to make a bigger change, the ombudsman may decide not to investigate your complaint.

There are a variety of ways to start a complaint, including by phone, via email, filling in an [online form](#) or by post.

The ombudsman will investigate complaints where there is a maladministration – a fault by the council, a government department or another organisation – which results in a person involved experiencing an injustice. Examples of such situations include:

- A local authority or a government department did not follow the law or its own policies;
- A local authority took too long to act or make a decision;
- A local authority did not follow the right process when making a decision, for example did not involve a Disabled person you support, or did not give them information they were entitled to know.

Potential Human Rights breaches or a failure to make reasonable adjustments for Disabled people can be raised in complaints to the Ombudsman.

## How will a complaint be investigated?

The case is allocated to an investigator, who will look at all the documents, contact you, speak to the person concerned and in some cases meet them in person. They may ask for additional information, and will then contact the public body and ask for their views. After gathering all the necessary information the investigator will draft a decision, and ask for your comments before reaching a final decision. It usually takes around 6 months from the time you filed a complaint to getting a final decision.

The decision of the ombudsman is final; however, if you can prove that it was based on factually incorrect evidence or you have important new information which is relevant to the case, you could ask for a review. Decisions of the ombudsman can be challenged through a judicial review if they are legally incorrect, or the decision was taken unlawfully.

The ombudsman publishes its decisions on its website.

## Some other ombudsmen and regulatory bodies that can be useful:



Parliamentary Ombudsman - Investigates complaints about Government Departments and the HNS.

[www.ombudsman.org.uk](http://www.ombudsman.org.uk)



The Information Commissioner's Office – for data protection and freedom of information issues.

[www.ico.org.uk](http://www.ico.org.uk)



The Legal Ombudsman can help resolve legal service disputes, including complaints about solicitors.

[www.legalombudsman.org.uk](http://www.legalombudsman.org.uk)



A full list of ombudsmen can be found here:

[www.ombudsmanassociation.org/association-members-by-country.php?area=1](http://www.ombudsmanassociation.org/association-members-by-country.php?area=1)

## Taking legal action

When a public body has acted unlawfully or their decision/ action breaches human rights, this can be challenged through a legal action. This could either be done through a process called Judicial Review or by bringing a legal action under the Human Rights Act. Since the Human Rights Act applies to private care providers it can also be used in private legal actions against them.

Judicial review is a process in which the judge will look at the lawfulness of a decision, action or inaction of a public body. The judge will assess whether the law has been applied correctly and whether a public body followed the right process. The court plays a supervisory role: it won't determine whether a decision was right or wrong based on the facts. The court can overturn a decision, order a public body to take certain action or prohibit it from taking a certain decision or action. The court can also order a public body to take certain actions until the case is resolved. Judicial review is often used to challenge decisions about adult social care. When a cut to a care package is disputed a judge can order that the local authority maintains levels of support until the case is resolved.



For more information about Judicial review see the Public Law Project's guide: [An introduction to Judicial Review.](#)

The Human Rights Act can be used in a legal challenge to change the interpretation of the law or to get a declaration of incompatibility, saying that the Act of Parliament is not compatible with the rights in the European Convention on Human Rights and Fundamental Freedoms.

### When considering legal action it is worth thinking about the following things:

**Time limits:** There are strict deadlines for starting a legal challenge. For judicial review it is 3 months and for breaches of human rights it is 12 months from the date of the decision. Is your case still within those time limits? It is also important to remember that lawyers will need time to investigate the case.

**Funding legal advice:** would a person you support qualify for legal aid? Are there other sources of funding? If a problem is widespread and a particular person cannot get legal aid, you could look for another person in a similar situation.

**How serious the situation is:** although it may take a long time for a case to get to court, it may be possible for lawyers to secure an interim solution while the case is being considered.

It is also important to remember that not all cases reach court. Sometimes the involvement of solicitors can help to resolve the issue or clarify the situation.

If you make a decision to refer a person to solicitors, it is best to approach solicitors who specialise in that area of law.



You can check [a list on our website](#) for solicitors who specialise in advising Disabled people.



You can also use [Find a Legal Aid Advisor tool](#) on the [Gov.uk](#) website to find a solicitor who can give advice for people eligible for Legal Aid or [Find a Solicitor](#) on the Law Society's website.



If you are considering taking legal action, please contact [Svetlana.Kotova@inclusionlondon.org.uk](mailto:Svetlana.Kotova@inclusionlondon.org.uk) at our Disability Justice Project, we may be able to help.

## Further information

[Taking legal action to protect human rights](#) – CAB

[Legal aid factsheet](#) – Inclusion London

[Taking Legal Action](#) – CAB

[Using a Solicitor Guide](#) – The Law Society

For a list of solicitor firms, who are experienced in offering legal advice to Disabled people [see our website](#)

## Further resources about the Human Rights Act

[Protecting Your Human Rights When Using Health and Social services](#) – CAB

[Your Human Rights: a guide for Disabled people](#) – a guide produced by the British Institute of Human Rights. Gives general information about the Human Rights Act and has specific examples of how it applies to Disabled people

[Mental Health Advocacy and Human Rights: Your Guide](#) – a guide produced by the British Institute on Human Rights in collaboration with advocacy groups

[Exercising Your Human Rights](#) – a guide by the EHRC

[Know your rights, Use Your Rights, Live Your Rights](#) – a guide by Disability Wales for Disabled people

[ourhumanrightsstories.org.uk](http://ourhumanrightsstories.org.uk) tells the real life human rights stories of people in the UK

[Stop the world, we want to get on](#) – a resource produced by Disability Awareness in Action about the international human rights framework and how it protects Disabled people.

[European Court of Human Rights cases related to Disability](#)

[The Human Rights Act – Changing Lives](#) – examples of how human rights have been used to resolve situations outside the courtroom.

**Inclusion London** is run by and for Deaf & Disabled people. We promote Deaf and Disabled people's equality and inclusion by supporting Deaf and Disabled People's Organisations (DDPOs) in London.

**The Disability Justice Project** brings together lawyers with London Deaf and Disabled People's Organisations. Together, we use the law to help Deaf/Disabled people make our rights to independent living and access to goods and services a reality.

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