

British Institute of Learning Disabilities

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Factsheet – Human Rights Act

Summary

- The Human Rights Act 1998 (HRA) came into force in 2000.
- It creates no new rights, but enables human rights cases to be heard in United Kingdom (UK) courts or tribunals.
- The Act cannot be employed to take legal action against private individuals or bodies.
- It is designed to be used to bring court proceedings against public authorities where human rights have actually been breached or may potentially be infringed.
- It can also affect courts and tribunals in the way that their capacity as public authorities deal with cases involving private parties.
- The HRA applies to people with learning disabilities as equal citizens and has the potential to make a profound impact on their service provision, inclusion in society, and quality of life.

Why a Human Rights Act?

The British government introduced the HRA in 1998 to make rights drawn from the European Convention on Human Rights enforceable in courts throughout the UK. It came into effect in October 2000. The Convention was itself passed by the Council of Europe in 1950 as a response to the Universal Declaration of Human Rights made by the General Assembly of the United Nations in 1948. The UK was one of the first countries to sign the Convention, in 1953.

How is the Human Rights Act relevant to people with learning disabilities?

In its preamble the Universal Declaration of Human Rights recognises that the inherent dignity and the equal and inalienable rights of all members of the human family are the foundation of freedom, justice

and peace in the world. The human rights of people with learning disabilities are inseparable from those of their fellow citizens.

In March 2008 the Joint Committee on Human Rights (the House of Lords and the House of Commons) issued a report: A Life Like Any Other? Human Rights of Adults with Learning Disabilities. This stated that the HRA "provides a legal framework for service providers to abide by, and for service users to demand that they are treated with respect for their dignity". The government response of May 2008 specifically accepted that it is often the most vulnerable members of society, such as people with learning disabilities, who most need the protection and promotion of their rights under the HRA.

It could be argued that by ensuring the human rights of vulnerable people are fully respected, those of all their fellow citizens will be strengthened.

What the Human Rights Act does

Everyone in the United Kingdom is protected under the Act. Under its provisions government and public authorities are obliged by law to respect the basic human rights of all citizens.

These fundamental human rights covered by the HRA fall under 15 headings.

- Right to life
- Prohibition of torture
- Prohibition of slavery and forced labour
- Right to liberty and security
- Right to a fair trial
- No punishment without law
- Right to respect for private and family life
- Freedom of thought, conscience and religion
- Freedom of expression
- Freedom of assembly and association
- Right to marry
- Prohibition of discrimination
- Protection of property
- Right to education
- Right to free elections

At the end of this factsheet are listed a number of resources which explain in detail what these rights mean in practice and how they affect the lives of people with learning disabilities.

Limitations of the Human Rights Act

The HRA is designed to enable court proceedings against public bodies which have breached the rights it covers or which are planning to take action that might do so. Such proceedings can be instituted only by the individual or individuals directly affected, although they can of course be supported by legal and other representatives.

It is not possible to take direct action under the HRA against private individuals or bodies. However, the UK courts are themselves public authorities under the Act and must take account of it. This can influence what happens in legal action against private individuals or bodies and can affect the way in which the law is applied. A well-known example is the way in which the law on breach of confidence is now applied against private bodies in the media in accordance with the right established under the HRA to respect for private and family life.

The government can limit or control rights under the HRA in time of emergency. Examples are campaigns of organised terrorism or threat of war. These powers are described in the Act.

In addition to the rights assured to individuals under the Act, there is imposed on them a responsibility to respect the rights of others and not to act in such a way as to deny these to any fellow citizen.

Public authorities and the Human Rights Act

The HRA is designed to affect the way public authorities conduct themselves and to ensure they pay attention to people's rights. It does not introduce new rights, but confirms those which exist, and should make it easier for service users to claim or defend these rights through the courts or before tribunals. The Act is considered as "higher law", which is to say it sets out basic values aimed at changing the way authorities and individuals think and behave. This includes the development of policies and the delivery of services.

The provisions of the Act are not limitless, but specific. They are written in such a way as to ensure that the claiming of human rights by one individual does not ride roughshod over the rights of others or of the local community or wider society. Respecting the human rights

and responsibilities of all parties concerned in an issue is often difficult. Public authorities providing services have a duty to maintain this balance and to act as honest brokers.

Public authorities must also see that their personnel are trained and kept updated in relation to the HRA and its effects on their daily work. This includes measures to promote staff familiarisation with the Act and confidence building in relation to the organisation's procedures on complaints.

Professionals and the Human Rights Act

The Act should be used by health and social care professionals as a tool to develop and reinforce a human rights culture and environment. The aim must be to provide services to people with learning disabilities in ways which disregard type or degree of disability, race, ethnicity, religion or other belief, cultural background, gender, or sexual orientation.

Most infringements of human rights can be resolved without legal action. In some cases, however, recourse to law may prove necessary. In this situation it should be borne in mind that the Act protects professionals as much as it does anyone. For example, the right to freedom of expression would apply where there is concern about treatment of individuals which cannot be dealt with other than by whistle-blowing.

If you are a member of staff supporting somebody with a learning disability you should in cooperation with your employer take the following steps.

- Ensure that you get appropriate training and support.
- Become familiar with the main provisions of the Act and sources of information on it.
- Check that practice in your organisation respects human rights.
- Get to know your organisation's policies and procedures on complaints, including whistle-blowing.

Professionals who come across potential or actual breaches of the human rights of somebody with a learning disability must initiate action along the following lines.

- Assure the service user that the matter will be taken seriously.

- Make a formal record in accordance with organisational requirements.
- Seek advice from a manager or senior colleague.
- Continue to consult with and inform the service user.

Consideration should also be given to seeking support from outside bodies. Some suggestions follow.

- The local self advocacy or citizen advocacy group.
- The Commission for Social Care Inspection – see the resources list below.
- An appropriate independent organisation which provides support on human rights – see the resources list.

Exercising human rights

It is often possible to resolve breaches of human rights outside the legal system through mediation, complaints procedures, or similar approaches. Equally, if human rights appear to have been violated and the matter cannot be resolved out of court, it may be necessary to take legal action. In either set of circumstances it is essential to obtain the best possible information and advice. The resources in the following section can help to support this process.

Human Rights Act resources

A number of the following sources provide detailed background information in a variety of formats and languages.

British Institute of Human Rights (BIHR)

Does not provide advice to individuals on human rights problems; this is available from the websites and helplines of other organisations. Publishes a range of plain language *Your Human Rights* guides which can be viewed on or downloaded from the website, including:

A Guide for Disabled People

A Guide for Older People

A Guide for People with Mental Health Problems

A Guide for Refugees and Asylum Seekers

www.bihr.org.uk

info@bihr.org.uk

020 7848 1818

British Institute of Learning Disabilities (BILD) Publications

Easy Guide to the Human Rights Act by Andrea Hughes and Phil Coombs explains in plain language what the Act says and how it can be applied to protect the legal rights of people with learning disabilities. A wall poster on the topic suitable for public display is included. It can be ordered online from the BILD website using a debit or credit card, or by telephone from BookSource giving ISBN 1 902519 75 2 as a reference together with the title.

www.bild.org.uk

Booksource – 0845 370 0067.

Carers UK

Information and advice on human rights as they affect carers. Publishes *Whose rights are they anyway? – Carers and the Human Rights Act*.

England – www.carersuk.org

Wales – www.carerswales.org

Scotland – www.carerscotland.org

Northern Ireland – www.carersni.org

CarersLine – 0808 808 7777

Citizens Advice Bureau (CAB)

Free, confidential and independent advice through local Citizens Advice Bureaux or online.

General information – www.adviceguide.org.uk

To find a local CAB:

In England and Wales – www.citizensadvice.org.uk

In Scotland – www.cas.org.uk

In Northern Ireland – www.citizensadvice.co.uk

Commission for Social Care Inspection (CSCI)

An independent body set up by the government to improve social care and stop bad practice.

www.csci.org.uk

enquiries@csci.gsi.gov.uk

0845 015 0120

Community Legal Advice

A free, confidential and impartial legal advice service.

Helpline – 0845 345 4345 – Monday-Friday 0900-1830

Directgov

The Government, Citizens and Rights pages of the website cover the rights and responsibilities of citizens of the United Kingdom.

www.direct.gov.uk/en/Governmentcitizensandrights

Equality and Human Rights Commission (EHRC)

Operates a helpline service in England, Scotland and Wales.

www.equalityhumanrights.com

Helplines:

England – 0845 604 6610

Scotland – 0845 604 5510

Wales – 0845 604 8810

Joint Committee on Human Rights

A committee charged by the House of Lords and the House of Commons to consider human rights issues in the UK. It does not take up individual cases. Its report of 6 March 2008, *A Life Like Any Other? Human Rights of Adults with Learning Disabilities*, and the government's response of 6 May 2008, can be read, downloaded or purchased via their website, or by going direct to the Parliament publications website.

www.parliament.uk/parliamentary_committees/joint_committee_on_human_rights.cfm

www.publications.parliament.uk/pa/jt/jtrights.htm

Law Centres Federation

Free, independent legal advice and representation for the most disadvantaged members of society through a network of community-based Law Centres.

To find a Law Centre near you in England, Wales or Northern Ireland go to:

www.lawcentres.org.uk

020 7428 4400

For Scotland use The Scottish Association of Law Centres on:

www.govanlc.com/salc

0141 440 2503

Liberty

Offers separate human rights advisory services on the law in England and Wales to the public and to voluntary organisations either by phone or online.

Public Advice Service – 0845 123 2307 – Monday and Thursday 1830-2030, Wednesday 1230-1430

Voluntary Sector Advice Service – 0845 122 8621 – Monday 1430-1630, Tuesday and Thursday 1000-1200

www.yourrights.org.uk

Ministry of Justice

The Ministry can explain what the HRA should do and how public authorities should behave under its provisions. It cannot investigate human rights violations or give legal advice. It has a useful file which can be viewed or downloaded called: *A Guide to the Human Rights Act – A booklet for people with learning disabilities.*

www.justice.gov.uk/whatwedo/humanrights.htm

humanrights@justice.gsi.gov.uk

020 7210 1437

Northern Ireland Human Rights Commission

Works to ensure that the human rights of all people in Northern Ireland are protected.

www.nihrc.org

028 9024 3987

Office of Public Sector Information

Read the Human Rights Act 1998 for yourself online or download a copy.

www.opsi/ACTS/acts1998

Prison Reform Trust

In July 2007 the Prison Reform Trust provided important written and verbal evidence on the rights of offenders with learning disabilities to the Joint Committee on Human Rights inquiry. This can be seen on their website, together with a briefing paper on human rights and offenders with learning difficulties and learning disabilities.

www.prisonreformtrust.org.uk

Refugees in Effective & Active Partnership (REAP)

An independent organisation that campaigns to support the human rights of refugees and asylum seekers in the UK, including those who have learning disabilities.

www.reap.org.uk

Refugee Legal Centre

The Centre uses law to protect human rights in immigration and asylum issues, including those of refugees with learning disabilities.

www.refugee-legal-centre.org.uk

Values into Action (VIA)

A UK-wide campaign for the rights of people with learning disabilities. Publishes *One Law for All?* by Patricia Finnegan and Stephen Clarke, which examines the impact of the HRA on people who have learning disabilities.

www.viauk.org

publications@viauk.org

More information and links to relevant websites are available on www.bild.org.uk

BILD has made every effort to ensure the accuracy of the information contained within its factsheets, but cannot be held liable for any actions taken based on the information provided.