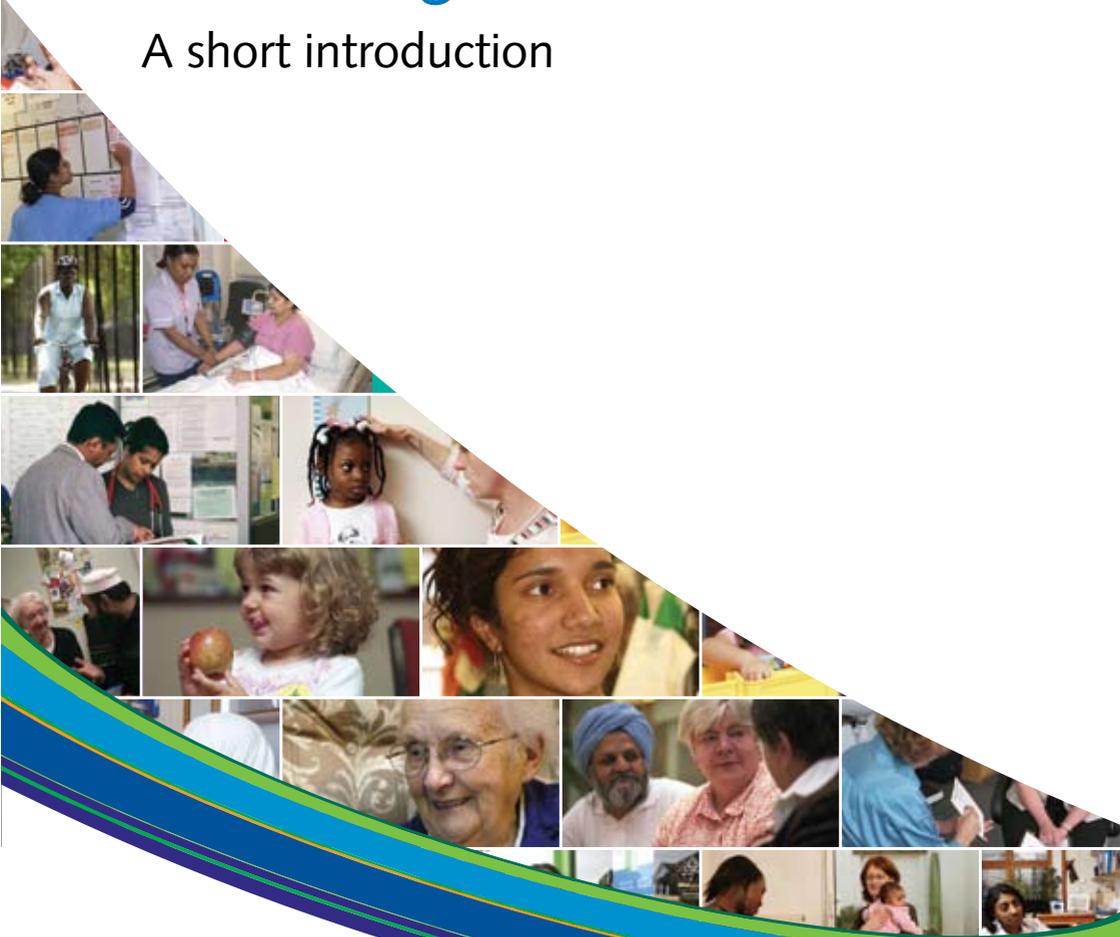


# Human Rights in Healthcare

A short introduction



**DH INFORMATION READER BOX**

<b>Policy</b> HR/Workforce Management Planning Clinical	Estates Performance IM & T Finance Partnership Working
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<b>For Recipient's Use</b>	

# Introduction

This booklet:

- introduces human rights and explains why they are relevant to healthcare (**SECTION 1**);
- looks at the human rights obligations that NHS organisations have under the Human Rights Act and explores what this means for their everyday work (**SECTION 2**); and
- provides suggestions and examples of what NHS organisations can do to take a human rights based approach to improve the design and delivery of services for patients and service users (**SECTION 3**).

The intended audience is primarily 'frontline' staff, including clinicians and support and administrative staff. It is also a useful introduction for directors, board members, managers and policy staff.

More detailed information about human rights and how they can be applied in a healthcare setting can be found in *Human Rights in Healthcare – A framework for local action*. Details of how to obtain this framework are given at the end of this booklet.

**Please note that this booklet provides a simple introduction to human rights in healthcare. Nothing in this booklet constitutes legal advice.**

There is a CD attached to this booklet that contains further information and resources on human rights





## Section 1

### What are human rights?

#### Human rights are ...

*'basic rights to humane dignified treatment and things I should have access to simply because of the fact I am a human being'.*

#### Mental health service user

Human rights belong to everyone. They are the basic rights we all have simply because we are human, regardless of who we are, where we live or what we do. Human rights represent all the things that are important to us as human beings, such as being able to choose how to live our life and being treated with dignity and respect.

Human rights are based on a number of core values, including:

- Fairness
- Respect
- Equality
- Dignity
- Autonomy.

These are often referred to as the FRED A values. These values will already be very familiar to most NHS staff. They are what the NHS is working towards every day.

## Why are human rights important in healthcare?

Every single person in the UK comes into contact with the NHS at some point in their lives, usually when they are at their most vulnerable. Therefore it is essential that human rights are taken into account when delivering services to ensure quality care.

Putting human rights at the heart of the way healthcare services are designed and delivered can make for better services for everyone, with patient and staff experiences reflecting the core values of fairness, respect, equality, dignity and autonomy.

### → Key benefits of a human rights based approach

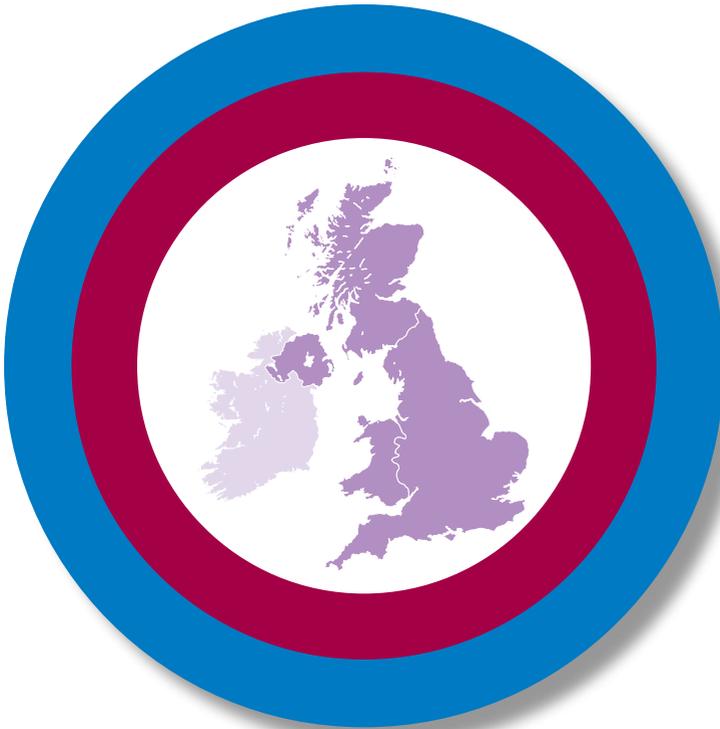
- It helps improve experience and outcomes for patients, service users and staff by approaching services and decisions in a person centred way.
- It supports the delivery of wider NHS priorities such as the Next Stage Review and Commissioning.
- It improves compliance with the Human Rights Act and reduces complaints/litigation.

*'Human rights are not an "add-on", they are an inherent part of care... Healthcare that isn't sensitive to human rights probably doesn't deliver its goals.'*

Staff member, British Medical Association

## Where do we find human rights?

Rights can be found in and are defined by law at three different levels – international, European and domestic.



### **United Nations**

e.g. International Covenant on Economic, Social and Cultural Rights; Convention on the Rights of Persons with Disabilities

### **Council of Europe**

European Convention on Human Rights 1950

### **UK Government**

Human Rights Act 1998

### **a) International law**

In 1948, the United Nations proclaimed the Universal Declaration of Human Rights. The international community has since agreed a range of human rights treaties (also known as conventions and covenants) that cover the full spectrum of **civil and political rights** and **economic, social, cultural and environmental rights**.

### **b) The European Convention on Human Rights**

Following the Universal Declaration of Human Rights, some of the countries in Europe then joined together into the Council of Europe. The Council used the Universal Declaration as a basis for developing the European Convention on Human Rights in 1950. The Council's aim was to give a practical meaning to the UN's Universal Declaration of Human Rights.

### **c) The Human Rights Act**

The UK has incorporated into UK law most of the rights defined in the European Convention through the Human Rights Act 1998. It was intended to bring about a culture of human rights in public services. In addition, it meant that people could take their human rights cases to a UK court. Previously, they had to take complaints about their human rights to the European Court of Human Rights in Strasbourg, France.



## Section 2

### **The UK Human Rights Act contains 15 basic rights:**

- the right to life;
- the right not to be tortured or treated in an inhuman or degrading way;
- the right to be free from slavery or forced labour;
- the right to liberty and security;
- the right to a fair trial;
- the right to no punishment without law;
- the right to respect for private and family life, home and correspondence;
- the right to freedom of thought, conscience and religion;
- the right to freedom of expression;
- the right to freedom of assembly and association;
- the right to marry and found a family;
- the right not to be discriminated against in relation to the enjoyment of any of the rights contained in the European Convention;
- the right to peaceful enjoyment of possessions;
- the right to education; and
- the right to free elections.

## So what does the Human Rights Act mean for NHS organisations and staff?

The Human Rights Act impacts on NHS organisations and their staff in two main ways:

1) It means that it is unlawful for NHS organisations to act in a way that is incompatible with the human rights contained within the Human Rights Act. In their day-to-day work, NHS staff need to be thinking about:

1. Does this impact on anyone's human rights?
2. If so, which rights and who do they belong to?
3. How should my practice, decision or response reflect this?

For a practical example, please see the scenario on page 12.

2) The Human Rights Act offers a practical tool to help support NHS organisations to put the individual at the heart of the decision making process and make decisions that better protect the interests of service users, staff and carers. It provides a helpful framework that covers the key elements that are important to us all as human beings, such as life, dignity and privacy. This can help NHS organisations ensure that individuals receive fair, dignified and equitable treatment within our healthcare system and improve patient outcomes.

Every single staff member in the NHS has a crucial role to play in creating an environment where human rights are respected in their organisation.

*'By valuing the human rights principles in relation to our staff and service users, we will demonstrate our effective commitment to quality outcomes which will improve the patient experience and provide satisfaction to our staff that they are undertaking a job that is valued.'*

Heart of Birmingham Teaching PCT



Not all of the rights in the Human Rights Act are of the same type.

### Three main types of rights

- **Absolute rights** cannot be limited or interfered with in any way, by NHS organisations or by any other public authorities. An example of an absolute right that may be engaged in a healthcare setting is the right not to be tortured or treated in an inhuman or degrading way.
- **Limited rights** can be limited only in specific and finite circumstances. These circumstances are set out in full in the Human Rights Act. An example of a limited right is the right to liberty, which is often of relevance in mental health or residential care facilities. One of the circumstances in which the right to liberty can be limited is the legal detention of someone with mental health problems.
- **Qualified rights** can be limited in a wider range of circumstances than limited rights and are the majority of the rights in the Human Rights Act. This is because the protection of qualified rights can affect the rights of others. For example, someone's right to freedom of expression may compete with another's right to respect for private life. NHS organisations can take action that interferes with these rights when a number of general conditions are met. Any interference with a qualified right must be:
  - in pursuit of a legitimate aim that is set out in the Human Rights Act, e.g. to protect the rights of others or for the protection of health;
  - prescribed by law, i.e. allowed within existing legislation;
  - necessary; and
  - **proportionate.**

## What is meant by a proportionate action?

In short, a proportionate response to a problem is one that is **appropriate and not excessive** in the circumstances.

Applying the principle of proportionality is central to considering and respecting human rights in the day-to-day work of NHS organisations. It provides a very important mechanism to ensure that the infringement of rights is kept to a minimum and is always reasonable. Proportionality also allows NHS organisations to balance competing interests, e.g. the rights of individuals with the rights or needs of others (such as patients, staff or the wider community).

Certain questions can be asked to help decide if an action is proportionate, such as:

- What is left of the person's rights if we take this action or adopt this policy?
- Is there an alternative approach to the problem that is less drastic?

→ **A straightforward way of thinking about proportionality is that you must not use a sledgehammer to crack a nut.**

### Explaining proportionality – a scenario

A care home takes a decision to have a blanket policy of placing CCTV in the bedrooms of all residents, for safety reasons.

→ **Outcome**

This interferes with the right to respect for private life of all residents.

→ **Alternative**

A decision is made that only residents who pose a risk to themselves and/or others will have CCTV placed in their rooms. This decision will be made on a case-by-case basis.

→ **Outcome**

Some residents have their right to respect for private life interfered with for their own safety or the safety of others; other residents do not have their right to respect for private life interfered with.

## Which human rights are most relevant to healthcare?

Some of the rights contained in the Human Rights Act are particularly relevant to healthcare. The table below introduces six rights that can come up most commonly for NHS staff in their day-to-day work.

Human Right	Some relevant issues in healthcare	Example
<p><b>The right not to be tortured or treated in an inhuman or degrading way</b></p> <ul style="list-style-type: none"> <li>• Inhuman treatment means treatment causing severe mental or physical suffering.</li> <li>• Degrading treatment means treatment that is grossly humiliating and undignified.</li> </ul> <p>This is an absolute right. Inhuman or degrading treatment does not have to be inflicted deliberately.</p>	<ul style="list-style-type: none"> <li>• Physical or mental abuse</li> <li>• Soiled, unchanged sheets</li> <li>• Leaving trays of food without helping patients to eat when they are too frail to feed themselves</li> <li>• Excessive force used to restrain patients</li> <li>• Staff not being protected from violent or abusive patients</li> </ul>	<p>A man with learning disabilities was living in a residential care home. He was regularly tied to a bed or his wheelchair for 16 hours at a time, to prevent him from hitting his head and face, causing him physical pain and mental anguish. This kind of situation could breach the right not to be treated in an inhuman or degrading way.</p>

Human Right	Some relevant issues in healthcare	Example
<p><b>The right to respect for private and family life, home and correspondence</b></p> <p>This right is very wide ranging. It protects four broad categories of interests:</p> <ul style="list-style-type: none"> <li>• <b>Family life</b> is interpreted broadly. It does not just cover blood or formalised relationships.</li> <li>• <b>Private life</b> is also interpreted broadly. It covers more than just privacy, including issues such as personal choices, relationships, physical and mental well-being, access to personal information and participation in community life.</li> <li>• The right to respect for <b>home</b> is not a right to housing, but a right to respect for the home someone already has.</li> <li>• <b>Correspondence</b> covers all forms of communication including phone calls, letters, faxes, emails etc.</li> </ul> <p>This right is a qualified right and may be interfered with if the interference has a basis in law, pursues a legitimate aim as set out in the Human Rights Act and is necessary and proportionate. One of the legitimate aims is the protection of the rights of others.</p>	<ul style="list-style-type: none"> <li>• Privacy on wards and in care homes</li> <li>• Family visits</li> <li>• Sexual and other relationships</li> <li>• Participation in social and recreational activities</li> <li>• Personal records – including medical, financial</li> <li>• Independent living</li> <li>• Closure of residential care homes or hospitals</li> <li>• Separation of families due to residential care placements</li> </ul>	<p>A hospital had a mixed ward and promised to re-order it so that men were at one end, with women at the other. It did not do this, and an Orthodox Jewish woman was highly distressed about sharing a ward with men. This kind of situation could be a breach of the right to respect for private life.</p>

Human Right	Some relevant issues in healthcare	Example
<p><b>The right to liberty</b></p> <p>The right to liberty is not a right to be free to do whatever you want. The right to liberty is a right not to be deprived of liberty in an arbitrary fashion.</p> <p>The right to liberty is a limited right. It can be limited in a number of specific circumstances, for example the lawful detention of someone who has mental health issues.</p>	<ul style="list-style-type: none"> <li>• Informal detention of patients who do not have the capacity to decide whether they would like to be admitted into hospital, e.g. those patients with learning disabilities or Alzheimer's disease</li> <li>• Delays in reviewing whether mental health patients who are detained under the Mental Health Act should still be detained</li> <li>• Delays in releasing mental health patients once they have been discharged by the Mental Health Review Tribunal</li> <li>• Excessive restraint of patients, e.g. tying them to their beds or chairs for long periods</li> </ul>	<p>A large number of patients throughout the UK who do not have capacity to make their own decisions but are not in a position to be detained under mental health legislation are informally admitted to and detained for treatment in hospital. This kind of admission and detention has been ruled to breach the right to liberty, as there are no clear rules and procedures governing who decides that someone should be detained, and for what reasons.</p>

Human Right	Some relevant issues in healthcare	Example
<p><b>The right to a fair trial</b></p> <p>The right to a fair trial contains a number of principles that need to be considered <b>at some stage</b> during the decision making process when a person's civil rights or obligations or a criminal charge against a person comes to be decided upon. The person whose rights will be affected has the right to:</p> <ul style="list-style-type: none"> <li>• an independent and impartial tribunal;</li> <li>• be given notice of the time and place of any proceedings;</li> <li>• a real opportunity to present their case before the decision is made;</li> <li>• disclosure of all relevant documents;</li> <li>• have their hearing take place within a reasonable time; and</li> <li>• be given reasons to enable them to understand the decision that has been made.</li> </ul>	<ul style="list-style-type: none"> <li>• Staff disciplinary proceedings</li> <li>• Compensation claims</li> <li>• Independence of tribunals, e.g. the Mental Health Review Tribunal</li> </ul>	<p>Ensure that there is a robust and fair process for dealing with any concerns about the professional conduct or performance of a healthcare professional.</p>

Human Right	Some relevant issues in healthcare	Example
<p><b>The right to life</b></p> <p>Public authorities must:</p> <ul style="list-style-type: none"> <li>not take away a person's life, except in a few very specific and very limited circumstances, such as lawfully, and using no more force than is absolutely necessary, defending someone from violence; and</li> <li>take appropriate steps to protect a person's life in nearly all circumstances.</li> </ul> <p>Although the right to life is fundamental, there is no corresponding right to medical treatment in all circumstances.</p> <p>The protection of the right to life requires that there should be an effective official investigation into deaths resulting from the state's use of force or the state's failure to protect life.</p>	<ul style="list-style-type: none"> <li>Do Not Resuscitate orders</li> <li>Refusal of life saving medical treatment</li> <li>Active or passive euthanasia</li> <li>Advance directives</li> <li>Deaths through negligence</li> <li>Investigations including inquests where a death is suspicious</li> </ul>	<p>A disabled woman was admitted to hospital with a chest infection. While there, she discovered that a 'Do Not Resuscitate' order had been placed on her file, because medical staff considered that she had a low quality of life which should not be prolonged. This kind of situation could be a breach of the right to life.</p>

Human Right	Some relevant issues in healthcare	Example
<p><b>The right not to be discriminated against</b></p> <p>This right is a right not to be discriminated against in the enjoyment of the other human rights contained in the Human Rights Act. It is not a free standing right, so if no other right in the Human Rights Act is engaged, then this right will not come into play. Discrimination takes place when someone is treated in a different way compared with someone else in a similar situation. Indirect discrimination happens when someone is treated in the same way as others that does not take into account that person's different situation. However, an action or decision will only be considered discriminatory if the distinction in treatment cannot be reasonably and objectively justified.</p>	<ul style="list-style-type: none"> <li>• Refusal of medical treatment to an older person solely because of their age</li> <li>• Non-English speakers being presented with health options without the use of an interpreter</li> <li>• Discrimination against NHS Trust staff on the basis of their caring responsibilities at home</li> </ul>	<p>A hospital had a practice of sectioning asylum seekers with little or no English without the use of an interpreter. This practice could breach the right not to be discriminated against (on the basis of language or race) in conjunction with the right to liberty.</p>



## Section 3

### How can we put human rights into practice within NHS organisations?

The process by which NHS organisations can put human rights principles into practice is known as a 'human rights based approach'. The table overleaf introduces the five principles of a human rights based approach and gives short examples of how NHS organisations have applied these in practice. Using these five principles can bring a range of benefits and improved outcomes for NHS organisations and their patients.

*'A human rights based approach is about applying internationally agreed standards across the whole of healthcare. It's a way of thinking and seeing that should underpin everything that we do.'*

**Director, Service Users and Carers, Mersey Care NHS Trust**

*'A human rights based approach to me means that services will support and protect my mental health needs rather than threaten them.'*

**Chair, Service User Forum**



Principle	Some questions to consider	Practice example
<p><b>Putting human rights at the heart of policy and planning</b></p>	<ul style="list-style-type: none"><li>• Which human rights values and standards are relevant to our policy, planning and practice?</li><li>• Whose rights are they?</li><li>• Are our strategies, policies and plans expressly linked to human rights?</li></ul>	<p>Mersey Care NHS Trust has integrated human rights into its patient risk assessment strategies and tools, identifying which human rights standards and values need to be considered in the process of risk assessment. An example of a practical tool Mersey Care has developed is the 'Keeping Me Safe and Well Risk Screen'. This is a simple questionnaire designed to help service users with learning disabilities understand their human rights, and identify the risks to themselves and others.</p>

Principle	Some questions to consider	Practice example
<p><b>Accountability</b></p>	<ul style="list-style-type: none"> <li>• Who is responsible for making sure that human rights are respected, protected and fulfilled?</li> <li>• Are there procedures in place for staff or patients who feel that their human rights have been or are in danger of being breached to hold the organisation to account?</li> </ul>	<p>Southwark Health and Social Care has identified that commissioning services creates a number of issues around who is accountable for human rights. The Trust has therefore developed a human rights based commissioning framework to ensure that commissioned services respect, protect and fulfil human rights. As part of this, Southwark developed a training programme to educate staff, including commissioners, and to create a baseline understanding of human rights.</p>

Principle	Some questions to consider	Practice example
<p><b>Empowerment</b></p>	<ul style="list-style-type: none"> <li>• Are there systems in place to educate patients and staff about human rights?</li> <li>• Do all patients and staff share a common understanding of human rights?</li> </ul>	<p>Surrey and Borders Partnership NHS Foundation Trust has developed a human rights training module for staff. The training is provided at four levels – for new staff, work teams, management, and Leadership and Senior Management. Training includes practical elements such as collaborating with client groups to improve work practices.</p>
<p><b>Participation and involvement</b></p>	<ul style="list-style-type: none"> <li>• Are patients and staff given opportunities to be involved in decisions and policies that affect their human rights, in an active and meaningful way?</li> </ul>	<p>Heart of Birmingham Teaching PCT developed an equality and human rights impact assessment tool to measure the impacts of any new or existing policy by engaging patients and service users.</p>

Principle	Some questions to consider	Practice example
<p><b>Non-discrimination and attention to vulnerable groups</b></p>	<ul style="list-style-type: none"> <li>• Have individuals or groups who are more vulnerable to human rights breaches been identified?</li> <li>• How might policies and procedures impact on these individuals or groups?</li> <li>• How can the Trust ensure that these individuals or groups do not experience discrimination?</li> </ul>	<p>Tees, Esk and Wear Valleys NHS Trust has worked with a range of voluntary and community groups that represent people who may be more vulnerable to human rights breaches, e.g. disabled people, asylum seekers, children and young people, to find out about the particular issues they may be facing.</p>

For more information about human rights based approaches, including case studies from NHS organisations on how they have applied them to their work, please see *Human Rights in Healthcare – A framework for local action*.

*'A human rights based approach gives me the confidence to know that my experience as a service user will be taken seriously when I am involved with Mersey Care Trust.'*

Chair, Service User Forum

## Ten top tips for developing a human rights based approach in your NHS organisation

- 1 Create a bold vision of a human rights based approach (HRBA) that sets out where the organisation needs to go and why.
- 2 Be ambitious, with a clear plan that includes quick wins and longer term goals.
- 3 Secure senior level commitment and engagement.
- 4 Ensure that there are resources allocated to do this work – particularly staff capacity and financial resources.
- 5 Don't reinvent the wheel – look at what the organisation already has in place and see how that can be used in an HRBA, e.g. existing initiatives such as equality and diversity or processes such as induction.
- 6 Raise awareness and engage staff by using practical human rights training that is clearly relevant to people's day-to-day work.
- 7 Make sure that staff, service users and patients have accessible information and resources on human rights and why the organisation is taking an HRBA.
- 8 Don't do it alone – seek expert advice, find out what others are doing and work with partners.
- 9 Involve staff, patients and service users.
- 10 Make sure you can measure progress to keep improving and don't forget to celebrate success!

## Where can I find further information about human rights?

### Useful websites

Department of Health  
[www.dh.gov.uk](http://www.dh.gov.uk)

British Institute of Human Rights  
[www.bihar.org.uk](http://www.bihar.org.uk)

Equality and Human Rights Commission  
[www.equalityhumanrights.com](http://www.equalityhumanrights.com)

Ministry of Justice  
[www.justice.gov.uk](http://www.justice.gov.uk)

### Other resources

British Institute of Human Rights  
*Your Human Rights Guides*, 2006  
(available from [www.bihar.org.uk](http://www.bihar.org.uk))

Ministry of Justice  
*A Guide to the Human Rights Act 1998* (3rd edition),  
October 2006

Ministry of Justice  
*Human Rights Human Lives – A handbook for public  
authorities*; October 2006 (available from  
[www.justice.gov.uk/guidance/humanrights.htm](http://www.justice.gov.uk/guidance/humanrights.htm))

Watson J and Woolf M  
*Human Rights Act Toolkit*, Legal Action Group, 2003



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