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The Housing Ombudsman Service

A Human Rights Guide

Housing
Ombudsman Service

The British Institute
of **Human Rights**



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Introduction and Aims

This resource has been created collaboratively between the Housing Ombudsman Service and the British Institute of Human Rights (BIHR). This resource is intended to provide practical information for staff in all casework roles, to support you in using human rights considerations in your day-to-day work. It has been designed to complement our existing guidance and other resources.

The resource begins with an overview of the Human Rights Act 1998, the rights protections it offers, as well as the legal duties that it sets out. The resource will then look at five of the human rights in detail. These rights have been chosen as they are most relevant to our work.

The resource will then provide role-specific support and tips for three different staff areas: Dispute Support, Casework Assessment and Support, and Dispute Resolution.

Each of the rights will be accompanied by relevant case studies, examples, and practical tips on using human rights in our work.

This resource will be useful for those who have prior human rights knowledge, as well as those who may not be familiar with human rights and the Human Rights Act 1998.



The Ombudsman does not have the legal power to decide whether a landlord has breached the Equality Act 2010 and Human Rights Act 1998, but the Ombudsman can consider whether the landlord considered its obligations under those Acts and its obligations to the residents.

This guide is for information purposes only. It is not intended, and not be used as, legal advice or guidance. The law referred to in this guide may have changed since it was published.

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The Human Rights Act 1998

Following the horrors of the Second World War, the world community formed the United Nations in 1945, and one of their first tasks was to create the Universal Declaration of Human Rights (UDHR). The UDHR was the first global statement about universal human rights, which belong to all people, and which governments across the world should uphold.

Following this, the Council of Europe, comprising of different European Nations, created the European Convention of Human Rights (ECHR), and a court to govern it, named the European Court of Human Rights (ECtHR). The ECHR contains 16 human rights, and countries that ratify it should implement these rights into their domestic law. It also meant that individuals in these countries could access the ECtHR if their human rights had been breached by their governments to seek accountability via legal remedies.

The UK parliament passed the Human Rights Act in 1998. The Human Rights Act 1998 took the 16 rights in the ECHR and brought them into UK domestic law. This means that people in the UK can now have their rights protected through the UK legal system instead of going all the way to the ECtHR, although this is still possible. Public authorities now have legal duties to uphold human rights, and if this does not happen, people in the UK can challenge them or even go to the UK courts.

Key points on the aims and accountability mechanisms in the Human Rights Act 1998:

- bring 16 rights in the ECHR into UK law
- support a culture of respect for human rights across public services in the UK

It does this by:

- creating a legal duty on public authorities to respect, protect, etc.
- creating a legal duty on public authorities (and courts)



Useful to know: The ECHR and ECtHR are completely separate to the European Union, therefore Brexit (the exit of the UK from the European Union) has not affected our relationship with the ECHR or ECtHR.

Who has Human Rights?

Under the Human Rights Act 1998, human rights are universal, this means that everyone in the UK has human rights no matter who they are, where they have come from, their legal status, or what they have done. If you are a human in the UK, you have human rights under the Human Rights Act.

This means that human rights can never be taken away from us. There are situations where rights may need to be restricted, but this is only in specific circumstances. These circumstances will be explored in a later section.

Public Authorities/Hybrid Public Authorities

The Human Rights Act 1998 places a legal duty on public authorities to respect, protect, and fulfil everyone's human rights. The Housing Ombudsman Service provides a public service. Although we are independent of national or local government, we are an executive non-departmental public body, sponsored by the Ministry of Housing, Communities and Local Government (MHCLG). For this reason, the Housing Ombudsman Service is considered public authorities and therefore have legal duties under the Human Rights Act. Considering human rights in our work isn't just advisable, it is a legal requirement.

Examples of public bodies (those who have HRA legal duties):

- Local authorities
- Police
- NHS

Examples of private bodies (those who do not have HRA legal duties):

- Private individuals
- Parents
- Plumbers, labourers
- Shop workers

There are some situations where private organisations may have legal duties under the Human Rights Act. This is where those private organisations are asked by the government to do a specific piece of work on their behalf. They are known as “hybrid public authorities”.

This is particularly relevant to us because social landlords can sometimes be private organisations but also deliver public services. A social landlord will only have human rights duties when performing acts that are considered public functions, but not the private services. However, it is important to know that it is not for us to decide whether a landlord is a public body or performing a public function, this is a question only for the courts.

Examples of hybrid public authorities include:



Private housing providers who have been contracted by a local authority to provide housing.



Private building contractors working on behalf of the government.



Private carers being contracted by the NHS or a local authority.

Recognising when a private organisation may be considered a hybrid public body can be difficult as there is no clear legal test or definition. There are, however, a few indicators to show when a private organisation may have human rights legal duties:



- The housing association has statutory or other special powers;
- They are performing services that have been contracted by governmental services;
- They have a charitable/public service motivation;
- Where they are performing non-commercial activities;
- They are performing services under state control and meets the Government’s aims;
- They are under statutory control or guidance;
- They are being funded or subsidised using public funds;
- A duty of co-operation with local authorities under section 170 of the Housing Act 1996.

- Weaver v London & Quadrant Housing Trust [2009]

Whilst social housing landlords can be considered public authorities for some of their actions, there are some actions that may not be considered public functions for the purposes of the Human Rights Act. This means that landlords may not have human rights legal duties for actions such as:



Private commercial leases



Private rental agreements



Granting a lease to a tenant under a shared ownership scheme



Actions or activities that have no or minimal involvement from a public authority



Activities that don't directly relate to the provision or termination of a social housing tenancy

If a landlord is a registered social landlord, it is likely that they would be considered a public authority and therefore would have duties under the Human Rights Act 1998.



Key takeaway: Public authorities and private organisations delivering a public function/service on behalf of the government have a legal duty to respect, protect and fulfil human rights.

Relevant Example – R (Weaver) v London and Quadrant Housing Trust

In 2009, Susan brought a case against a registered social landlord, London and Quadrant Housing Trust (L&Q). L&Q was not set up by a Local Authority. L&Q tried to evict Susan after it said she had failed to pay her rent for eight weeks. Susan said this breached her Article 8 right to home and private life.

While L&Q was not set up by the Local Authority, the Court nonetheless found that it was a hybrid public authority and that ending Susan's tenancy was a public function.

The Court said that granting and terminating social housing tenancies are a fundamental part of the public service of providing social housing and so these acts, and the steps necessary to complete them, must be public functions.

Legal Duties

Public authorities and private bodies doing work on behalf of a public authority (known as hybrid public authorities) have legal duties under the Human Rights Act 1998 to respect, protect, and fulfil everyone's human rights.



Respect – Respecting human rights means refraining from doing something that could breach or unlawfully limit someone's human rights. It is therefore a negative duty.

For example - A landlord refraining from turning up to their tenant's property unannounced, with unnecessary frequency, or at anti-social hours.



Protect – Protecting human rights is a positive obligation to step in and take action if someone's rights are not being respected.

For example, a social housing landlord or local authority addressing Anti-Social Behaviour (ASB) where this is affecting a tenant's mental or physical wellbeing.



Fulfil – Fulfilling someone's human rights means investigating when someone's human rights have not been respected to stop this from happening again.

For example - the Housing Ombudsman making a decision that reflects on how a landlord could have taken steps to protect someone's rights or ordering that a landlord takes action to provide reasonable adaptations to a property for a disabled resident, such as providing a wet room, so they can use basic amenities in their home.

Part of this legal duty includes identifying human rights concerns in a complaint even if this hasn't been directly raised in the complaint. This can be seen in the following Housing Ombudsman Service cases:

Case Reference – 202301245

A resident with learning disabilities and a speech impediment alleged that a contractor hired by the landlord to carry out works on the flat had made homophobic remarks and sexual propositions towards them.

Even though the resident's complaint did not expressly mention their human rights, the Housing Ombudsman identified that the Article 8 right to a private life was relevant to the situation. The Ombudsman considered the landlord's duties to protect the resident's emotional wellbeing under Article 8, as well as protecting them from discrimination based on their learning disability.

The Ombudsman concluded that the landlord had acted reasonably, and although the resident did not mention their human rights, it was within the scope of the Ombudsman's legal duties under the Human Rights Act to identify potential human rights concerns and consider whether the landlord had given them proper consideration.

Case Reference -202229793

In another case, a resident reported on several occasions that, because of ASB, he was unable to have his daughter stay overnight at the property. Whilst the resident did not mention human rights themselves, the Ombudsman identified that the right to a family life protected under Article 8 of the HRA was relevant to this complaint as the resident was unable to enjoy their family life. It is not in the jurisdiction of the Ombudsman to say whether a breach occurred, but the Ombudsman said that "the landlord should have considered whether there were Article 8 concerns when the resident advised it that his daughter was unable to stay with him." There was no evidence that the landlord considered the resident's family situation or how it was affected by the ASB.



Practice point: Where a resident specifically refers to a breach of their human rights, discrimination, a failure to meet their needs as a disabled person or make reasonable adjustments, or any other matter/s relating to equalities and human rights and it is a significant part of their complaint, you must consider drawing this out specifically within the complaint definition.

When can rights be restricted?

In an earlier section it was highlighted that, whilst human rights can never be taken away, there are some situations where some rights can be restricted. The 16 rights in the Human Rights Act are split into absolute and non-absolute rights:

Absolute rights are rights that cannot legally be limited for any reason. There is never a justifiable reason to place restrictions on absolute rights. Therefore, any limitation on an absolute right is unlawful and immediate action should be taken to put a stop to these limitations.

Non-Absolute rights are rights that can be lawfully restricted as long as it satisfies every stage of a three-stage test. Most of the rights in the Human Rights Act are non-absolute rights. The three-stage test that needs to be satisfied is outlined here:



Lawful – There must be a legal basis for the restriction.

For example, the Housing Act 1985 gives landlords powers to act in a tenant's property in order to address hazards, therefore there could be a legal basis for entering a property.



Legitimate – For a restriction on someone's human rights to be permissible, it must also be for a good reason, or a "legitimate aim". What constitutes legitimate is laid out in the text of each right in the Human Rights Act, but it includes for the protection of the rights of others, for someone's health and safety, or for national security.

For example, the Housing Act 1985 gives landlords powers to act in a tenant's property in order to address hazards, therefore there could be a legal basis for entering a property.



Proportionate – The most important stage in the three-stage test is that the restriction must be proportionate to the aim pursued. That means that public authorities should use the least restrictive action available to achieve that aim. Where rights need to be restricted, this should still be done in such a way that respects human rights as much as possible.

An example would be seeking to evict a resident because a landlord has received one noise complaint. This could be a disproportionate restriction on their human rights and not the least restrictive measure available to deal with the issue.



Remember: Each one of the stages in the three-stage test must be satisfied for a restriction on a non-absolute right to be lawful. Even if only one of the stages is not satisfied, the action will be unlawful. A Landlord must demonstrate whether it has considered and correctly applied the three - stage test when restricting a right and has provided evidence for this. This Service cannot decide whether the action is unlawful but may conclude there is maladministration if the Landlord cannot demonstrate it has taken these steps.

The rights in the Human Rights Act



Article 2
The right to life



Article 3
The right to be free from torture and inhuman or degrading treatment



Article 4
The right to be free from slavery and forced labour



Article 5
The right to liberty



Article 6
The right to a fair trial



Article 7
The right not to be punished for something that wasn't against the law when you did it



Article 8
The right to respect for private and family life, home and correspondence



Article 9
The right to freedom of thought, conscience and religion



Article 10
The right to freedom of expression



Article 11
The right to freedom of assembly and association



Article 12
The right to marry and start a family



Article 14
The right to be free from discrimination



Article 1, Protocol 1
The right to peaceful enjoyment of possessions



Article 2, Protocol 1
The right to education



Article 3, Protocol 1
The right to free elections



Article 1, Protocol 13
Abolition of the death penalty

Article 8 – The right to private and family life, home and correspondence



The right to a private and family life, home and correspondence is a widely encompassing right which may be one of the most common rights that appear in our work. To break down the key elements:

Private Life

- This includes someone's physical and mental wellbeing
- It is a person's ability to have a say over their life, how they behave and dress, how they decorate their home, and what they do in their private spaces.
- It means having our personal data protected.
- It is about having a say over where we live and who we live with.
- It is about being able to have and maintain relationships with others, including friends and family.
- It is about being able to access and take part in a community, both in person and online.

Family Life

- Develop ordinary family relations
- Ongoing contact if split up
- Not being temporarily moved to a property that is far away from family members whilst works are being done to their home

This might include:

- Supporting people and their families
- Challenging tenancy agreements that prevent family members from living together
- Can include close family, but also foster parents, friends, or partners as there is no definition of family in the HRA

Home

- Not a right to housing
- About enjoyment of current home – including family home, social housing, supported living or residential accommodation.
- Public authorities should not intrude on space without permission.
- Can include having mould, damp, disrepair and ASB addressed.

Correspondence

- Uncensored communication with others
- Through a variety of mediums including letters or modern communications
- The ability to correspond with social landlords in different ways.

Article 8 may be particularly relevant in the following situations:



Forced access;



Visits made to the resident's home without notice;



Enforcement actions placing restrictions on family or private life i.e. restrictions on visitors or household members re their access to or use of the home;



Threats of eviction or injunction;



Landlord communication, including at complaint handling stage, where the resident has raised communication needs and made requests for reasonable adjustments so that they can take part in decisions about them

The right to a private and family life, home and correspondence is a non-absolute right, this means it can be lawfully restricted so long as that restriction is:



Lawful – There must be a law which allows public authorities to take that action.



Legitimate – There must be a good reason, for example public safety or protecting the rights of other people.



Proportionate – Public authorities must have thought about other things they could do, but there is no other way to protect you or other people.

Relevant Example – R (Bernard and Another) v Enfield Borough Council

Mrs Bernard was severely disabled following a stroke, having limited mobility and using an electric wheelchair. She was incontinent and had diabetes. She lived with her husband and six children in a house adapted by Social Services to meet her needs. However, she had to sell the house after mortgage arrears built up. The family applied for council accommodation but were placed in a house that was not adapted to meet Mrs Bernard's needs. She could not access the bathroom by herself or get out of the front door because there were steps in front of the doors and could not get upstairs so had to stay in the living room, which opened directly out to the street. An Occupational Therapist submitted a report to the council outlining the problems with the house, but the council did not take steps to adapt or move the family.

This case study is based on a court decision. If this resident had brought a complaint to The Housing Ombudsman, some of the matters complained about would have fallen within the jurisdiction of the Local Government and Social Care Ombudsman, or we may have considered a joint investigation with the LGSCO. However we do see similar issues in our casework to the ones identified in this case study. Please refer to our [jurisdiction guidance](#) or speak to your manager if you need advice on a jurisdiction related query.

Case study breakdown

- The relevant public authorities in this story are the local council which has placed Mrs Bernard in her council accommodation and therefore has legal duties for her.
- Mrs Bernard's physical and mental wellbeing has been affected by the fact that she is unable to access basic amenities such as the toilet or the front door.
- The enjoyment of Mrs Bernard's home is being affected by the fact that she cannot use or access many areas of her home.
- Mrs Bernard's family life could have been affected if she is restricted to only one room in her house.
- Mrs Bernard's privacy could be affected by the fact that she is stuck in the front room facing the street.

Lawful – In this scenario, the local authority did not rely on any law by not making reasonable adjustments to Mrs Bernard’s property. Furthermore, the National Assistance Act 1948 places a positive obligation on local authorities to provide accommodation that is suitably adapted. Therefore, there was no lawful basis for the Council’s decision-making/failure to act.

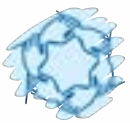
Legitimate – There is no legitimate aim given by the local authority for their lack of adaptations to Mrs Bernard’s property. It would be difficult to see how it is for the protection or rights of others, or Mrs Bernard.

Proportionate – It is unlikely that the lack of adaptations could be considered proportionate as the local authority took no steps to make any kind of adaptations or changes to assist Mrs Bernard in any way. Even if the local authority couldn’t rehome Mrs Bernard, there are things they could have done to help her enjoy her rights more.

Outcome

The court found a serious breach of the Article 8 right to a private and family life, home and correspondence, as the council, by not meeting its positive obligations, had "condemned the claimants to living conditions which made it virtually impossible for them to have any meaningful private or family life".

Other rights relevant to this scenario:



Article 14 – The right to be free from discrimination – By not making reasonable adjustments to Mrs Bernard’s property, it is possible that the local authority could be discriminating against her on the basis of her medical condition.

Example of Article 8 from our decisions – COMPLAINT 202120281

The resident has an assured tenancy for a two-bed flat with the landlord. A neighbour made a complaint to the landlord about excessive noise coming from the resident’s flat. The landlord opened an antisocial behaviour (ASB) case to investigate the complaint and let the resident know that an investigation was underway.

The resident made a subject access request for her housing file.

On receipt of the file, the resident discovered that sound monitoring equipment and a professional witness had been used during the landlord's investigation.

The resident raised concerns that her right to privacy under the Article 8 right to a private and family life, home and correspondence in the Human Rights Act 1998 has been breached by the landlord's investigation into noise complaints against her. The Housing Ombudsman considered this in the complaint response, laying out the key elements of Article 8. Whilst we stated that we had no legal power to decide whether a landlord has breached any of the Articles in the 1998 Act, we did consider whether the landlord has given proper consideration to an individual's rights under the 1998 Act when considering the resident's complaint.

Any noise monitoring and/or surveillance during an investigation must be proportionate to the nature of the complaint. Based on the limited evidence available, we found that the landlord does not appear to have considered whether its actions were appropriate and proportionate to the noise complaint.

Even if the landlord had given proper consideration to Article 8, it may still have been justified in using sound monitoring equipment and a professional witness. However, we found that the landlord should have explicitly responded to the resident's complaint about a breach of Article 8.



Article 6 – The right to a fair trial

The right to a fair trial applies if you are charged with a criminal offence or if a public authority (such as the Housing Ombudsman) is making a decision that has an impact on someone's rights.

This includes:

- Having a trial or hearing held within a reasonable time.
- You are not placed at a substantial disadvantage to the other people in the trial.
- The trial is heard by an independent and impartial decision-maker.
- You are given all the information relevant to you.
- You are provided with representation and an interpreter if required.
- It may not be necessary for decision-making to fulfil all the conditions of a 'fair hearing' if a person has access to a subsequent appeal process which would satisfy these requirements.
- Decisions should be given with reasons.

How this is relevant to the Housing Ombudsman Service:

- An Ombudsman can be a court or tribunal for the purposes of Article 6 ([Heather Moor & Edgecomb v UK](#)).
- Decisions based on written evidence (without an oral hearing) do not breach Article 6(1) if the complainant can issue legal proceedings. ([Heather Moor & Edgecomb v UK](#))
- The right to a fair trial is likely to be particularly relevant in review or appeal proceedings which would determine a tenant's rights.
- The dispute must relate to a civil right this means must be an issue recognised in areas of UK law, including property law.
- The ECtHR has held that Article 6 applies to social matters including welfare assistance and accommodation ([Fazia Ali v UK](#)).
- The Ombudsman should try and put opponents (e.g. landlord and tenant) on an equal footing. ([Dombo Beheer BV v the Netherlands](#))
- The Ombudsman should make necessary adaptations for people's needs (such as learning disabilities) in a way that does not affect the essence of Article 6. ([Shtukaturov v Russia](#)).

The right to a fair trial may be relevant to our work in the following situations:

- Allegations of unfair handling by the landlord, for example fairness of its investigation.
- Where a landlord's complaint handling is not independent or impartial

Case Reference – 202006413

A landlord working as part of a local authority had a resident with mental health problems including a personality disorder, anxiety and depression. He also has high blood pressure and tinnitus which means he is awake frequently through the night.

The resident made a formal complaint to the landlord about their housing officer, saying they were treating the resident poorly and in a way that was discriminatory on the grounds of their race or mental health.

The housing officer responded to the complaint about themselves, saying that they were not racist or ableist and dealt with several different residents from different backgrounds, vulnerabilities and health issues. They said it was not in their interest or nature to discriminate. The housing officer then notified the landlord complaints team that they had dealt with the complaint.

When the resident told the landlord that they felt the response was not impartial, the landlord did not take any action to rectify it.

Case study breakdown

- The landlord is part of a local authority, this means they are a public authority for the purposes of the Human Rights Act 1998, and therefore they have a legal duty to respect, protect, and fulfil our human rights.
- Landlords who are public authorities also must respect the right to a fair trial, this includes in their complaints procedures.
- A key element of the right to a fair trial is that trials or hearings are heard with impartiality and independence.
- The resident complained about a specific housing officer, and that housing officer was the one that dealt with the complaint.

- As the housing officer dealt with the complaint about themselves, it cannot be said that the complaint was treated in an impartial or independent way. It is possible that this does not respect the right to a fair trial.
- If the landlord had reviewed the complaint after it was raised that it was not impartial, it could have solved the issue earlier.

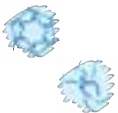


One of the exceptions to the right to a fair trial is that, if there is the opportunity for the complainant to issue legal proceedings, such as judicial review or the Court of Appeal, the right to a fair trial may not have been breached. For example, if a landlord's response to a complaint is not impartial, but the resident can seek judicial review, their right to a fair trial is still being respected.



The right to a fair trial is an absolute right, this means any restriction on the right would be unlawful. You do not consider the three-stage test of lawful, legitimate, and proportionate with absolute rights as you would never look to justify a limitation on these rights.

Other rights relevant to this scenario:



Article 14 – The right to be free from discrimination

Article 8 – The right to a private and family life, home and correspondence.



Article 1, Protocol 1 – The right to peaceful enjoyment of possessions

The right to peaceful enjoyment of possessions protects our right to **enjoy** our **possessions** without **interference, deprivation, or control** of these possessions by a government or public body.

Possessions means things like land, property and objects people own, as well as shares, pensions, money, and certain types of welfare benefits.

Enjoyment involves using, developing, selling, destroying or dealing with property in any way they please.

Interference, deprivation or control Public bodies cannot take away a person's property or possessions or impose restrictions on the way in which they use them.

The right to peaceful enjoyment of possessions is a non-absolute right, this means it can be lawfully restricted so long as that restriction is:



Lawful – There must be a law which allows public authorities to take that action.



Legitimate – There must be a good reason, for example public safety or protecting the rights of other people.



Proportionate – Public authorities must have thought about other things they could do, but there is no other way to protect you or other people.

The right to peaceful enjoyment of possessions case study

A resident had permission from their landlord, who was a registered provider of social housing, to keep some of his possessions in storage. The landlord then removed and disposed of these possessions without asking the resident's permission. This caused the resident significant emotional and financial distress, with the possessions having a value of over £18,000. The resident raised a formal complaint.

In its formal response, the landlord acknowledged the resident had been permitted to keep some possessions in a storage room. It advised it had since repurposed this room as a maintenance storeroom, so the room had been cleared and the resident's possessions disposed of.

As there was no written agreement for the use of the storage facility, the permission for the storage of the resident's possessions could be withdrawn. However, the landlord did not provide any notice to a resident and did not complete and retain an inventory of any items it removed or disposed of.

Case study breakdown

- In this scenario, the landlord is likely to be a public authority because they are a registered provider of social housing and are likely to be performing a public function. This means they have a legal duty to respect, protect, and fulfil our human rights.
- By removing the resident's possessions and disposing of them without permission, it is possible that the landlord is interfering with the resident's right to enjoy their possessions.
- Removing, interfering with, or disposing of possessions without a good reason and without necessity is likely to be an unlawful interference with the right to peaceful enjoyment of possessions.

Lawful – There is a lawful basis for landlords interfering with residents' property, this is the Torts (Interference with Goods) Act 1977. However, this law says that there are different steps that a landlord must follow before interfering with the possessions of a resident, for example providing them with notice and, relevant to this case study, that a record is kept of any items disposed of. In this scenario, the landlord did not follow any of these steps, so it is possible that there was no lawful basis for disposing of the possessions.

Legitimate – It could be argued that there is a legitimate aim for the landlord in disposing of the resident's possessions. For example, protecting the landlord's own right to enjoy their property now that the tenancy has ended.

Proportionate – It is unlikely that the landlord's actions were proportionate as there were less restrictive actions they could have taken.

For example, they did not take sufficient steps to inform the resident or get consent for the disposal of possessions. Similarly, no notice was given to the resident about the withdrawal of access to the storage facility. The landlord could have asked the resident to clear his own possessions from the property, and the landlord did not create or retain an inventory of the possessions that were disposed of.



Remember: Not all landlords are public authorities, which means that not all landlords have human rights legal duties. Only landlords that are providing social housing on behalf of a local authority are likely to have human rights legal duties. Purely private landlords do not have these legal duties.



Article 14 – The right to be free from discrimination

The right to be free from discrimination makes it illegal to discriminate against a person, setting out a list of reasons which includes sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth. It is open-ended because it then says, “or other status”.

The right to be free from discrimination under the Human Rights Act has some similarities to the Equality Act 2010, however there are some important differences:

Article 14 of the Human Rights Act

- Only applies to public authorities
- Must ‘piggyback’ from other rights in the HRA.
- List of protected characteristics is non-exhaustive

The Equality Act 2010

- Also applies to private bodies.
- Does not need to ‘piggyback’ from any rights, it is a standalone protection.
- Exhaustive list of nine protected characteristics.

It is important to note that these two laws complement each other, and do not exist in opposition.

The right to be free from discrimination is known as a ‘piggyback’ right, meaning it only applies when discrimination has affected our enjoyment of one of the other 15 rights in the Human Rights Act, but you do not have to prove that this other right has been breached.

Discrimination could include:

- Treating someone less favourably to another person in a similar situation where this cannot be objectively and reasonably justified, i.e. to stop them from being treated worse.
- Failing to treat someone differently when they are in a very different situation to others.

The right to be free from discrimination can be restricted, however it works differently from the three-stage test of lawful, legitimate, and proportionate that we find with other non-absolute rights. The test for this right is instead to ask whether the discrimination could be objectively and reasonably justified.

Article 14 may be relevant to our work in the following situations:

- Landlord's use of unacceptable user policies where someone may be considered to be vulnerable and / or has a protected characteristic;
- Residents who have described or presented as being in a vulnerable situation;
- Aid/ adaptations requests;
- Residents with a protected characteristic and their complaint about the landlord's handling is related e.g. handling of reported race hate incidents;
- Reported living conditions that place residents at threat/ risk e.g. uninhabitable conditions due to damp/mould, noise/ ASB impacting mental health, unsafe or unsuitable conditions subject to a transfer request.
- Contact restrictions where the alleged presentation may be linked to underlying condition/s or vulnerabilities.
- Where someone with a disability needs to have reasonable adaptations to their property so they can enjoy it in the same way as anyone else, for example, fitting wet rooms or lower kitchen counters so someone in a wheelchair can use these amenities.

Example of our consideration of Article 14 (202221775)

A resident was left housebound after the landlord failed to adapt a property which had become unsuitable due to a loss of mobility. The resident had to use a crutch and often a wheelchair to move around and was living on the third floor of a building that did not have a lift. The resident felt she was being treated "like an animal" by the landlord, and the resident's family were concerned that the resident would take their own life if nothing was done. The resident frequently had to be physically carried to leave their own building. A psychologist expressed concerns about the resident's safety in case of a fire or medical emergency and the effect this had on her mental health. The Fire Brigade Services issued a report stating that due to her disability, the resident could not cook for herself or open windows.

It was advised that the resident required an urgent medical move. The resident was offered a property, but it was not suitable as they had experienced a traumatic event in the area and did not feel able to return there.

The resident had been waiting for rehousing for six years.

The resident said that this treatment amounted to discrimination, and as such, the Ombudsman considered the right to be free from discrimination under the HRA. It also considered the effect this had on her mental wellbeing as protected by the right to private life (Article 8 of the HRA) The Ombudsman found that “the landlord had not fully considered the concerns and worry the fire safety issue had caused the resident. Additionally, there was no evidence of any response to her concerns that she had been discriminated against...”. Similarly, the Ombudsman found that the landlord did not utilise an “empathetic and customer focused approach”.

Finding severe maladministration, the Ombudsman also “ordered the landlord to investigate separately the resident’s concerns of discrimination and potential human rights violation.”

Customer Journey Through the Housing Ombudsman Service

This section looks at how cases progress through our service and how we may consider Human Rights considerations at the different stages of our process, from Dispute Support to Casework Assessment and Support, through to Dispute Resolution.

Dispute Support

Dispute Support is often the first encounter a resident has with the service. It is an opportunity to locally resolve the complaint by assisting at an early stage with the landlord and resident. At this primary stage, the service is also trying to establish what the resident wishes to raise as a complaint. It is important that caseworkers follow the correct processes to ensure that satisfactory communications have taken place with the resident to be able to identify this.

On occasion, a resident may themselves raise equality and diversity concerns or, human rights concerns which they explain they would like us to investigate. It may also be the case that the resident has not directly raised these as concerns but that as a caseworker, you feel it is appropriate to explore this in our own work as you have identified these as potential issues arising.

Should a resident raise a discrimination claim about the Housing Ombudsman Service, please refer to the current guidance on complaints about us, or check with your manager.

If someone has raised a potential human rights concern relating to a situation that isn't under our jurisdiction, you could signpost to places where they can get support and advice:

AdviceUK

AdviceUK is the UK's largest support network for free, independent advice centres. They have information on where to find a range of advocacy and advice, from benefits advice to disability and health advice.

British Red Cross

The British Red Cross national support line can help you with emotional support, finding local support services and accessing wheelchair and other support services. They have telephone interpreters available.

Support line: 0808 196 3651

Care Rights UK

Care Rights UK provides free, expert advice about problems with care. You can book an appointment in advance or call during opening times.

Helpline: 020 7359 8136

Citizens Advice

Citizens Advice provides free, independent and confidential legal advice, and can help you find a solicitor.

Adviceline (England): 0800 144 8848

Advicelink (Wales): 0800 702 2020

Relay UK (type instead of talking): 18001, 0800 144 8884

Law Centres Law Centres provide a free and independent professional legal service to people who live or work in their area.

Legal Aid Adviser The Legal Aid Adviser website can support to find a legal aid solicitor.

Liberty Liberty is a human rights organisation that runs a free human rights advice service for members of the public and voluntary organisations.

Helpline: 0800 988 8177

Migrant Help Migrant Help is a charity contracted by the Home Office to provide advice to refugees, people seeking asylum and victims of human trafficking and modern slavery. Their phone lines are free, open 24 hours a day and they have telephone interpreters available. You can also contact them using their webchat.

Helpline: 0808 8010 503

POhWER POhWER is a national advocacy organisation which has information about different types of advocacy and where to find more help.

Rights of Women Rights of Women provides free, confidential legal advice to women on family law, criminal law, immigration and asylum law and sexual harassment at work.

Shelter Shelter is a housing and homelessness charity that provides advice, information and advocacy.

Their webchat is available Monday to Friday, 9am to 5pm. They also run an emergency helpline on that you can call if you are homeless, are worried about losing your home in the next two months, have nowhere to stay tonight or are at risk of harm or abuse.

Helpline: 0808 800 4444



Important to know:

- If you are unsure about how best to approach a situation using human rights, you don't have to talk about it straight away. You can tell the resident or landlord that you will find out and get back to them.
- To get further internal support on using human rights in our work you can ask our internal Human Rights and Equality Act Subject Matter Experts by emailing EandHR@housing-ombudsman.org.uk. You can also find a list of the current Subject Matter Experts on Hoogle or you can ask your manager.
- Using human rights may feel tricky as you become more familiar with it, however, it is our legal duty to use the Human Rights Act and taking the first step to have conversations about human rights where appropriate is empowering to ourselves and to the person trying to access the service.
- Whilst the Ombudsman cannot say whether a human rights breach has occurred, as this is a question only for the courts, they can consider whether landlords have given proper consideration to their legal obligations under the Human Rights Act. For example:

Case Reference – 202229793

A pregnant resident with three children moved into a new house through mutual exchange, however when the family moved in, they discovered rat and pest infestations, damp, and rotting. The landlord offered alternative accommodation on a temporary basis, however, the Ombudsman found that the resident had been living in temporary accommodation for more than 6 months in a caravan away from her home, her children's school, and her community. The resident reported that her wellbeing, and that of her family, was negatively affected by living in temporary accommodation. Her access to a community, and to participate in essential, social, cultural and leisure activities was severely disrupted by the inability of the landlord to provide a safe home.

The Ombudsman found that “The landlord was responsible for maintaining the condition of the property to a habitable standard which supported the resident's access to these fundamental rights. Therefore, given the resident's circumstances, it would be reasonable to conclude that the landlord did not give proper consideration to its obligations under the Human Rights Act 1998 in this case.”

The Ombudsman ordered the landlord to undergo a review of its failings and how it can improve, including but not limited to showing how it will ensure it meets its obligations under the Human Rights Act 1998.

Whilst it was not mentioned specifically in the decision, the above case is relevant to the Article 8 right to a private and family life, home and correspondence. We can mention rights specifically if we feel they are relevant.

Casework Assessment and Support

Casework Assessment and Support is a vital step in the resident's journey with the Housing Ombudsman. At this stage, information is gathered to assess the best route to progress the complaint and ultimately whether the complaint is one that is within the Ombudsman's jurisdiction to consider. As part of the enquiries made at Casework Assessment and Support stage, caseworkers should:

1

Gather information from the resident about the events or actions which appear to impact their rights, such as how the treatment they received has impacted them and why they believe the treatment they received impacted their rights.

2

It is important that we fully understand a resident's complaint. That means we will need to have open conversations with residents about their circumstances and we should use the resident's own language when referencing this.

3

As part of our enquiries, we should also ask the landlord for an explanation of the understanding of the issue, what they did in response to the resident's concerns, what guidance they relied upon for their decision making and an explanation for any failure or errors in complaint handling.

4

We should also ask the landlord if it can objectively and reasonably justify any indirect discrimination which has been alleged or appears to have occurred as a 'proportionate means of achieving a legitimate aim'. To do this, we could ask the landlord enquires such as, but not limited to:

- its reasons for the action/omission complained about
- what factors it took into account
- if/how it considered the resident's protected characteristics or status
- Copies of any supporting information from any third parties, such as doctors or other health professionals and advocates
- An explanation of the landlord's understanding of the health or disability needs of the resident
- Where any reasonable adjustments were put in place, please advise what these were and on what grounds the adjustments were put into place
- Copies of any correspondence where the resident raised concerns that the landlord was not following their request
- An update on any progress since the Landlord provided its final response to the complaint, or any options being considered.
- which policy/policies it was operating under and why it was appropriate to apply the policy/policies in this case.

Our analysis of the complaint should consider whether the landlord has given proper consideration to the Human Rights Act and Equality Act in the provision, or denial, of services to the individual. In doing so, we might find there is contemporaneous evidence which makes direct reference to the Human Rights Act and Equality Act. However, a landlord might legitimately justify its actions with reference to how it applied a non-discriminatory policy in a fair manner.

Dispute Resolution

Cases are passed to Dispute Resolution to be investigated. When a case is first allocated to you for investigation, you will need to review the evidence already on the file and then finalise a complaint definition, identify what the key issues to investigate are, update the parties and request any further information needed.

Complaint Definition

Where a resident refers to a breach of their human rights or any other matters relating to human rights and it is a significant part of their complaint, you should include this in the complaint definition. This is the case whether or not there is evidence to support the allegations.

Where a resident does not specifically refer to human rights concerns in their complaint to us, or in their correspondence with the landlord, you should still consider whether there are any clear themes that relate to human rights. If so, you will need to decide whether to include this in the complaint definition. A conversation with the resident may help you to give proper consideration to the complaint, identify the key issues, ensure the resident feels heard and can help you to decide if it is proportionate to include a human rights reference in our complaint definition.

Where human rights do not form an integral part of the complaint definition but are still relevant to the case, perhaps as a supporting matter (e.g. where we have identified human rights are relevant but the resident has not necessarily mentioned this or has simply made a comment to this effect), you can set out the landlord's responsibilities in the legal framework section of the report and then explain our findings later in the report.

Jurisdiction

Once you have defined the complaint and decided whether human rights considerations should be included in the complaint definition, or whether they are not part of the definition but will be referenced in the body of our report, you will need to consider jurisdiction.

Any jurisdiction issues in relation to human rights may have already been identified and raised with the parties before the case gets to you. In other cases, jurisdiction may not have been considered and you will need to consider this as part of our investigation.

Investigating complaints that may involve human rights concerns- practical steps and considerations

We should consider if the resident refers to specific rights. The resident may identify human rights concerns in their complaint but not always. Or they may not reference these specifically but may say they did not feel their treatment was fair or dignified. This may include how the landlord considered unreasonable behaviour or whether it acted in line with its vulnerable persons policy.

- If relevant make a brief note of which Articles of the Human Rights Act are being considered and why.
- Human rights should be integrated into all landlord policies and procedures. There are unlikely to be standalone human rights procedures and so there is little value in asking for these.
- Where relevant it would be useful to obtain copies of the landlord's vulnerable persons and/or reasonable adjustment policies.
- Landlords must act in a way that is compatible with the Human Rights Act when they introduce new policies or change existing ones there should be some kind of check or audit of compatibility. Though not a legal requirement most local authority landlords do an equality impact assessment when they introduce a new policy or change an existing policy and so it could be useful to ask for this impact assessment.
- We should consider whether the application of a particular policy may have directly or indirectly discriminated against a protected group. In such cases a landlord would need to justify the policy.

Consider whether the landlord or third parties acting on its behalf:

- behaved unfairly, unreasonably, or incompetently (para 52(e) of the Scheme); or
- treated the resident personally in a heavy-handed, unsympathetic or inappropriate manner (para 52(f) of the Scheme)?
- If the resident has one or more of the protected characteristics or status, we should consider whether the landlord has given proper consideration to Article 14 of the Human Rights Act and its responsibilities under the Equality Act. Article 14 is a "piggy-back" right, meaning that it applies only when there are concerns about another one of the rights in the HRA. If a right is being impacted because of someone's characteristics or status, it could also be an Article 14 issue.
- We should think carefully about any actions (including behaviour and communications) of third parties acting on behalf of the landlord – the landlord remains accountable for their actions. We should consider whether the landlord has taken proportionate steps to address any poor practice by its contractors and make appropriate orders or recommendations where the evidence does not show this.

We would not generally expect human rights to be explicitly referenced in landlord records and decisions. Instead, decisions and actions should be taken in such a way which do not conflict with the principles of human rights and equalities. If a human rights-based approach is not identifiable from the records, then you may need to ask the landlord to evidence how it had regard to these issues.

For example, it may be helpful to ask the landlord to provide its risk assessment(s) in relation to ASB or damp and mould, or records of case conferences and panel review meetings (if not already on the casefile).

Where a resident has told a landlord that they have been treated unfavourably in relation to a protected characteristic or where they have referenced the human rights legislation in their complaints, we should consider whether, and how a landlord has responded to this aspect of the complaint in the complaint responses.

We should consider whether the landlord addressed the resident's complaint that they were discriminated against. We may find service failure in its complaint handling if it failed to consider the complaint.

If considering any of the non-absolute rights (like Article 8 – the right to a private and family life, home and correspondence) the landlord may have a justification for interfering with those rights which we would need to consider. If a caseworker thinks a right may have been interfered with, the landlord must show that interference was:

Lawful – the action must be based on law.

Legitimate – such as public safety, national security, national economic wellbeing, prevention of crime, protection of health or morals and protection of rights and freedoms of others.

Proportionate – asking the landlord if there were any alternatives available that would have involved less interference (and consider why they were not used). However, we cannot carry out a full assessment of the balance of rights and proportionality. We only look at whether the landlord has considered the issues, considered alternatives.

Reviews - Both parties in a dispute have the right to request a review of the Ombudsman's determination and may as part of their request cite human rights considerations for the first time. If you are carrying out a review in such circumstances, please refer to the guidance about jurisdiction and investigations above.

Top Tips

- Always consider the impact of actions or decisions on the person or people affected.
- People should be as involved as possible in conversations about things that affect their rights, including being involved in appeals and review processes.
- Use the language of human rights law alongside a plain language explanation of human rights.
- Deliver decisions in a reasonable time, and in a way that the individual understands.
- Do not wait for a human rights issue to be raised. You can identify rights issues even if the individual making a complaint does not.
- Even though you cannot say whether a breach has taken place, you can consider whether the landlord has given proper consideration to someone's human rights or ask a landlord to review their actions in cases where they have failed to give proper consideration to their human rights legal duties.
- You can signpost people to places where they can get further support if there are potential human rights issues, such as citizens advice or legal advice organisations.

FAIR Model

You can also use the FAIR model to think about human rights in a practical way in our work. FAIR stands for Facts, Analysis of the Rights, Identifying changes, and Review. It works like this:



Facts- Establish the facts, what is the situation? How long has it been going on for? What has the person told you about the impact on them?

- What is the resident's complaint(s) about, and does it include a specific mention of human rights, discrimination or failure to meet specific needs? If it does, there should be a separate complaint definition.
- What issues has the landlord responded to, or if the landlord has not responded, has the resident exhausted the landlord's internal complaints process?
- What issues are outstanding?
- Has the resident mentioned any special circumstances such as a physical and/or mental health issue that have been impacted by the issues they have complained about?
- Have the special circumstances caused the resident difficulty in accessing the landlord's services?
- What action has the landlord taken to resolve the resident's complaint?



Analysis of the rights at stake - After discussions with the person involved, discern what rights are potentially at stake, are these absolute or non-absolute? If absolute, move to "I". If non-absolute, work through Lawful? Legitimate? Proportionate?

- Where the resident has referred to human rights, we can consider whether this involves absolute rights or non-absolute rights. Remember non-absolute human rights mean that a landlord might be permitted to interfere with the right so long as there is a lawful, legitimate and/or proportionate reason for this. Refer to the graphic appended to this guidance for further information about which rights are absolute or non-absolute.

- Could the alleged discrimination fall within Article 14 in the Human Rights Act which includes the Equality Act protected characteristics, but cover "other statuses"? Please note that the right to be free from discrimination is known as a 'piggyback' right. It can be considered in relation to another right protected under the Human Rights Act, such as the right to a fair trial or right to respect for private and family life



Identify changes necessary and who is responsible for making these. This might not be your Team/Dept but this might be the social landlord or other public bodies involved.

You could work through the following questions to help you determine what changes might be necessary to ensure that human rights duties are being thought about:

- Has the landlord considered the resident's requests made for any reasonable adjustments and how has the landlord responded?
- How effective was the landlord's communication with the resident and did it follow any requests for reasonable adjustments?
- How and when did the landlord communicate any outcomes to the resident?
- What was the landlord's record keeping like and did this contribute to any failings or was it sufficiently robust?
- Did the landlord act in line with its own policy and procedure?
- Did the landlord put into practice what the promised to do?
- What did the landlord do to try and put things right where it identified service failings?
- When we have identified failings, what should the landlord have done?



Record and review.

- Has the landlord learnt from outcomes and how?
- What changes, if any, has the landlord made in response to the case?
- What changes are necessary to ensure that other residents are not similarly affected?
- Has the landlord considered self-assessment against any of our Spotlight reports (where relevant and where the Spotlight report has been in place during the ICP)?
- Consider a [wider order](#) order under Paragraph 54(f).

Other resources

This resource compliments the guidance of the Housing Ombudsman Service on human rights and the equality act – <https://www.housing-Ombudsman.org.uk/landlords-info/guidance-notes/equality-and-humanrights://www.housing-ombudsman.org.uk/landlords-info/guidance-notes/equality-and-human-rights/rights/%20>

BIHR resources on Human Rights

- The British Institute of Human Rights has free resources on the duties of public authorities on their website - <https://www.bihar.org.uk/get-informed/where-do-organisations-duties-apply>

Housing Ombudsman Service Guidance

- [EHRC Ombudsman Guidance - The Equality and Human Rights Commission \(EHRC\) publishes guidance to help people working for ombudsman schemes decide when and how to apply human rights to their casework - Human rights and complaints: for ombudsman schemes | EHRC.](#)
- [EHRC also issued guidance for social housing providers to help them comply with the HRA - Human Rights at Home](#)

Appendix – Absolute and Non-Absolute rights

Absolute Rights

Absolute rights are rights that can never be restricted. Any interference with these rights is unlawful. These are the absolute rights in the Human Rights Act 1998:



Non-absolute rights

Non-absolute rights are rights that can be restricted so long as they satisfy every step of the three-stage test (see page 8 of this guidance). These are the non-absolute rights in the Human Rights Act 1998:



Part absolute, part non-absolute rights:

Some rights have parts that are absolute, and parts that are non-absolute:



The right to hold or change a religious or other belief or opinion is absolute and can never be restricted. However, the right to manifest this belief or opinion is non-absolute, so it can be restricted if it meets the three-stage test.



The government must provide access to education to all children in the UK, this part of the right is absolute so cannot be restricted. However, the right for parents to choose what their children are taught is non-absolute so it can be restricted if it meets the three stage test.

The right to be free from discrimination



The right to be free from discrimination works differently. Discrimination is always unlawful, but not all differential treatment will be classed as discrimination. Treating someone differently for some reason (or failing to treat them differently) is only lawful if it can be objectively and reasonably justified.

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