



Human Rights & Advocacy

A guide for caseworkers

The British Institute
of Human Rights 

About this guide

This guide has been created for staff working for members of parliament, particularly those in constituent-facing roles. It focuses on the practical and everyday application of human rights law as it applies in the UK, including the European Convention on Human Rights and the Human Rights Act.

The guide aims to support staff to build their confidence in recognising and raising human rights issues in housing, health, education, benefits and beyond. It provides tools, information and resources to help staff advocate on behalf of constituents interacting with public services and signpost constituents on to appropriate services.

This guide is for information purposes only. It is not intended, and should 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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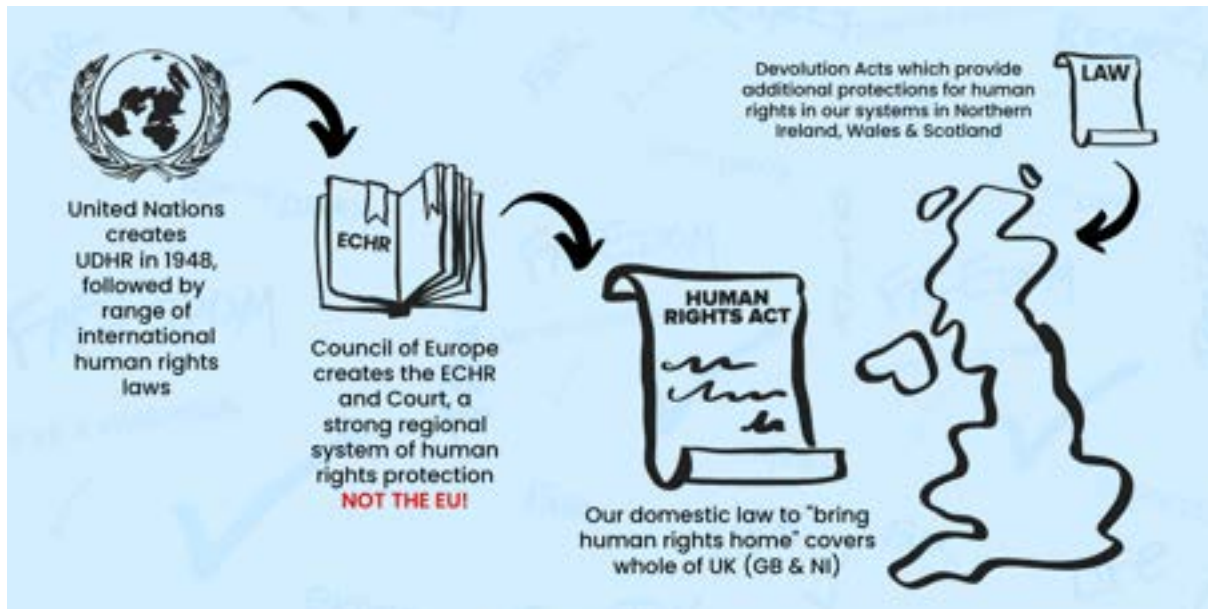
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What are human rights?

Human rights are the rights everyone is entitled to simply by virtue of being human. They are based on values such as fairness, respect, equality and dignity but they are more than just nice ideas; they are protected in law. The European Convention on Human Rights (ECHR) and the UK's Human Rights Act (HRA) set out rules for how governments must treat individuals. The rights in the ECHR and HRA are also covered by the devolution arrangements in Northern Ireland, Scotland and Wales.

UK governments and people who work for public bodies, such as doctors, social workers, teachers and judges, have a legal duty to **respect, protect and fulfil** the human rights of everyone in the UK. If they do not, the people affected can bring a legal case against them.

The European Convention on Human Rights



Following the atrocities of World War II, countries were united in their mission to ensure governments of the day would never again be able to pick and choose who gets rights and who doesn't. In 1949, 10 countries (including the UK), agreed the Treaty of London which created the Council of Europe – an international organisation “convinced that the pursuit of peace based upon justice and international co-operation is vital for the preservation of human society and civilisation”.

The Council of Europe (which is not related to the European Union) then created the European Convention on Human Rights (ECHR). Since then, 46 countries have signed up to it. The ECHR is inspired by the **Universal Declaration of Human Rights** (UNDHR), which was written by the United Nations and is influential but not legally binding.

The countries (including the UK) signed up to the ECHR are known as Member States. By signing the ECHR, Member States promise to protect the specific human rights listed within it. Member States also agree that individuals, groups or other Member States can bring a case to the European Court of Human Rights (ECtHR) if a Member State breaches rights. Member States agree to follow the judgments made by the ECtHR. This system is designed to ensure governments are held accountable and countries work together to protect universal human rights.

The European Court of Human Rights

The ECtHR is made up of 46 judges – one from each Member State (but the judges do not represent their states, they are independent).

Before someone is able to take a legal case to the ECtHR, they must have “exhausted all domestic remedies.” This means someone must have tried every possible way to get justice in the UK such as by appealing to the public body that made the decision (like a health board or the Department for Work and Pensions), taking a case to a UK court and appealing to a higher court.

The highest court in the UK is the Supreme Court. The system of precedence in the UK's legal system means that all courts in the UK have to follow what the Supreme Court has said on a previous issue. This includes human rights law.



Section 2 of the Human Right Act says UK courts have to consider decisions made by the ECtHR but that doesn't mean they have to follow them. The Supreme Court has shown that they are open to choosing a different approach to the ECtHR in some cases if there is a good reason for this. However, the duty to consider case law from the ECtHR is an important part of upholding the UK's obligations under the ECHR and has contributed to the UK's

good record at the ECtHR; in 2023, out of 1014 judgments issued by the ECtHR, only 3 concerned the UK and 1 found a violation.

Interim measures

Interim measures are very rare but are an important part of the functioning of the ECtHR. They mean the ECtHR can order countries to take (or not take) certain steps while a legal case is ongoing. The decision to order interim measures is not based on the likelihood of a person winning their case but on whether there is an "imminent risk of irreparable damage" if certain steps are taken or not taken in the meantime. They're designed to make sure everyone has their case fairly heard before any irreversible steps are taken.

Interim measures are written into Rule 39 of the Rules of Court, which the ECtHR has confirmed are binding on Member States. This means the UK has to follow interim measures from the ECtHR.

Find out more about interim measures in our explainer.

The Human Rights Act

The HRA brought 16 rights from the ECHR directly into UK law. This is what made it possible for people to bring human rights cases in UK courts rather than having to go to Strasbourg. It also confirms the legal duty on public authorities across the UK to respect, protect and fulfil human rights.



1. The HRA puts a legal duty on public authorities to respect, protect and fulfil human rights across all of their actions, decisions, policies, services etc.

2. Other laws should be applied in a way that respects people's human rights, as far as possible.



3. If 1 and 2 are not complied with, people can now bring legal cases in UK courts rather than going to the ECtHR in France.

The Human Rights Act and other laws



The HRA is sometimes described as a "foundation law". This is because it serves as the basis for interpreting all other UK laws, policies and guidance. Section 3 of our HRA means that any UK laws must be applied in a way which respects our human rights, as far as it is possible to do so.

The only exception to this is where a law could not possibly be read in a way that respects human rights. When the law gives public authorities a choice, they must choose the option that respects human rights. We call this “looking at laws through a human rights lens”.

This applies to the courts but also to public authorities acting under the power of other laws, such as healthcare workers applying the Mental Health Act.

When this doesn't happen individuals can seek justice in the courts. UK courts can never overrule an Act of the UK Parliament because Parliament is sovereign. However, where possible, UK courts can apply other laws compatibly with the human rights in the HRA. This is a key form of accountability that ensures human rights, as set out by Parliament in the HRA, are effective in the UK.

The court can disapply (i.e. not follow) secondary legislation - such as rules and regulations - that doesn't respect human rights. This is because secondary legislation is not passed by Parliament so is not protected by parliamentary sovereignty. The court can only disapply secondary legislation if doing so is not prevented by any Acts of Parliament.

Who is responsible for upholding human rights?

Section 6 of the HRA says all public authorities must act in a way that is compatible with human rights whenever possible. It is important to note that this “does not include either House of Parliament or a person exercising functions in connection with proceedings in Parliament.” This means that MPs and their caseworkers don't have legal duties under the HRA when acting in a purely parliamentary capacity. However, some MPs may have HRA duties in other capacities, such as when acting as Government Ministers.

There are two types of public authorities that do have duties under the HRA:



Core public authorities are organisations you would traditionally think of as public, i.e. government-run services, central government and its Departments, Ministries etc. This includes NHS services, local councils, police and emergency services, as well as regulatory bodies, courts and tribunals.



There are also **hybrid or functional public authorities**. This includes private organisations, charities, or not-for-profit organisations which are carrying out “functions of a public nature”. These bodies have duties in relation to the public services they offer, but not the private services. For example, a private organisation that runs prisons and also offers private security services would only have responsibilities under the HRA in relation to their work running prisons.

There is no single test to identify whether a body is carrying out a public function, but a good indicator is whether the body delivering the service is exercising statutory powers (such as private hospitals acting under the Mental Health Act). Other factors to be considered can include whether the function is being funded by a core public authority in place of a statutory service and whether the function is regulated by the State.

It’s also important to remember that core public authorities cannot “contract out of” their legal duties under the HRA. For example, if a Local Authority owes someone a housing duty and pays a private company to provide them with accommodation, the Local Authority still has a duty to uphold that person’s human rights. The private company might be carrying out a public function and so also have a duty, but that doesn’t replace or negate the Local Authority’s duty.

The 16 Rights

There are 16 human rights in the Human Rights Act, found in Schedule 1. All public officials have a duty to respect, protect and fulfil these rights.



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

Absolute & Non-Absolute Rights

None of our human rights can ever be taken away. However, some of them can be restricted in specified circumstances. These are known as “non-absolute” rights. Rights that can never be restricted are known as “absolute” rights. Some rights are made up of multiple elements and one element may be absolute while another element is non-absolute. An example of this is the right to education, explored later on in this guide.

The HRA says a public official can only restrict a non-absolute human right if they can show doing so is:

- Lawful (the law allows it)
- Legitimate (there is a valid reason for doing it)
- Proportionate (it’s the least restrictive way to meet that aim)

ABSOLUTE		NON-ABSOLUTE	
Right to life (Article 2)	Right to be free from inhuman or degrading treatment (Article 3)	Right to liberty (Article 5)	Right to private and family life, home and correspondence (Article 8)
Right to be free from slavery and forced labour (Article 4)	Right to a fair trial (Article 6)	Right to freedom of thought, conscience and belief (Article 9)	Right to freedom of expression (Article 10)
Right not to be punished for something that wasn’t against the law when you did it (Article 7)	Right to freedom of thought, conscience and belief (Article 9)	Right to freedom of association and assembly (Article 11)	Right to marry and found a family (Article 12)
Right to education (Article 2, Protocol 1)	Abolition of the death penalty (Article 1, Protocol 13)	Right to be free from discrimination (Article 14)	Right to peaceful enjoyment of possessions (Article 1, Protocol 1)
		Right to education (Article 2, Protocol 1)	Right to free elections (Article 3, Protocol 1)

** Some rights are both absolute and non-absolute. That means they contain a part which can never be restricted but they also contain a part which can be restricted in limited circumstances.



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

This right protects us against very serious harm. There is no list of what constitutes “inhuman and degrading treatment”. It all depends on the individual person and how treatment affects them, particularly in light of factors such as their age, sex and mental and physical health. Harm which doesn’t meet the threshold (i.e. is not considered “severe” enough) to engage Article 3 may still engage Article 8 - the right to respect for private life (explored later on in this guide).

In broad terms, inhuman and degrading treatment is treatment which:

- makes someone very frightened or worried;
- causes them a lot of pain; and/or
- makes them feel worthless or hopeless.



When might the right to be free from inhuman or degrading treatment come up in your work?

While harm must be very severe to engage this right, it’s something that can come up in a range of different scenarios and is something you should consider when a constituent reports very serious concerns. For example:

- They are living in a care home or hospital where they have been subjected to mistreatment or neglect.
- They have told the police that someone has put them at risk of serious harm but the police have not carried out a proper investigation.
- They are street homeless, destitute and have exceptional personal circumstances such as being pregnant or having acute health issues.

This right is an **absolute right**, which means it cannot be restricted or interfered with by public officials under any circumstances.

When considering whether public officials have met their duties under Article 3, ask if they have:



Respected the right? i.e. are they ensuring they're not treating someone in an inhuman or degrading way?



Protected the right? i.e. have they taken positive steps to prevent someone being treated in an inhuman or degrading way?



Fulfilled the right? i.e. have they investigated if someone has been treated in an inhuman or degrading way and taken steps to stop it happening again?



In real life: DMA's story

DMA and four others were seeking asylum and all had various mental and physical health conditions. They were accepted by the Home Office to be entitled to accommodation and financial support because they otherwise faced destitution and inhuman or degrading treatment which would be a breach of Article 3 of the Human Rights Act. The Home Office had hired private companies to provide these services but were not monitoring how they were carrying them out. DMA and the others were all left homeless for long periods and had to rely on help from charities, churches and individuals for food and places to sleep. The Court found that by not monitoring the services, the Home Office had breached its duty to provide support and its duty to act compatibly with human rights wherever possible. The Court emphasised that the Home Office cannot "contract out" of its responsibilities. Where a public authority has a legal duty to provide accommodation, it can choose to use private contractors to provide that accommodation, but the duty remains with the public authority.

Case: DMA, AHK, BK & ELN v Secretary of State for the Home Department (CO 4126/2019).



Article 5: The right to liberty

This right protects our ability to move about freely without arbitrary restrictions. If somebody is under continuous supervision and control; is not free to leave (whether or not they have tried); hasn't or can't give their consent; and the State knows or should know about their situation, it is likely that person has been deprived of their liberty (discussed in the [Cheshire West case](#)).



When might the right to liberty come up in your work?

You should consider this right whenever a constituent reports that they are being subjected to restrictions that a public body is involved in, particularly if there are concerns that the restrictions are excessive, unauthorised or proper safeguards are not in place. For example:

- They are being detained in hospital under the Mental Health Act and are not sure whether proper processes have been followed.
- They have been arrested but have not been given an explanation as to why in a way they understand.
- They are being held in immigration detention following a Deportation Order but there is no real prospect of them being removed from the UK.

This right is a **non-absolute right**, which means that it can only be limited by a public authority if it is **lawful, legitimate and proportionate** to do so.

When considering whether public officials are putting someone's Article 5 rights at risk, ask if any restriction is:



Lawful?

Public authorities can only restrict someone's right to liberty if there is a law that allows them to do so. They must also interpret that law in a way that protects human rights if possible, and follow the safeguards that apply to that law. For example, to lawfully detain someone under the Mental Capacity Act, the public authority must have followed the Deprivation of Liberty Safeguards procedure. This also includes the safeguards set in Article 5 itself, which says anyone deprived of their liberty should have quick access to a court to decide if it's lawful and anyone who is arrested should have the reasons why explained to them quickly and in a way they understand.



Legitimate?

The Human Rights Act gives six specific reasons someone can be deprived of their liberty. These include being detained after being convicted of a crime, being detained for the purposes of being deported, and being detained because of mental health concerns. Public authorities can only restrict someone's right to liberty for one of these specific reasons.



Proportionate?

A public authority can only restrict someone's right to liberty if they have considered all options and chosen the least restrictive approach. This means they should have considered options like care in the community and a shorter period of detention to see if those could meet the legitimate aim they are pursuing.

When considering whether public officials have met their duties under Article 5, ask if they have:



Respected the right? i.e. are they ensuring they're not depriving someone of their liberty unless this is lawful, legitimate and proportionate?



Protected the right? i.e. have they taken positive steps to prevent someone being deprived of their liberty unless this is lawful, legitimate and proportionate?



Fulfilled the right? i.e. have they investigated if someone has been deprived of their liberty in a way that is not lawful, legitimate and proportionate? Have they taken steps to stop it happening again?



In real life: Peter's story

Peter was an informal patient at a London mental health hospital, meaning he is allowed to leave the hospital whenever he likes. However, when Peter tried to leave the ward to visit his friends and sister, nurses told him it was not in his best interests to do so. Peter's advocate, Rana, had been trained by BIHR and wrote to the hospital explaining that this risked breaching Peter's Article 5 right to liberty. Since Peter was not a formal patient, stopping from leaving essentially meant staff were detaining him without any of the normal safeguards. The nurses stopped preventing Peter from leaving when he wanted. His relationship with them improved and so did his mental health; he was discharged shortly after.

Example from BIHR's work



Article 8: The right to private & family life, home & correspondence

This right protects our autonomy, wellbeing and ability to be involved in decisions that impact our lives. The application of this right to people's lives will be person-specific. For example, family does not refer only to biological kin but to the people we have close personal ties with. Similarly, home does not always mean a house or a flat but can be a hospital, a caravan, a room in a hostel or anywhere somebody is residing.



When might the right to private and family life, home and correspondence come up in your work?

This right comes up in many areas of our lives. You should consider it when a constituent reports that an action (or lack of action) from a public body is significantly impacting on their ability to live their life in the way they choose. For example:

- They are living in council housing and their landlord is refusing to make reasonable adaptations to their property or to move them somewhere that meets their needs.
- They are receiving support from adult social services but are being prevented from making personal choices such as how to dress or who they have contact with.
- Their confidential information has been shared by a public authority, such as a doctor, without their consent.

This right is a **non-absolute right**, which means that it can only be limited by a public authority if it is **lawful, legitimate and proportionate** to do so.

When considering whether public officials are putting someone's Article 8 rights at risk, ask if any restriction is:



Lawful?

Public authorities can only restrict someone's right to private and family life, home and correspondence if there is a law that allows them to do so. They must also interpret that law in a way that protects human rights if possible, and follow the safeguards that apply to that law. For example, police stopping and searching people under the Criminal Justice & Public Order Act must follow guidance and the Code of Practice when doing so.



Legitimate?

The Human Rights Act says that someone's right to private and family life, home and correspondence can only be interfered with for a good reason, such as to protect public safety, health or other people's rights.



Proportionate?

A public authority can only restrict someone's right to private and family life, home and correspondence if they have considered all options and chosen the least restrictive approach. This means they should have considered options that give the person greater choice and autonomy to see if those could meet the legitimate aim they are pursuing.

When considering whether public officials have met their duties under Article 5, ask if they have:



Respected the right? i.e. are they ensuring they're not restricting someone's right to private and family life, home and correspondence unless this is lawful, legitimate and proportionate?



Protected the right? i.e. have they taken positive steps to prevent someone's right to private and family life, home and correspondence being restricted unless this is lawful, legitimate and proportionate?



Fulfilled the right? i.e. have they investigated if someone's right to private and family life, home and correspondence has been restricted in a way that is not lawful, legitimate and proportionate? Have they taken steps to stop it happening again?



In real life: Mrs Bernard's story

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. The court found a serious breach of the Article 8 right to private and family life 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".

Case: Bernard v London Borough of Enfield [2002] EWHC 2282



Article 14: The right to be free from discrimination

This right protects equal enjoyment of other human rights. It is often referred to as a “piggy-back right” because it can only be raised in connection with another human right. For example, it could be raised in connection with Articles 3, 5 or 8, discussed above. The other right doesn’t have to be breached, just impacted, in order to attach an Article 14 claim to it.

Unlike other laws, like the Equality Act, the Human Rights Act is open-ended and does not include a set list of protected characteristics that are protected from discrimination. Characteristics such as gender identity, immigration status and health status as well as disability, and parental or family status have been found by courts to be protected statuses under Article 14.



When might the right to be free from discrimination come up in your work?

You should consider this right if a constituent reports they are being treated less favourably than other people who are in the same situation as them, or if they are not being treated differently despite being in a different situation to others. For example:

- They are not allowed to wear religious items at school or in their workplace.
- They are not receiving appropriate healthcare because a doctor has made an assumption about them based on their ability or health status.
- They don’t speak English but aren’t being offered interpreters when trying to access public services.

Not all differential treatment (or lack thereof) will be classed as discrimination.

When considering whether public officials are putting someone’s Article 14 rights at risk, ask if they can show that any differential treatment is **objectively and reasonably justified**.

When considering whether public officials have met their duties under Article 14, ask if they have:



Respected the right? i.e. are they ensuring they're not discriminating against someone?



Protected the right? i.e. have they taken positive steps to prevent someone being discriminated against?



Fulfilled the right? i.e. have they investigated if someone has been discriminated against? Have they taken steps to stop it happening again?



In real life: The Befriending Service's story

A mental health hospital had a practice of detaining asylum seekers who spoke little or no English, under the Mental Health Act, without the use of an interpreter. This meant that the people being detained in the mental health hospital could not understand why they were being detained, or how to challenge it. After participating in a BIHR session, members of a user-led mental health befriending scheme explained to staff that this system wasn't meeting the safeguards set out in the right to liberty (Article 5). They also argued that it breached the asylum seekers' right not to be discriminated against on the basis of language. They worked with staff to change the policy on interpreters so people seeking asylum who are detained have access to the same information as everyone else.

Example from BIHR's work



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

This right protects our freedom to enjoy our possessions without interference, deprivation or control from a government or public body. “Possessions” means things like land, property and objects you own, as well as shares, pensions, money, and some welfare benefits.



When might the right to peaceful enjoyment of possessions come up in your work?

You should consider this right if a constituent reports they are being prevented from accessing or using their possessions in the way they want by a public authority. For example:

- They are in hospital and are being stopped from accessing their phone because of a blanket policy.
- Their public sector pension has been unfairly impacted by a change in the law.
- They are being disproportionately impacted by a policy that restricts welfare benefits such as the “bedroom tax”.

This right is a **non-absolute right**, which means that it can only be limited by a public authority if it is **lawful, legitimate and proportionate** to do so.

When considering whether public officials are putting someone’s Article 1, Protocol 1 rights at risk, ask if any restriction is:



Lawful?

Public authorities can only restrict someone’s right to peaceful enjoyment of their possessions if there is a law that allows them to do so. They must also interpret that law in a way that protects human rights if possible, and follow the safeguards that apply to that law. For example, if a housing association is evicting someone under the Housing Act, they must follow the proper procedure, such as getting a court order if necessary.



Legitimate?

The Human Rights Act says that someone's right to peaceful enjoyment of their possessions can only be interfered with if it is in the public interest or necessary to ensure payment of taxes and penalties.



Proportionate?

A public authority can only restrict someone's right to peaceful enjoyment of their possessions if they have considered all options and chosen the least restrictive approach. This means they should have considered options like exempting people from certain policies or assessing someone's needs on a case-by-case basis to see if those could meet the legitimate aim they are pursuing.

When considering whether public officials have met their duties under Article 1, Protocol 1, ask if they have:



Respected the right? i.e. are they ensuring they're not preventing someone's peaceful enjoyment of their possessions unless this is lawful, legitimate and proportionate?



Protected the right? i.e. have they taken positive steps to stop interference with someone's peaceful enjoyment of their possessions unless this is lawful, legitimate and proportionate?



Fulfilled the right? i.e. have they investigated if someone has been stopped from peacefully enjoying their possessions in a way that is not lawful, legitimate and proportionate? Have they taken steps to stop it happening again?



In real life: K & AM's story

K and AM were accepted by the Home Office to be Potential Victims of Trafficking and so entitled to £65 per week in financial support (minus any other money received from the Home Office) while their cases were ongoing. They were also seeking asylum and people seeking asylum were entitled to £37.75 per week in asylum support. K and AM were only given £37.75 per week so that they didn't receive more than other people seeking asylum – but this left them £27.25 short of the amount they should have been receiving as Potential Victims of Trafficking. The court said this was an interference with their right to possessions. The court also said that treating Potential Victims of Trafficking in the same way as other people seeking asylum was discrimination under Article 14 because their circumstances were different and should be treated differently.

Case: K & AM v Secretary of State for the Home Department [2018] EWHC 2951



Article 2, Protocol 1: The right to education

This right protects our access to effective education within existing educational institutions, such as schools. It also means that public authorities in charge of children's education must respect parents' religious and philosophical convictions (although this doesn't mean that schools will always do what parents want).



When might the right to education come up in your work?

This right applies to primary, secondary and higher education, so you should consider it if a constituent reports they are being unfairly prevented from accessing any of these systems. For example:

- Their child is being denied access to school transport because of a blanket policy but consideration has not been given to their specific needs or abilities.
- They are being charged higher tuition fees than normal without their personal circumstances being taken into account.
- Their child is going to a school which promotes only one faith or belief system and there is no alternative option.

Part of this right is absolute, while part of it is non-absolute. Public authorities cannot arbitrarily stop someone from accessing an education system that already exists. However, they can regulate education and make decisions about, for example, how to allocate resources and admission criteria, as long as any restrictions that are imposed are foreseeable and for a good reason.

Public authorities can also limit parent's right for their children to be educated in a way that respects their religious and philosophical convictions if it is **lawful, legitimate and proportionate** to do so.

When considering whether public officials are putting someone's Article 2, Protocol 1 rights at risk, ask if any restriction is:



Lawful?

Public authorities can only restrict someone's right to education if there is a law that allows them to do so. They must also interpret that law in a way that protects human rights if possible, and follow the safeguards that apply to that law. For example, if a school is excluding a disabled child because of behavioural issues, they must consider whether reasonable adjustments have first been put in place in line with Equality Act regulations.



Legitimate?

Public authorities can only restrict someone's right to education for a good reason. The Human Rights Act doesn't give a specific list of reasons, but courts have considered things like protecting the health of teachers and students and improving the standards of university studies legitimate aims.



Proportionate?

A public authority can only restrict someone's right to education if they have considered all options and chosen the least restrictive approach. This means they should have considered options like extra classroom support to see if those could meet the legitimate aim they are pursuing.

When considering whether public officials have met their duties under Article 2, Protocol 1, ask if they have:



Respected the right? i.e. are they ensuring they're not denying someone access to education unless this is lawful, legitimate and proportionate?



Protected the right? i.e. have they taken positive steps to stop someone being denied access to education unless this is lawful, legitimate and proportionate?



Fulfilled the right? i.e. have they investigated if someone has been denied access to education in a way that is not lawful, legitimate and proportionate?? Have they taken steps to stop it happening again?



In real life: ZB and DB's story

Ms Bell and her two disabled children, ZB and DB, were placed in temporary accommodation by the Council. The Council's occupational therapist said both children "have high moving and handling needs, large equipment requirements, need hoisting for all transfers and are fully dependent on carers to meet all of their needs." However, the Council did not provide a property that met these needs. In fact, DB's bedroom was upstairs and because he could not manage the stairs himself, and it was difficult for his mother to carry him, he was largely confined there.

This made it difficult for both children to attend school as Ms Bell had to stay home with him. The Council also failed to arrange suitable transport to the children's school or to enrol them in a special educational needs school. The Court held that the Council had breached the children's right to education (Article 2, Protocol 1) and their right not to be discriminated against (Article 14).

Case: ZB & DB v London Borough of Croydon [2023] EWHC 489

Worked example

Take a look at Cameron's story below and think about:



What human rights are at risk?



Are they absolute or non-absolute?



If they're non-absolute, is any restriction lawful, legitimate and proportionate (or in the case of differential treatment, is it objectively and reasonably justified)?



Cameron's story

Craig's son, Cameron, had severe disabilities and both his parents had to give up their work to care for him. Cameron received Disability Living Allowance (DLA) to help with his care costs. Cameron was admitted to hospital for chronic bowel obstruction and stayed there for over a year. At least one of his parents was with him at all times and they remained his primary caregivers. His parents had to pay for travel and other expenses during this time which came to around £8,000.

However, the DWP had a policy of stopping children's DLA payments after 84 days in hospital. This was done in accordance with regulations made under the Social Security Act. The DWP said the policy was needed because when people are in hospital, their disability-related needs are met by the NHS. If they continued to receive DLA on top, they would be getting paid twice from public funds.

Cameron's DLA payments were therefore stopped after 84 days, which caused the family financial hardship. His parents had to reduce the amount of times they visited Cameron throughout the week because of the cost of petrol.



Article 8: Craig said Cameron and his family's right to life family life was impacted because the reduction in DLA meant they were not able to visit as often.

This is a **non-absolute right**.

There is a **law** allowing it (the Social Security Act) and a **good reason** for doing it (to protect public funds and the UK's economic wellbeing). However, it has not been shown that it was the **least restrictive** option available.*



Article 14: Whilst the DLA policy applied to everyone, it disproportionately affected severely disabled children in need of lengthy hospital treatment. This is considered a status protected under the Human Rights Act.

Not all differential treatment (or failure to treat someone differently) is classified as discrimination.

The failure to treat Cameron differently to others in receipt of DLA despite him being in different circumstances was not **objectively and reasonably justified**. Cameron and his family's disability-related costs were not met by the NHS, as anticipated by the policy. They had to personally cover a lot of costs that were necessary for them to support Cameron's care, such as travel and food.



Article 1, Protocol 1: DLA counts as a "possession" for the purposes of the Human Rights Act and so by reducing the amount paid, DWP impacted on Cameron's right to peaceful enjoyment of possessions.

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*This story is based on a [real court case](#). In that case, the UK Supreme Court found there was a breach of Article 14, when read in conjunction with Article 1, Protocol 1. Because it made this finding, it said it did not need to go on to examine whether Article 1, Protocol 1 itself was breached or whether Article 8 was engaged. As a result of this case and the finding that Cameron's human rights had been breached, Parliament decided to change the rules about DLA

What can you do?

Cameron's story is based on a real case that went all the way to the UK Supreme Court. However, human rights advocacy is not just about legal cases. By supporting constituents to understand their rights and holding public bodies accountable to their legal duties, you can help to address issues before they escalate.



Support constituents to self-advocate:

- You can help ensure constituents know their human rights and feel confident in raising issues with public authorities by sharing resources and information about the HRA. In a case like Cameron's, you could share our video on the HRA and welfare benefits.
- Encourage constituents to keep records of the impact of the issue as well as any interactions with public authorities related to it. This can help with accountability and will also be important if they later need to escalate the matter. In a case like Cameron's, you could encourage him to keep a record of any correspondence to or from the DWP as well as records of costs incurred as a result of the benefits reduction.



Speak about the issue with the public authority:

- Start by raising the issue informally with the public authority concerned. This could be by sending an email or requesting a meeting with a staff member or manager to set out your concerns about the human rights at risk. In a case like Cameron's, this could mean getting in touch with the DWP caseworker.
- If this doesn't work, consider raising the issue more formally by following the service's complaints procedure or by escalating to the next level. Make sure to put your concerns in writing and to keep a record of any contact. In a case like Cameron's, this could mean asking for your complaint to go to a Senior Manager or asking an Independent Case Examiner to look at the case.



Signpost to appropriate services:

- You may want to refer constituents to advice or support services that specialise in a certain area. When making your referral, be sure to include your concerns about the potential human rights issues so the service can act on these. BIHR's website has [a list of organisations that may be able to help a constituent facing a human rights issue](#). In a case like Cameron's, you might make a referral to an organisation like Citizens Advice.
- You could also help your constituent to find a solicitor who can give them advice on [bringing a human rights legal case](#). The [Law Society of England and Wales](#) has a database which you can use to find legal advisers in your area as does the [Law Society of Scotland](#) and the [Law Society of Northern Ireland](#). In a case like Cameron's, you could search for advisers that specialise in social welfare, health and benefits.



Share information about human rights:

- Making sure that people are aware of and understand their legal rights and duties under the HRA can help support a culture of respect for human rights across the UK and prevent cases like Cameron's from escalating.
- BIHR and our RITES Committee of Lived Experience Experts have created a [social media pack](#) to help you start human rights conversations online.
- In 2024, the United Nations (UN) urged the UK Government to work to raise awareness of human rights among authorities, civil society and the general public. You can [read the full concluding observations and find out more about the evidence BIHR and the RITES Committee gave to the UN on our website](#).

More from BIHR

Find out about more ways to keep in touch and get further support from BIHR.

Training

Did you know that BIHR offers human rights workshops tailored to your work? We've worked with people, communities, staff, and policy makers to develop their confidence in using human rights for over 50 years. We firmly believe that knowledge is power and have developed a wide range of both online and in-person training offers to achieve lightbulb moments - when people make the connection between human rights and their lives and practice.

We can work with you on long-term programmes and making sustainable change, on staff or community workshops and confidence-building sessions, and on resources that can be co-produced with people accessing services. For more information, get in touch on training@bihr.org.uk.

““ You MUST get on this, it has changed my outlook as a whole, educated me and enabled me to have the courage to share this with friends, families and colleagues. This should be accessible for everyone (can't express or sing this from the rooftops enough!)” – Practice Leads Programme participant

“The BIHR Human Rights Awareness Raising Workshop was a great resource for the organisations who attend the Poverty Action Network. It was well tailored to address the issues they specifically face in their line of work and I have no doubt everyone will now be able to apply the HRA to future casework.” – One-Off Community Workshop participant

Resources

[Our resources page](#) is packed with free guides, posters, template letters and more to help you in your human rights advocacy.

Many of our resources have been co-produced with public services, community groups and people accessing services and are tailored to specific fields of interest, such as healthcare, women's rights, asylum accommodation and more. If you have any queries or would like to discuss custom resources, get in touch on training@bihr.org.uk.



Mailing lists

We also have a dedicated mailing list for parliamentary and governmental staff. Sign up to the list to get human rights updates relevant to your work including new resources, event invites and expert briefings. You can also sign up to our monthly eNews for more general updates on BIHR's work and on human rights news from across the UK.

If you found this guide helpful, or if you have feedback about the contents, we'd love to hear from you. Send us your comments, suggestions and stories of human rights advocacy at info@bihr.org.uk.

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