

# Your Human Rights

A guide for children and young people  
accessing inpatient mental health services in  
England and their families and supporters



Made by the British Institute of Human  
Rights and experts with lived experience of  
CAMHS inpatient services

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## Introduction: Who is this for?

This resource is aimed at young people (and their parents, carers or loved ones) who are mental health inpatients (also known as **CAMHS** inpatients), including autistic people and those with a learning disability. Inpatient means you are receiving care and treatment in a hospital or care setting.

In this guide, we will focus on some rights that our lived experience experts have told us are important when in hospital. We will offer advice on how to raise human rights issues when in hospital. There will also be links and signposting to other resources if you feel you need more information on any of the topics covered.

We do not cover all rights here, but there are detailed guides to all 16 human rights at [www.bih.org.uk/what-rights-do-i-have](http://www.bih.org.uk/what-rights-do-i-have)



Any words that are **highlighted like this** can be found in the [glossary](#).

This resource 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 resource may have changed since it was published.

This booklet has been co-produced by the British Institute of Human Rights (BIHR) and Lived Experience Experts: young people or parents of young people who have had experience receiving inpatient treatment for their mental health in England. The examples therefore come from England and refer to English legislation but the human rights we talk and the legal duties on public bodies are the same across the UK.

BIHR is a UK-wide charity working with people, communities, public bodies and policy-makers to make positive change through human rights.

The stories in this resource are based on real life cases or events in inpatient settings. These may be distressing and triggering.

## Introduction: What is the Human Rights Act?

All public authorities have a legal responsibility to support your human rights. Public authorities include (but are not limited to) all NHS services, local councils, and regulators such as the Care Quality Commission . This responsibility will fall on all staff within the hospital, including nurses, therapists, managers and healthcare workers. Staff working in private hospitals also have a responsibility to uphold rights for lots of reasons but importantly because they are also regulated by a public body.

The Human Rights Act works as a foundation law, meaning all laws must be applied in a way that respects our rights, including the **Mental Health Act**. If your human rights are not being looked after, you can:

- ✔ Talk to another staff member that you trust.
- ✔ Talk to an **Independent Mental Health Advocate**. In most hospitals there will be contact information available, or the Advocate may visit the ward at a regular time each week.
- ✔ Raise the issue formally. This could be by talking to the ward manager, or externally by writing to **PALs**, or contacting the **Care Quality Commission**.
- ✔ Take a legal case to court.

The Human Rights Act says that people working in public services should:



**RESPECT your human rights-** Not take away your rights. Some rights can be limited but a test must be followed.



**PROTECT your human rights -** Keep you safe from having these rights taken away. They have a duty to protect you from yourself, friends or family, other staff and other organisations.



**FULFIL your human rights-** Investigate when something has gone wrong and try to stop it from happening again.

## The FAIR Model

This is a tool developed by the Scottish Human Rights Commission to look at situations which impact human rights.

### Facts.

Establish the facts. What is the situation? How long has it been going on for? What is the impact on you and your family?

### Analysis.

Analyse the rights at stake. Think about what rights are at stake in your situation. Are these rights absolute or non-absolute? If they are non-absolute, work through "Lawful? Legitimate? Proportionate?" (see more information on the next page)

### Identify.

Identify changes necessary and who is responsible for making these. This might not just be one team or public body as others have the Human Rights Act duty too.

### Record and review.

Keep a record of any decisions, objections and conversations and look back at these at regular intervals to see if any changes should be made.

## What rights do we have?

There are 16 rights in the Human Rights Act. Some of these rights are what we call "absolute rights". This means it's against the law to limit these rights, for any reason.

Others are non-absolute; this means there are certain circumstances in which a public official may be allowed to limit a person's human rights. These situations are specific and will usually have to follow the lawful, legitimate and proportionate tests:

### Lawful?

There must be a law which allows public officials to take the action or decision which restricts the right.

### Legitimate (for a good reason)?

There must be a good reason that the public official is trying to restrict the right.

### Proportionate (thought about properly)?

The Government or public body must have thought about other things they could do, but there is no other way to protect you or other people.

If a public official or body cannot meet these three tests then the limitation on human rights will not be lawful.

Article 14, the right to be free from discrimination, is different to the other rights. It has to be used by joining it onto another right, rather than on its own. For example, your right to life or right to liberty cannot be restricted on the basis of your race or disability. This right protects you from being treated worse than others for any reason, like disability or race, or for more than one reason, like being a young, black, disabled woman.

# Absolute & Non-Absolute Rights

## Absolute

Right to Life  
(Article 2) ★

Right to Be Free from  
Torture and Inhuman  
and Degrading  
Treatment (Article 3) ★

Right to Be Free from  
Slavery and Forced  
Labour (Article 4)

Right to a Fair  
Trial (Article 6) ★

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 Religion (Article 9) ★

Right to Education  
(Protocol 1, Article 2) ★

Abolition of the Death  
Penalty (Protocol 13,  
Article 1)

## Non-Absolute

Right to Liberty  
(Article 5) ★

Right to Freedom of  
Thought, Conscience  
and Religion (Article 9) ★

Right to Freedom of  
Assembly and  
Association  
(Article 11)

Right to be Free from  
Discrimination  
(Article 14) ★

Right to Education  
(Protocol 1, Article 2) ★

Right to Private and  
Family Life, Home and  
Correspondence  
(Article 8) ★

Right to Freedom  
of Expression  
(Article 10) ★

Right to Marry and  
Found a Family  
(Article 12)

Right to Peaceful  
Enjoyment of  
Possessions  
(Protocol 1, Article 1) ★

Right to Free  
Elections  
(Protocol 1, Article 3)

\*Circled 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.

★ = we discuss this right in this guide



## Article 2: The Right to Life

The right to life is an absolute right. This means that there is never a lawful reason for staff in public services to restrict your right to life.

**This right may be at risk within the hospital ward, for example:**

- If there is **abuse** or **neglect** in inpatient settings which could lead to death.
- If you are thinking about taking your own life whilst in hospital and public officials know you are at risk of suicide but don't protect you.
- If healthcare professionals (such as doctors or nurses) refuse to give you life-saving treatment because of another medical condition, for example you are autistic or have learning disabilities.
- If **restrictive practice** is used forcefully or dangerously.
- If you are allowed to go on leave when staff know you are at risk.
- If staff do not put care plans in place which you need to manage your risks.
- If life-saving treatments don't work for you because of another health condition, or any other reason, and alternative treatments are not explored.

**What do staff have to do about this right?**

- Only use restrictive practices to protect you or others from severe and immediate risk of harm and making sure they are done in ways which do not hurt you.
- Risk assess you and make sure care plans and recommendations are put in place properly.
- Consider the impact of health conditions on your treatment and how staff interact with you.
- If staff know, or ought to know, that your life is at risk then they should take steps to protect you from harm.



### Rights in Action: Amy's story

**Please be aware that this story contains difficult and potentially triggering issues, specifically suicide.**

Amy was a 14 year old with complex health needs. Following several incidents of self-harm, she was admitted to a CAMHS unit. At the time of her admission, she was noted to be at high risk of self-harm and suicide. Part of her care plan was that she should have one on one time with staff every day, including having stories read to her at night, to keep her calm and reduce her risk. During her three months as an inpatient, she was physically restrained six times and forcibly sedated instead of other interventions being tried. Amy frequently told staff that she wanted to commit suicide and that she wanted one on one time with staff. No risk reviews were taken out and staff did not take any other actions to safeguard Amy. Amy later committed suicide in her room. This was a breach of Amy's Article 2 right to life as staff were aware of the risk to Amy's life and should have stepped in to take steps to protect her from coming to harm.



## Article 3: The Right to be Free from Inhuman and Degrading Treatment

This right protects against being treated in a way that causes serious mental or physical harm or humiliation.

This right is absolute. This means a public body can never treat you in a way that causes you serious mental or physical harm or humiliation. When we say serious mental harm we mean something that makes you feel worthless or hopeless or humiliates you. This includes deliberate (abuse) and unintentional (neglect) harm. In other words, it doesn't matter if the person or public body meant to cause this harm.

**Remember:** This right is about very serious mental and or physical harm. Because we are all different, serious harm might be different for each person. It is all about the impact the treatment has on you. If you are seriously harmed, either mentally or physically, by an experience or treatment you receive whilst in inpatient care, this will be a breach of this right. Traumatic experiences whilst in inpatient care often have a long-term impact.

**This right may be at risk within the hospital ward, for example:**

- If you don't have access to a bathroom and you are left in bodily fluids for a long time.
- If you aren't given medicine or care which means you are in pain or are suffering for a long time.
- If you are not given food or drink which means you become ill.
- Staff talking to you in a way that is frightening or humiliating.
- If you don't have suitable clothes or are forced to take off your clothes while staff are watching.
- If you are physically or emotionally harmed by another young person and staff knew about this but didn't protect you.

Sometimes restrictive practice might harm your recovery and cause a serious mental or physical impact. This could be inhuman and degrading treatment.

Restrictive practice is when someone is made to do something they don't want to do or when someone is stopped from doing something they want to do.

Examples of when this could be inhuman and degrading include using restrictive practice to:

- Manage behaviour rather than to keep you or others safe from harm.
- Punish you.
- Coerce you – for example threatening to restrain or seclude you if you will not take your medication.

**What do staff have to do about this right?**

- Only use restrictive practices when truly necessary to reduce risk to you or others.
- Make sure support for care needs is in place including giving medication or treatment when needed.
- Treat you with dignity including giving access to a bathroom and respecting you when washing or changing clothes.



#### Rights in Action: Matt's story

**Please be aware that this story contains difficult and potentially triggering issues, specifically seclusion and restraint.**

Matt is a 15-year-old inpatient in a children and young people's mental health hospital. He is detained under **Section 3** of the Mental Health Act in a medium secure hospital. He is autistic and has been exhibiting distressed behaviours. Matt made verbal threats to staff and patients so staff restrained Matt and placed him in a seclusion room. He has been held there for 3 days because he remains verbally aggressive and continues to make threats to staff. This is causing Matt serious distress.

Staff observe Matt 24 hours a day in the seclusion room. To do this, they also lock the door in the bathroom. Matt feels scared and humiliated by this and does not have any privacy. Staff don't feel it is safe to enter the room to clean as Matt is still verbally aggressive and making threats. Matt is barefoot and left in his own waste for 3 hours until staff feel it safe to enter the room.



### Rights in Action: Matt's story (continued)

The way Matt is being treated is causing him to suffer serious mental harm. This impacts on his Article 3 rights to be free from inhuman and degrading treatment. Article 3 is an absolute right, which means there are never any lawful reasons why it can be restricted. Staff should have looked at less restrictive options, for example thinking about de-escalating the situation before putting Matt in seclusion. Staff should be talking to Matt about what is happening, and finding out what he needs. They should also be speaking to the people who know Matt best, his family and his loved ones, as well as making sure Matt has access to an advocate. They should be thinking about what has caused Matt to behave in this way and how to support him to leave seclusion, for example psychological support or reviewing his medication. Staff should also have a care plan, created with Matt and his family which explains how Matt should be supported during these periods in the future.



## Article 5: The Right to Liberty

This right prevents your movement from being significantly restricted or controlled.

This right is at risk when you are under high levels of supervision and control, you are not allowed to leave, and you have not agreed to these restrictions. For this, it doesn't matter if you haven't tried to leave; if you would be stopped from leaving then it will be a **deprivation of your liberty**.

**This right may be at risk within the hospital ward, for example:**

- If you are restrained for a longer period of time than necessary.
- If you are not able to move around the ward freely, for example going to your bedroom when you want to.
- If you are placed in **seclusion**.
- If staff restrict access to the garden or other facilities on the ward.
- If you have your leave reduced or taken away.

**What do staff have to do about this right?**

- Not limit your movement unless it's needed for your, or others', safety, and they can clearly show this is the case.
- Protect your liberty and make sure you are involved in conversations about your rights.
- If something goes wrong, find out why and try to stop things going wrong again.

This right is non-absolute, so it can be restricted, but only if it is lawful, legitimate and proportionate.

It's important to think about why staff have imposed these restrictions. Is it to protect you or other people? This would be a legitimate reason. Or is it because there aren't enough staff on the ward, or because staff don't want to do something? These would not be legitimate reasons.



## Rights in Action: Ellie's story

Ellie is a 17-year-old girl who has been detained on a CAMHS ward under Section 3 of the Mental Health Act for 8 months. Ellie is autistic and has ADHD. She often struggles with getting to sleep, going to bed late at night and waking up early in the morning. One evening, the staff decided that everyone was to go upstairs to their bedrooms earlier than usual. All staff and young people had to go upstairs at the same time as there weren't enough staff members to supervise both areas of the ward.

Ellie didn't want to go upstairs, as she wasn't ready to sleep yet and wanted to watch TV instead. The nurse in charge came out of the office, and said to Ellie: "You're on a section, if I want you to go upstairs I can just restrain you and take you upstairs." This made Ellie feel scared, completely out of control, and lose trust in the staff member. Using seclusion and restraint would be a violation of Ellie's right to liberty under Article 5.

**Lawful?** Seclusion and restraint are allowed under the Mental Health Act in certain circumstances. However, the Mental Health Act has to be applied in a way that is rights-respecting, considering the other rights in the Human Rights Act. In Ellie's story, seclusion and restraint are being used as a punishment and as a way to change her behaviour which is not lawful.

**Legitimate?** There is no good reason for Ellie's liberty to be limited in this way. There is no evidence that these measures need to be taken because Ellie is at risk of harm. Instead, it seems like the reason is lack of staff which is not a legitimate reason. The impact on Ellie has not been considered and the measures taken may actually cause Ellie more harm.

**Proportionate?** This seems like it is a blanket rule which means that the least restrictive option for Ellie has not been considered. The least restrictive option for Ellie would involve considering her individual need and wellbeing. This should be decided by talking to Ellie about what would be better for her.



## Article 6: The Right to a Fair Trial

This right means that you must be treated fairly when a public service is making an important decision that impacts your rights. For example, if you are an inpatient because you have been sectioned under the Mental Health Act by a mental health tribunal then your right to a fair trial needs to be respected, protected and fulfilled. This right could also apply to less formal things like hospital managers' meetings.

Your right to a fair trial is an absolute right. This means staff in public services can never limit or take away this right.

This right is linked to other rights. For example, if you are being detained on a ward under the Mental Health Act, this would be a restriction of your right to liberty (Article 5) and would be allowed if staff can show it is lawful, legitimate and proportionate. However, the right to a fair trial means that if this happens, you should be informed of why it has happened, quickly and in a way that you understand. You must also be able to challenge the decision speedily in the courts if you want to.

**This right may be at risk within the hospital ward, for example:**

- If you are not given the important information about decisions that are being made in a way that you understand.
- If you have not been told how or why a decision has been made.
- If your hearing did not happen quickly enough.
- If you were not given the opportunity to participate in your hearing at a **mental health tribunal**.
- If you weren't given access to documents that might help you challenge a tribunal's decision.
- If you were not allowed an advocate to speak up for you, or an interpreter to translate for you.
- If a big decision was made that affected your life and you were not told about it, for example your **section** has been extended and you didn't know.

## What do staff have to do about this right?

- Not stop you from having a fair trial.
- Make sure you are involved in talks about decisions as much as possible.
- If something goes wrong, find out why and try to stop this from happening again.



### Rights in Action: Marc's story

Marc is 17 and is an inpatient under Section 3. He is one of the older young people on the ward. Marc is quiet and reserved and does not voluntarily spend a lot of time with the other inpatients. Recently, behaviour on the ward has begun to deteriorate. As one of the older inpatients, Marc is blamed for this and the staff say that he is the ringleader. The managers on the ward have a meeting and decide to move Marc to another unit, over 100 miles away. Marc is currently in a ward close to his family, so they can visit regularly. Moving Marc would impact on his relationship with his family, protected under Article 8. Marc and his family are not involved in this decision. Marc's mother is told about it on a Friday with the move scheduled for the following Monday and is told not to mention it to Marc as it would upset him. Marc's mother is not told if they can challenge this decision to move Marc. This is a breach of Marc's right to a fair trial, as he is not being involved or informed about decisions in his life that will impact his rights.



## Article 8: The Right to Private & Family Life, Home & Correspondence

This right is about your access to living your own life, having different types of relationships, and communicating with others.

### Private life includes:

- Wellbeing
- Autonomy: control over your own life and body
- Participation: being part of your community
- Relationships with others
- Confidentiality: private information not being shared

### Family life includes:

- Developing ordinary family relations. This includes your biological family and any one else you consider family, including foster parents.
- Making friends, having a family or having a partner.
- Ongoing contact, so keeping in touch with family and friends even if split up.

### Home includes:

- This is not a right to housing but about enjoying the place you are currently housed in – in this case, your hospital ward. This means that public authorities should not intrude on your space without your permission.

### Correspondence includes:

- Uncensored communication with others
- Choosing a method of communication like social media or letters.

### **This right may be at risk within the hospital ward, for example:**

- If you don't feel as though you or your family have any say in your care and you don't feel like your concerns are being listened to.
- If you or your family are not offered access to an advocate when you need one to be involved in decisions about your care.
- If your friends or family aren't being allowed to visit you in hospital without a good reason or as a punishment.
- If your leave has been taken away, and you don't know why.
- If you are not allowed to use your phone or access the internet.
- If you are worried that staff are not keeping sensitive information confidential.

### **What do staff have to do about this right?**

- Not share your confidential information without permission.
- Risk assess you as an individual.
- Provide alternative ways to help you access your community and family.
- Not take away access to family or friends as a punishment or method of behaviour modification.

This right is non-absolute, so it can be restricted, but only if it is lawful, legitimate and proportionate.

If you think this right is being restricted without meeting the three-stage test, think about:

- Have staff explained the reasons for their decision?
- Is this being done in my/other young people's best interests?
- If the staff are worried about risk, are there any other methods they could use that would be less restrictive?

Examples of alternative ways of managing risks:

- Young person-centred care planning, where you are part of making plans and they are made individual to your own needs.
- Individual risk assessments instead of blanket bans.
- Ward provision of telephones and computers, or supervised phone use, or online safety training.
- Supervised visits if staff are worried about safety.



### Rights in Action: Zoe's story (Good Practice Example)

Zoe is a 17-year-old girl being treated in an adolescent unit, who also suffers with glaucoma: a lifelong condition where the optic nerve is damaged, which requires regular monitoring and treatment. Zoe had been complaining about eye pain, and she is long overdue a check up by her ophthalmologist. This is impacting her Article 8 right to wellbeing. However she has been regularly self-harming and attempting suicide, and has tried to abscond in the past. Zoe is detained under Section 3 of the Mental Health Act and has no Section 17 leave.

Her psychiatrist discovered that the hospital which the adolescent unit was attached to had their own ophthalmology department, which would reduce the risk of absconding, and meant staff could attend with her.

**Lawful?** Under the Mental Health Act, hospitals can limit leave.

**Legitimate?** The staff are worried about risks to Zoe's safety if she leaves the hospital, which is a good reason to restrict her rights.

**Proportionate?** In this example, the mental health risk was well managed, without jeopardising Zoe's physical needs.



### Rights in Action: Frankie's Story

Frankie is a 17-year-old autistic patient on an adolescent unit. They are a talented artist who enjoys doing detailed drawings using ballpoint pen. Along with their mum, they have told ward staff that Frankie was taking A level Art at college before they were admitted and they would like to keep up with their coursework. They also find drawing in their bedroom a good way to relax and regulate their emotions when they feel stressed. However, this hasn't been noted on Frankie's care plan or risk assessment. A new agency member of staff tells Frankie they aren't allowed a ballpoint pen on the ward as it can be used to harm themselves or others. She locks away Frankie's pen and gives them a crayon to use instead. By locking away Frankie's pens, the staff member is impacting Frankie's Article 8 right to wellbeing and autonomy.



### Rights in Action: Frankie's Story (continued)

**Lawful?** The Mental Health Act 1983 Code of Practice says staff can use lockable facilities to store items which may pose a risk to the patient or others – but the staff member has not explained why she believes the pen poses a risk. Frankie should be able to access their property on request if it is safe to do so.

**Legitimate?** Protecting the safety of others is a legitimate reason to interfere with Frankie's Article 8 rights but the staff member has not explained how locking away Frankie's pen would meet this aim.

**Proportionate?** In Frankie's case, it would not be the least restrictive option to stop them from using a pen, especially as there is no risk to Frankie's safety. Frankie was not involved in the decision and alternatives were not discussed with them, so it is not the least restrictive option.



### Rights in Action: Caroline's Story (Parent's Perspective)

Caroline is a single parent of an only child. When her son, Danny, was an inpatient, she missed him terribly. It had a massive impact on both of them because it was the first time they had been separated for a significant length of time. Visiting times were especially important when Danny wasn't allowed on leave. At one point, these visits were restricted which had a massive impact on both Caroline and Danny's wellbeing. There were no alternatives offered to replace visiting. It interrupted their bond and relationship with each other and not having contact had a long-lasting impact on both Caroline and her son.

**Lawful?** Under the Mental Health Act Code of Practice, hospitals can restrict visitors for clinical or security reasons.

**Legitimate?** The staff must explain and document their reason for restricting Danny's visitors and it must be for one of the above reasons.

**Proportionate?** The hospital should have taken steps to ensure that the bond between Caroline and Danny was not disrupted and, if visiting was restricted, that there were other ways to maintain their relationship so as to protect Caroline and Danny's right to family life.



## Article 9: The Right to Freedom of Thought, Conscience & Religion

This right means that you are free to hold different beliefs and follow different religions, but also includes the right to have no religion and protection for non-religious beliefs that are important to how we live our lives (for example, beliefs about ethical veganism).

This right has two different parts:

1. the right to hold or change religious or other beliefs; and
2. the right to put your thoughts and beliefs into action (this is called 'manifestation').

**This right may be at risk within the hospital ward, for example:**

- If staff are stopping you from going to a space where you can pray or worship.
- If you have a religious diet, for example you eat Kosher or Halal food and staff on the ward don't respect this.
- If you are vegetarian and staff on the ward don't respect this.
- If you are being bullied because of your religion or belief and staff don't do anything to stop this
- If you are not allowed to access religious items or wear religious jewellery or clothing.
- If staff are imposing their own religious beliefs on you, for example about diet or health when you are struggling with an eating disorder.

**What do staff have to do about this right?**

- Not interfere with the right to freedom of thought, conscience and religion, unless it is necessary.
- Accommodate your religion or belief where possible.
- Remain neutral and impartial, and promote mutual tolerance rather than conflict between those holding different beliefs.
- If things go wrong, find out why and try to stop the same thing happening again.

This right is both non-absolute and absolute. You can think or believe what you want. No public official can stop you doing this. But when we do things because of our religion or beliefs it has to respect other people's rights. The right to hold or change beliefs is absolute, so can never be restricted or limited. The right to act on your beliefs is non-absolute and so can only be restricted if it is lawful, legitimate and proportionate.



### Rights in Action: Luke's Story (Good Practice)

Luke likes watching videos by a famous influencer who has controversial beliefs. In his videos, the influencer says he doesn't think gay people should be allowed to get married. Luke plays these videos in the common area, which upsets the other residents.

The staff told Luke he couldn't watch these videos in the common room anymore and could only watch them in his room. Luke told staff they couldn't stop him watching the videos in the common room because it would breach his right to freedom of thought.

The right to freedom of thought is absolute and protected by Article 9(1). However, the right to manifest (ie to express or act on) that thought is protected under Article 9(2) and can be limited if it is lawful, legitimate and proportionate to do so. Staff have obligations to protect other people's rights and have to balance different people's rights when considering this.

**Lawful?** Under the Mental Health Act, staff can put in place rules about the use of internet and social media. However, these must be applied in a way that is rights-respecting.

**Legitimate?** The manifestation of a thought or belief (this means acting on a thought or belief) can be restricted for reasons such as public safety, the protection of public order, health or morals, or for the protection of the rights and freedoms of others. The staff stopped Luke from playing the videos in the common room to try and protect the rights of other residents who don't want to be exposed to the content.

**Proportionate?** The staff have not stopped Luke from watching the videos altogether or stopped him from watching any videos in the common room. He can watch the videos he wants in his room, and he can watch other videos in the common room. The staff seem to have chosen the least restrictive option possible, so this would be a justifiable interference with Luke's rights.



## Rights in Action: Munira's Story

Munira is a practicing Muslim and prays five times a day. However, staff said that everyone had to follow the same schedule between 9am and 6pm and that it would be too complicated to change it, so Munira cannot pray during the day. They told her she could just pray at night-time before she goes to bed.

Munira's right to hold religious beliefs is absolute, so cannot be interfered with in any way. Munira's right to manifest that belief can only be limited if it is lawful, legitimate and proportionate to do so.

**Lawful?** Under the Mental Health Act, staff can create a hospital routine that will support a patient's care and treatment. However, these should be looked at individually as not everyone's needs will be the same.

**Legitimate?** Staff have stopped Munira from manifesting her belief through prayer because they think it would be too complicated to change her schedule, which is not a valid reason.

**Proportionate?** Staff are using a blanket schedule for everyone, so they have not considered what the least restrictive option would be for Munira. They haven't talked to Munira about what would be best for her or how prayer times could be accommodated in her day, so this is not a justified interference with Munira's rights.



## Article 10: The Right to Freedom of Expression

This right is the freedom for you to express yourself. It means that you can speak, be heard and can participate in political, artistic and social life. It includes the “right to know” which means that you have the right to look for and receive information from others.

**This right may be at risk within the hospital ward, for example:**

- If you don't have the opportunity to express concerns or opinions in community groups.
- If you don't have the freedom to express yourself using writing, art, or any other media.
- If you cannot receive information from others, including magazines, newspapers.
- If you are not allowed access to social media.
- If you are prevented from expressing unpopular opinions you may have.

**What do staff have to do about this right?**

- Allow you to express yourself unless it is harmful.
- Not restrict access to media unless truly necessary for your recovery.

This right is non-absolute, which means it can only be restricted if it is lawful, legitimate and proportionate.

Public bodies may restrict this right if expression may be harmful to others, for example:

- stopping you discussing triggering topics openly on the ward.
- stopping you discussing topics that may have had a traumatic effect.



### Rights in Action: Jade's Story

Jade was an inpatient under Section 2. She was out on leave with her parents and picked up a newspaper at the shop before returning to the ward as she was interested in politics and current affairs.

When she got back to the ward the staff told her it was against policy for inpatients to have newspapers because it could cause issues with other patients. Jade felt as if she was being restricted from her right to expression and to accessing the news.

**Lawful?** Under the Mental Health Act, staff can create an environment that is suitable for young patients.

**Legitimate?** Staff are allowed to balance Jade's right to freedom of expression with other patients' rights.

**Proportionate?** The staff seem to have applied a blanket policy here which does not take into account Jade's individual circumstances or any alternative options. It therefore is not a proportionate restriction. Staff could, for example, have told Jade to keep the newspaper out of common areas instead.



### Rights in Action: Emma's Story

Emma was writing in her diary. A staff member peered over her shoulder, and commented that the things she was writing about were inappropriate and disturbing, threatening to confiscate her diary. This was Emma's way of expressing herself and threatening to take away her diary limited her freedom of expression.

**Lawful?** The Mental Health Act Code of Practice says staff can use lockable facilities to store items which may pose a risk to the patient or others but Emma's journal does not seem to pose a risk.

**Legitimate?** The threat to take away Emma's diary is not to protect Emma but instead because the staff member believe she is expressing herself in an inappropriate way. This is not a good reason.

**Proportionate?** The risk to Emma's freedom of expression seems to be greater than the risk of harm posed by the journal, so this restriction would not be proportionate.



## Rights in Action: Eddie's Story

On Eddie's ward, they can watch TV, listen to the radio, read magazines and use the internet. One day, Eddie wakes up and is told that there would be a complete media ban across the ward for the next few days. Eddie asks why but is just told "it's for your own good". This makes Eddie feel very distressed as watching TV and using the internet was Eddie's way of keeping in touch with the outside world. Without this, Eddie feels isolated and anxious. This is impacting Eddie's Article 10 right to receive information. Eddie also feels distressed that staff are further controlling what he can or can't do on the ward and disrupting his regime. A few months later, Eddie finds out that the media ban happened because there was an investigative TV programme about abuse in inpatients settings which staff did not want inpatients to know about.

**Lawful?** Under the Mental Health Act Code of Practice, blanket bans should not be used unless necessary for patient safety, so this restriction was not lawful.

**Legitimate?** The ban was put in place because the staff do not want patients to watch the programme about abuse in inpatient settings. This might be a legitimate reason if staff can show that watching the programme would be harmful for Eddie but they have not assessed this; they have applied the ban to everyone. This means they have not shown there is a legitimate reason.

**Proportionate?** As this is a blanket restriction, Eddie's individual needs have not been considered so the media ban was not proportionate.



## Article 14: The Right to be Free from Discrimination

This right protects you from being treated worse than others for any reason, like disability or race, or for more than one reason, like being a young, black, disabled woman.

Staff in public services can only treat you differently if this is to stop you from being treated worse.

This right is used by joining it onto another right, rather than on its own. For example, your right to life or right to liberty cannot be restricted on the basis of your race or disability.

**This right may be at risk within the hospital ward, for example:**

- If a doctor decides not to treat your physical health problem because you have mental health issues or a learning disability.
- If you are being bullied.
- If a health or care professional decides you should live somewhere, like a care home or a mental health unit, just because of your disability or age.
- If you are not listened to or believed about issues you are having due to your disability, race or another characteristic.
- If you are restrained or secluded due to your disability, race or another characteristic.

**What do staff have to do about this right?**

- Not treat you any worse than others for any reason, except if treating you differently will have a positive impact on your rights.
- Not treat you any worse as a way of changing behaviours that are due to your disability, race, religion etc.
- Investigate if you are being discriminated against.

The right to be free from discrimination can sometimes be restricted. Staff in public services can treat people differently as long as they can show that it is right and fair for everyone. You can talk to staff in a public body about what they decided or did. You can ask them to tell you how this was right and fair for everyone. If you think changes could be made or that you have been individually discriminated against, then you can tell staff in a public body.



### Rights in Action: Jack's Story

Jack is a black autistic man. He has been admitted to a mental health unit under a Section 2. One morning he is talking to another young person in a communal area and the staff believe he is being aggressive as he is raising his voice slightly and stimming. They immediately use restrictive practice on him rather than asking him or the other young person what is going on.

This is against Article 14, the right to be free from discrimination, in relation to Article 3, the right to be free from torture or inhumane and degrading treatment because the restraint occurred due to him being Black and autistic, and this was a distressing situation.

Seni's Law, or the Mental Health Units (Use of Force) Act, also discusses reduction of force particularly against Black men. An investigation into hospital practice showed that black men were 3 times more likely to be restrained and that this was due to discriminatory attitudes based on race.



### Rights in Action: Sophie's Story

Sophie has been an inpatient for the last 5 months. While in hospital, she transitioned from male to female. Sophie has changed her name and the clothes that she wears. She is coming to terms with her gender identity and wants to wear earrings and rings, like the other girls on the ward. Staff tell Sophie that her wearing jewellery is not appropriate and so she is not allowed. Sophie is so distressed by this that she begins self-harming.

This is against Sophie's Article 8 right to autonomy to choose how to express herself. Sophie is being treated differently and not being allowed to wear jewellery because she is transgender. This is not fair for Sophie and so would be a breach of her Article 14 right to be free from discrimination. The decision was not based on an individual risk assessment for Sophie but instead on what staff on the ward deemed as appropriate.



## Article 1, Protocol 1: The Right to Peaceful Enjoyment of Possessions

This right means we should all be able to enjoy things that belong to us without staff in public services trying to control them or take them away. Possessions means things that belong to us, such as mobile phones, money, or anything else you might own.

**This right may be at risk within the hospital ward, for example:**

- If your personal items are taken on arrival to a mental health hospital but you are not told why.
- If your personal items are taken because of a blanket hospital policy, not because you are at risk.
- If your personal items are locked away and you don't know how to access them, or you are told you cannot access them.
- If you change rooms or hospital and your personal items are lost.
- If someone moves your possessions around or uses them without telling you first.
- If your personal items are taken as a method of punishment.

**What do staff have to do about this right?**

- Individually risk assess you before taking your personal items.
- Support you to access items under supervision where appropriate.
- Tell you when, where and why items are being taken from you.
- Never use taking your belongings as a form of punishment.
- If your belongings have to be taken away from you, make sure that they are stored in a safe place and are not lost or given to someone else.

**Examples of alternatives to taking away items:**

- Individually risk assessing people for access to items rather than putting blanket bans in place.
- Allowing access to items under supervision or in certain areas of the hospital.
- Providing alternative options, such as a mobile phone without access to the internet instead of not allowing any phone access.

This right is non-absolute, so it can be restricted, but only if it is lawful, legitimate and proportionate.



## Rights in Action: Jason's Story

Jason is a 16-year-old inpatient. Upon arrival to hospital, Jason had his mobile phone confiscated by staff. He was told that this needed to be taken away during his stay until discharge. Jason did not agree to this and asked medical staff why his belongings would be removed. The staff told Jason that it was “hospital ward policy” for inpatients to not have access to their phones, unless in cases of emergency for “safety” reasons.

Jason told staff that he had a right to peaceful enjoyment of possessions and that to take his phone away it had to be an individual decision which needed to be lawful, legitimate and proportionate for Jason.

**Lawful?** The Mental Health Act Code of Practice says staff can use lockable facilities to store items which may pose a risk to the patient or others but the staff have not assessed whether Jason's phone is a risk.

**Legitimate?** There was no legitimate aim as staff had not done an individual risk assessment that Jason having his phone would cause harm to him or others.

**Proportionate?** It was also not the least restrictive option as his phone had been taken away from him on arrival and nothing else had been considered.

Blanket policies for these reasons are rarely human rights compliant as they do not consider the circumstances of individuals



## Rights in Action: Peter's Story (Parent's Perspective)

Peter, Debbie's son, is 17 and an inpatient. For Christmas, Debbie bought him a Nintendo Switch. When he was moved wards, the charger and controller for the game console was lost. Staff said that they had removed the charger but no longer knew where it was. Peter was very upset as this meant he could no longer use his Nintendo Switch. Debbie bought her son a new charger.

When Peter was on leave, he bought some new games for his Switch which were rated 16+. Debbie also bought him some new clothes. When he got back on the ward, Peter was told that he could not play the games as they were not age appropriate for other people on the ward.

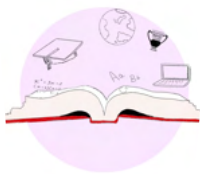
Staff did not carry out an individual risk assessment or update Peter's care plan. Peter is very unhappy about this and doesn't understand why he can't access age appropriate material. This really distressed Peter and to control his behaviour, staff restrained him. This increased Peter's distress.

Debbie comes to visit Peter when she hears about the incident. When she arrives Peter is dressed in clothes that she does not recognise and which are too small and look unclean. Debbie goes to look for the clothes that she bought him and cannot find them in Peter's belongings. She later sees another inpatient wearing a t-shirt she bought her son. She asks staff why her son is wearing clothes that aren't his and is told "we couldn't find his clothes this morning so we found him something to wear from the lost property box". Debbie is very upset about this as she went to a lot of effort finding clothes that her son would like and would meet his sensory needs.

**Lawful?** Under the Mental Health Act, staff can create an environment that is suitable for young patients. but the games are age-appropriate for Peter and his clothes were not a risk.

**Legitimate?** There was no legitimate aim as staff had not done an individual risk assessment on the impact of the games on Peter and the clothes were switched simply because the staff couldn't find them.

**Proportionate?** The restriction is not proportionate as staff have not properly considered Peter's needs.



## Article 2, Protocol 1: The Right to Education

The government has a duty to provide access to education for all children (under 18) in the UK. Even if you are ill and are in hospital receiving treatment, this doesn't mean you can be denied the opportunity to learn. In the UK, this means being provided with the opportunity to access higher education (University). If you have a learning disability or any other learning challenges, you should have access to a school or facility that provides the support necessary for you to learn (Article 14, Right to be free from discrimination).

**This right may be at risk within the hospital ward, for example:**

- If you are not able to attend school, and there are no provisions for you to learn. For example, you don't have any leave from the ward and there aren't any resources for you to learn on the ward.
- If religious and other beliefs and principles of you or your parents are not thought about in your education.
- If there aren't any provisions on the ward or the hospital school for you to obtain qualifications such as GCSEs or A-Levels.

**What do staff have to do about this right?**

- Not try to stop you from accessing education, unless it is necessary, and they can show that this is the case.
- Make sure that you can access primary, secondary, and higher education.
- Take 'reasonable and appropriate' steps to protect your right to education.

This right is non-absolute, so it can be restricted, but only if it is lawful, legitimate and proportionate.



### Rights in Action: Evie's Story (Good Practice)

Evie is a 17-year-old girl who is detained on a CAMHS ward under Section 3 of the Mental Health Act. She has ADHD and is autistic. Evie has had all her leave taken away due to several attempts to abscond, as staff are worried about her safety if she tries to abscond again.



### Rights in Action: Evie's Story (continued)

She therefore cannot attend the hospital school next door. She is bored on the ward, and misses school as she really enjoys maths. She is also concerned as she was working towards taking A level maths before being admitted, and due to her ADHD struggles to stay focused without prompts from a teacher. She expresses her concerns to staff on the ward, and they arrange for one of the teachers to come onto the ward and use a communal areas to do maths with Evie. This greatly relieves Evie as she is less worried about falling behind.

**Lawful?** Under the Mental Health Act, doctors can revoke leave for Evie's safety.

**Legitimate?** Staff are worried about Evie's safety, which is a good reason.

**Proportionate?** Staff have provided an alternative way for Evie to access education, which is a proportionate response.



### Rights in Action: Kim's Story

Kim is a 15-year-old inpatient on a CAMHS ward. They have an eating disorder and are currently undergoing treatment. School is really important to Kim and is a distraction from life on the ward. One day, Kim leaves a teaspoon of rice on their plate. Because of this, staff take away all of their leave and say that they cannot leave the ward for the foreseeable future. Kim's school is next door in a different building. Because their leave has been taken away, Kim is not allowed to go to school. No other provisions are put in place for Kim to receive an education on the ward.

**Lawful?** Under the Mental Health Act, doctors can revoke leave if necessary for health and safety or the protection of others, but that does not seem to be the case here, so the restriction is not lawful.

**Legitimate?** The hospital is restricting Kim's access to school as a way of modifying their behaviour. This is not a legitimate reason.

**Proportionate?** The disruption to Kim's education is causing them more harm than the initial behaviour that the staff were trying to change (not finishing their dinner). The interference is not proportionate.



## Blanket Restrictions

Blanket restrictions are general rules or policies that apply to everyone who enters the ward, regardless of personal circumstances.

**Examples include:**

- Confiscating your belongings when you enter the ward.
- Having set times during which everyone on the ward can access facilities, go to their bedrooms or any other areas.
- Having strict routines that all young people must adhere to.

Blanket restrictions are almost never human rights respecting because they will rarely pass the proportionality aspect of the three-stage test. For a restriction to be proportionate, it must be the least restrictive of all options that could be enforced to protect you and others.

Blanket rules are created in order to include all young people's risks and behaviours, and most often should not be enforced on every individual. Without considering individual circumstances, it is highly unlikely that blanket bans are really the least restrictive.

Instead of imposing blanket bans, staff should undertake individual risk assessments and formulate care plans. This approach would ensure that each young person's risks are managed, and not everyone is limited by many rules.



### Rights in Action: Rani's Story (FAIR model)

Rani was a 15-year-old inpatient on an acute CAMHS unit. She is autistic and several of the items she used for sensory regulation were taken away from her due to blanket bans, like her headphones and phone to play music, and fidget toys that contain metal or other materials.

Rani was told she couldn't have these as they were a risk to other young people on the ward, even though they were not a risk to Rani herself. This confused her and distressed her, meaning she found it much harder to engage in therapies and take her medications. She started to have meltdowns on the ward which also impacted other patients, particularly when there were alarms going off.



## Rights in Action: Rani's Story (continued)

### Facts.

Rani's sensory items have been taken away from her because of a blanket ban on the ward. This is having a negative impact on Rani and is making it harder for her to engage in her treatment plan.

### Analysis.

Rani's right to peaceful enjoyment of possessions (Article 1, Protocol 1) is at risk because Rani has not got access to her sensory items. Rani's Article 8 right to wellbeing is also at risk because of the negative impact this is having on her mental health. Both of these rights are non-absolute and so can only be restricted if it is lawful, legitimate and proportionate.

**Lawful?** The measure could potentially be lawful under the Mental Health Act.

**Legitimate?** If the measure was to protect Rani's health and wellbeing, it would be a legitimate reason. However, this is a blanket policy so the individual reason or impact on Rani has not been considered so it would not be legitimate.

**Proportionate?** This was not a proportionate response. Rather than simply applying a general ward policy and the ward should do a thorough, individualised risk assessment regarding what level of risk items would pose to Rani.

### Identify.

For Rani, an individual risk assessment needs to be carried out and the staff on the ward are responsible for doing this.

### Record and review.

Rani's objections to this policy should be recorded and it should be reviewed on an individual basis.

The blanket ban was not a proportional response as Rani had not been risk assessed as an individual. Although it might be seen as legitimate due to other patient risk, no alternatives had been considered such as Rani having the items only in her room or under supervision. Blanket policies are not usually human rights compliant as they do not look at the individuals. Eventually, Rani was allowed some of the items in her room for short periods of time.

# A flowchart to help you raise a human rights issue

 **What is the issue?**

Is an absolute right (e.g. the right to be free from inhuman treatment) at risk?

Yes

No

Is a non-absolute right (e.g. the right to liberty or family life) at risk?

Yes

Is the restriction lawful, legitimate and proportionate?

No

Raise it informally with the staff. Did they fix the problem?

No

Raise it formally e.g. write a letter to the hospital. Did they fix the problem?

No

Escalate it to next-level management or ask for a meeting. Did they fix the problem?

No

 **TAKE ACTION**

- Make a complaint with PALS
- Contact the Ombudsman
- Contact the CQC
- Seek legal advice

## Glossary

### Abuse

This is when you are treated badly. It can include not being cared for properly, being physically harmed or someone hurting your feelings.

### CAMHS

This stands for Children's & Young People's Mental Health Services. These can be inpatient or community services.

### Care Quality Commission (CQC)

The independent body that monitors health and social care in England. If you are concerned about your care you can raise it with the CQC. This includes if you are concerned about how the Mental Health Act has been used: [cqc.org.uk/contact-us/how-complain/complain-about-use-mental-health-act](https://www.cqc.org.uk/contact-us/how-complain/complain-about-use-mental-health-act)

If you have concerns about your care, you should be able to raise them with the hospital.

### Censorship

This is when you are prevented from saying something or accessing information because someone decides that the information or opinion would go against what the rest of society would agree with.

### Deprivation of liberty

This means that you are not free to leave somewhere and you are under some form of control or supervision. If you are an inpatient, you will be deprived of your liberty. Your liberty may also be deprived when you are on the ward, see [Article 5](#) for more information.

### Independent Mental Health Advocate

This is an independent person who supports you to have your voice heard and understand your rights.

### Mental Health Act (MHA)

This is the law that tells people with a mental health disorder what their rights are and how they can be treated.

### Mental Health Tribunal

This is an independent panel of people who can make a decision about whether you should remain in hospital or not.

## Neglect

This is when people who are there to help you do not look after you properly.

## Patient and Liaison Service (PALS)

This is a confidential NHS service that can give advice, support and information to patients and their families.

## Restrictive Practice

This is when you are made to do something you don't want to do, or you are stopped from doing something you want to do. It can take a range of forms.

- **Chemical restraint:** using medication to restrict your movement, for example medication which has a sedative effect.
- **Mechanical restraint:** using equipment to restrain your movement, for example using a belt to stop someone getting out of their chair or being put in restrictive clothing.
- **Physical restraint:** being physically held or moved by members of staff. Also includes staff blocking your movement to stop you leaving.
- **Psychological restraint:** can involve being told constantly by staff not to do something, or that what you want to do is not allowed or is too dangerous. It may involve restricting your right to make choices about your life, for example what time you want to go to bed.

## Seclusion

This is when you are taken away from other patients and put in an area which you are not allowed to leave.

## Section

This is when you are made to stay in hospital for assessment or treatment under the Mental Health Act. This is sometimes called being detained. You can read more about this process here: [mind.org.uk/information-support/for-children-and-young-people/hospital/being-sectioned/](https://www.mind.org.uk/information-support/for-children-and-young-people/hospital/being-sectioned/)

## Section 2

This means you can be kept in hospital for up to 28 days while staff assess your condition and what treatment you may need.

## Section 3

This means you can be kept in hospital for treatment.

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This resource 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 resource may have changed since it was published.

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