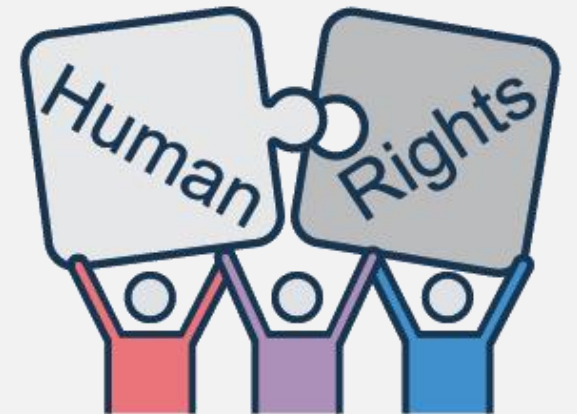




The session will start at 10am.

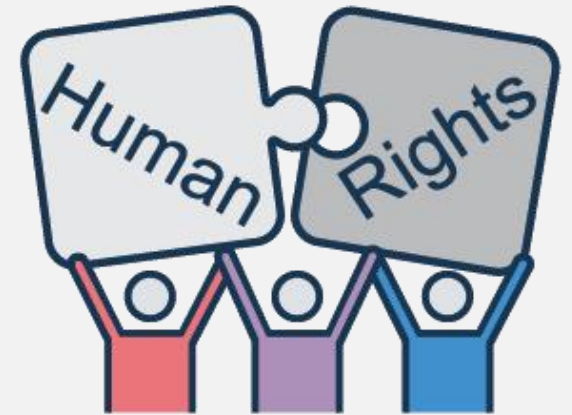




Carers and Human Rights

The session will start at 10am

Carlyn Miller
Policy and Programmes Manager
British Institute of Human Rights



About BIHR



PEOPLE: with information on human rights to change own lives. Knowledge is power!



COMMUNITIES: to address social justice issues using human rights.



SYSTEMS: to increase the accountability of public bodies to respect and protect human rights in everything they do, every day.



POLICY: Sharing the stories of people whose rights are risked to help change policy that affects them and their families.

How today will work



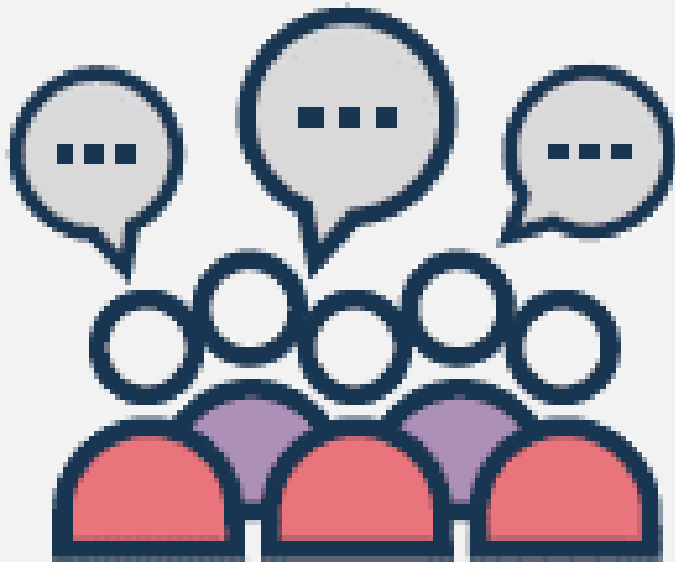
- My presentation will last about 50 minutes with activities throughout.
- We will be using the chat bar but if you don't feel able, let me know and I will come to you individually.
- Take a break if you need to.
- We will also pause for questions and discussion at key points throughout.
- The final 30 mins will be led by Carers Scotland.

Self care



- Today we will talk about how human rights apply to real life.
- This may make you feel upset or anxious; please take a moment and leave the session if you need to.
- We do not give legal advice or do casework.
- If you or someone you support is at risk of immediate serious harm you should contact the police on 999. For non-emergency situations you can contact them on 111.

Introductions



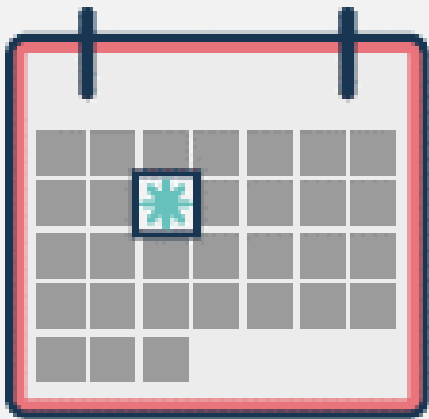
Tell me in the chat bar

- Your name
- Where you are from/ live
- Something that made you happy this week

For example: “Carlyn, Stewarton, Autumn is coming ”

If you aren't able to use the chat bar, let me know and I will come to you directly.

Today



- ✓ Understand how human rights are protected in Scotland-legally.
- ✓ Know more about how services need to be respecting and protecting carer's human rights.
- ✓ Real life examples of human rights – specifically for people in a caring role.

What do the words “human rights” make you think about?



Type in the chat bar if you can:

- ✓ A word
- ✓ A feeling
- ✓ A phrase
- ✓ A song
- ✓ A person

What are human rights?



**Treated with
dignity**



**Treated with
respect**



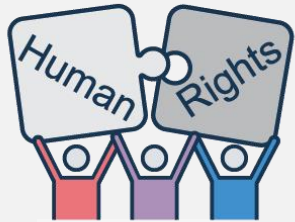
**Treated
fairly**



**Listened to and
have a say over
their lives**

BUT human rights are more than values, upholding human rights is the law.

Who has human rights?



Every person has the same human rights. Carers have the same rights as the people they care about.



Human rights are not gifts from the government or rewards that you earn, they belong to you.



Sometimes rights may be limited but there is a test that public bodies have to meet. They can never be taken away.



Fitting human rights laws together



Council of Europe (not EU!)
formed after WW II, established ECHR

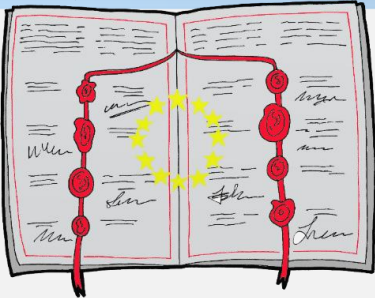
Universal Declaration of Human Rights 1948

European Convention on Human Rights 1950

Human Rights Act 1998

The Scotland Act 1998

Agreed internationally at the UN after WW II



OUR LAW HERE IN THE UK

SETS RULES FOR SCOTTISH MINISTERS

3 ways our Human Rights Act works



1. The Human Rights Act puts a legal duty on public authorities to respect and protect human rights across their actions, decisions, policies, services, etc.



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



3. If 1 and 2 are not complied with people can now bring legal cases in the UK courts

The duty on public authorities

Section 6 of the Human Rights Act states, “It is unlawful for a public authority to act in a way which is incompatible with a Convention right.”

A public authority is defined as;

- (3) In this section “public authority” includes—
 - (a) a court or tribunal, and
 - (b) any person certain of whose functions are functions of a public nature,

What is a public authority?

Pure public authorities	Functional or hybrid public authorities
“public authorities” including courts and tribunals. And ...	Private or charitable bodies performing “public functions” For example ...



Private Companies

Charities

Not for profits

HRA 1: The legal duty on public bodies (and their officials)



RESPECT people's human rights. Not restrict them or try to breach them.



PROTECT people's human rights. Step in and take positive action to protect people from harm, usually called safeguarding.



FULFILL people's human rights. Investigate when things have gone wrong, (and try to stop it from happening again).

HRA 2: Foundation Law

- The Human Rights Act operates as a foundation law
- All other legislation should be compatible with human rights or 'human rights compliant'
- This includes the Coronavirus (Scotland) Act 2020 & the Coronavirus Act (2020).



When should staff in public services respect and protect human rights?



- When making that decisions that affect people and their family's rights and lives.
- When making rules about who can access a service, includes services for carers, e.g. respite services.
- When they are aware that a carer's right might be at stake because of a change of care and support.

ALL THE TIME - ALL DECISIONS

The human rights legal duty means people can



Speak up because we all have human rights which the law says should be respected and protected- that means carers too!



Talk to services about whether they are meeting their legal duty to respect and protect people's human rights- that means carers too!



Work with services to find better solutions without the need to go to court or use a lawyer- that means carers too!

Any questions?





Coronavirus

The British Institute of **Human Rights**

bihr.org.uk



The Coronavirus Act and the Coronavirus (Scotland) Act allow for some changes to health and social care legislation for people and carers. There have been changes to:

Social Work (Scotland) Act 1968, Social Care (Self-directed Support)(Scotland) Act 2013, Carers (Scotland) Act 2016, Children (Scotland) Act 1995

The planning, assessment and delivery of care services MUST still be compatible with human rights.

Scottish Government Guidance makes this clear:

“When using these provisions, all decisions made on an individual's social care needs should be considered alongside their individual wellbeing and fundamental human rights.” SG guidance.

Changes to Carers (Scotland) Act 2016

The following duties on LAs can be suspended:

- The duty to prepare Adult Care and Support Plans
- The duty to prepare young carer statements

Local Authorities only have this option to suspend these duties when it is not practical to comply with them or it would cause unnecessary delay in the provision of support.

The general duty to provide support to carers remains.



Things to remember



- ✓ Public bodies can only make these changes when it is not practical to comply with them or it would cause unnecessary delay in the provision of support.
- ✓ The general duty to provide support remains.
- ✓ All public officials have a legal duty to protect, respect and fulfil human rights. This includes involving you in decisions that affect your care and support.



www.bihr.org.uk/human-rights-and-coronavirus-hub

Human Rights and Coronavirus Hub

<h3>Human Rights & Coronavirus</h3> <p>FIND OUT MORE ABOUT WHY RESPECTING AND PROTECTING HUMAN RIGHTS IS VITAL DURING THIS TIME (AND AT ALL TIMES)</p>	<h3>Changes to Law and Policy</h3> <p>FIND OUT MORE ABOUT THE CHANGES TO LAW AND POLICY INTRODUCED AS PART OF THE RESPONSE TO CORONAVIRUS WHICH WE BELIEVE RISKS PEOPLE'S HUMAN RIGHTS</p>
<h3>Our Work with People</h3> <p>FIND OUT MORE ABOUT OUR SESSIONS AND RESOURCES FOR PEOPLE, FAMILIES AND CARERS WHO INTERACT WITH PUBLIC SERVICES, HELPING THEM ADVOCATE FOR THEIR HUMAN RIGHTS DURING THIS TIME</p>	<h3>Our Work with Communities</h3> <p>FIND OUT ABOUT THE COMMUNITIES, GROUPS AND ORGANISATIONS WE ARE PARTNERING WITH TO ADVOCATE FOR, AND CHALLENGE RISKS TO, HUMAN RIGHTS AT THIS TIME</p>
<h3>Our Work with Systems</h3> <p>FIND OUT MORE ABOUT OUR SESSIONS AND RESOURCES FOR PEOPLE WITH LEGAL DUTIES TO RESPECT AND PROTECT HUMAN RIGHTS AND UPHOLDING RIGHTS DURING THIS TIME (NATIONAL, LOCAL AND PUBLIC AUTHORITIES AND SERVICES, INCLUDING THOSE DELIVERED BY CHARITIES OR COMPANIES)</p>	<h3>Our Policy Work</h3> <p>FIND OUT MORE ABOUT BIHR'S COMMUNITIES OF PRACTICE (A PLATFORM FOR PEOPLE TO BE HEARD ON HUMAN RIGHTS ISSUES AFFECTING YOUR LIFE AND WORK), SHARING THIS WITH REVIEWS INTO THE CORONAVIRUS RESPONSE, AND BIHR'S VIEWS ON KEY ISSUES FOR PEOPLE'S HUMAN RIGHTS IN LAW, POLICY AND PRACTICE</p>



Explainers on legal changes in Scotland



Equality Act: No Change

The public sector equality duty means public authorities have to consider or think about how their policies or decisions affect people with one of the following **9** protected characteristics:

- ✓ Age
- ✓ Disability
- ✓ Gender reassignment
- ✓ Pregnancy and maternity
- ✓ Marriage and civil partnership
- ✓ Race
- ✓ Religion or belief
- ✓ Sex
- ✓ Sexual orientation

Remember the Human Rights Act (Article 14) also protects people from discrimination on these grounds or “any other status” when linked to their human rights.

Sharon Coleman

Sharon Coleman's son Oliver was born with a rare condition affecting his breathing and also has a hearing impairment. Ms Coleman brought a case claiming that she was forced to resign from her job as a legal secretary because she had been refused flexible working which other employees were granted. Ms Coleman argued that she was targeted because she has a child with a disability and was denied flexible work arrangements offered to her colleagues without disabled children. She won and the court ruled that discrimination by association with a disabled person was unlawful.

Coleman v Attridge Law & Steve Law (2008)



Any questions?



How many rights are in the Human Rights Act and can you name any?



Type out your guesses in the chat if you can let me know and I'll come to you directly!



Right to life
(Article 2)



Right not to be tortured or
treated in an inhuman or
degrading way
(Article 3)



Right to be free from
slavery or forced labour
(Article 4)



Right to liberty
(Article 5)



Right to a fair trial
(Article 6)



Right not to be punished for
something which wasn't against
the law when you did it
(Article 7)



Right to respect for private
and family life, home and
correspondence
(Article 8)



Right to freedom
of thought, conscience
and religion
(Article 9)



Right to freedom
of expression
(Article 10)



Right to freedom of
assembly and association
(Article 11)



Right to marry
and found a family
(Article 12)



Right not to be discriminated
against in relation to any
of the human rights listed here
(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)



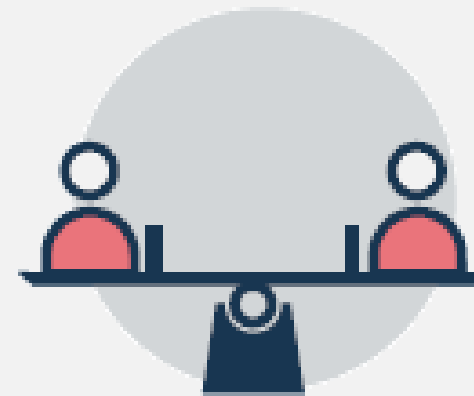
Abolition of the
death penalty
(Article 1, Protocol 13)

Human rights: absolute and non-absolute

Absolute rights: Can never be restricted!



Non-absolute rights: 3 stage test



The 3 Stage Test



1. **Lawful:** There must be a law which allows public officials to take that action.

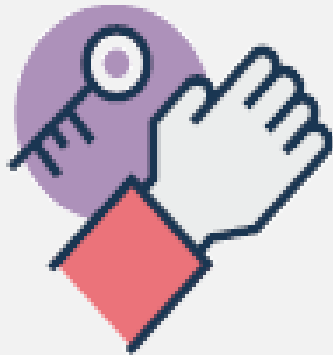


2. **Legitimate:** There must be a good reason (for example public safety or protecting the rights of other people).



3. **Proportionate:** Public officials, must have thought about other things they could do, but there is no other way to protect you or other people.

Key rights for today:

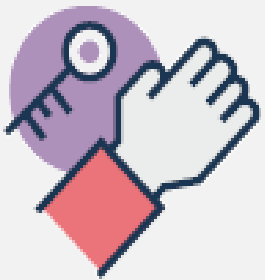


Right not to be tortured or
treated in an inhuman or
degrading way
(Article 3)



Right to respect for private
and family life, home and
correspondence
(Article 8)

Right not to be tortured or treated in an inhuman or degrading way (Art. 3)

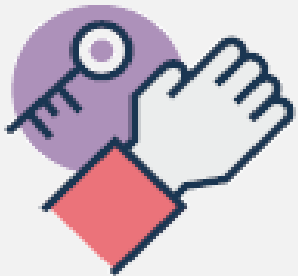


Right not to be tortured or treated in an inhuman or degrading way
(Article 3)

Protects people from being treated in a way which causes them serious mental or physical harm or humiliates them, including:

- ✓ Serious harm arising from a lack of care/support or self-neglect
- ✓ Severe abuse or ill-treatment by others (which could include practitioners, family members, carers)

When is treatment ‘inhuman or degrading?’



This is treatment which:

- ✓ Makes you very frightened or worried
- ✓ Causes you a lot of pain
- ✓ Makes you feel worthless or hopeless

Right not to be tortured or treated in an inhuman or degrading way
(Article 3)

Example: A lack of support for a carer who suffers severe physical or mental illness as a result of caring (when the authorities know about this).

Khadija

Khadija cares for her daughter after the council withdrew the two care staff who had previously provided support. Khadija was awaiting surgery for a serious back problem and had spoken to the council about an adapted shower but a year had passed since she was put on the waiting list. Continuing to help her daughter to shower put Khadija at risk of permanent back damage. Khadija started reading about her human rights and challenged the council that leaving her at risk of permanent back damage could amount to inhuman and degrading treatment. The council soon installed the shower within 3 weeks of Khadija raising her Article 3 rights.



Things to remember:

- ✓ What is inhuman and degrading differs from person to person.
- ✓ The coronavirus crisis might be having an impact on people's situation- **changes to care and support which would lead to inhuman or degrading treatment are not lawful.**
- ✓ Public officials must always consider how a decision might impact the person and those who care for them by thinking about things like your age, health, mental health, capacity, disability, gender...



Any questions?





Right to respect for private
and family life, home and
correspondence
(Article 8)

Right to respect for private & family life, home, and correspondence

Private life

- well-being
- autonomy
- participation in the community
- relationships with others
- confidentiality

Family life

- develop ordinary family relations
- ongoing contact if split up

Home

- not a right to housing
- about enjoyment of current home – this could include a care home or hospital ward

Correspondence

- uncensored communication with others
- letters and modern communications



When might this right be at risk?

Right to respect for private
and family life, home and
correspondence
(Article 8)

- If your local authority does not provide you with the proper support – for example, with adequate respite care and an appropriate carer’s assessment.
- Poor physical and mental health, as a result of not being able to access medical treatment or not being able to recover fully from medical treatment because of your caring responsibilities or as a result of the physical and mental consequences of caring.
- Loneliness and isolation, because caring means you may have few opportunities to participate in social life.
- Loss of privacy and family life, for example if a loved one or family member is moved into residential care against your wishes or theirs, or moved into a home far from where you live.



Dora & Simon

Dora had Alzheimer's and was blind. She was temporarily moved into a local nursing home after a fall, in which her husband Simon was also injured. Social Services decided Dora should be moved to a permanent care home but the home was too far for Simon and other family members to travel to see Dora. Simon contacted Counsel and Care. They helped Simon to challenge this decision using the argument that the local authority needed to consider his right to private and family life under the Human Rights Act. This helped Simon persuade Social Services to allow Dora to remain in the nursing home close to her family.

John

John's Mum had a stroke in 2014, which has affected her mobility and physical ability. John moved into her home to care for her. John is finding it harder and harder to cope as he has his own health needs, with arthritis and recently being diagnosed with cancer. He will need time to be able to have chemotherapy treatment.

John spoke to his local social work department to ask for help to provide support for his Mum whilst he has treatment. They provided an urgent assessment because John has cancer but have said that whilst his Mum does have needs, the cost to provide these at home is too much and that his Mum should move into a care home, possibly temporarily.

John explains that he only needs this temporarily and that neither he nor his mum want to live in a care home. The social worker says she understands but there is nothing in the budget for support like this for carers but that if the treatment does end up making John too unwell to provide care, that they *might* be able to provide a two or three home care visits a day but can't confirm this until when and if John does become too unwell to care. John is considering delaying his treatment until this is sorted out.

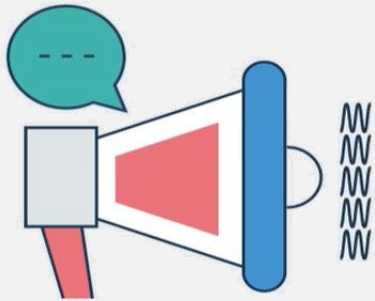


FAIR model for ensuring human rights



- F** Facts- What is the situation of each individual? What would be the impact of the decision be on John? (John and his mum must be involved in these discussions)
- A** Analysis of the rights at stake- After discussions with the person, discern what rights are potentially at stake, are these absolute or non-absolute? Are there equality issues?
- I** Identify changes necessary and who is responsible for making these.
- R** Record and review.

Raising a human rights issue



1. Use your human rights knowledge to decide which rights are involved. Are they absolute or non-absolute?

2. If they are absolute rights raise this immediately with the public service using human rights language.

3. If they are non-absolute, is the restriction **lawful, legitimate and proportionate?**

4. You could raise the issue formally: write a letter. Explain that you know there is a legal duty which is not being met.

5. Step up the intervention (e.g. make a complaint, contact a regulator, contact a lawyer)



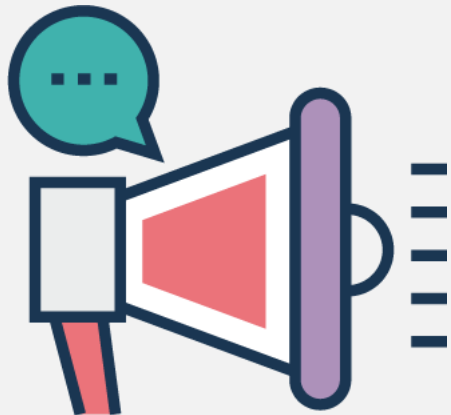
Top Tips:



- ✓ Record the impact that the decision is having on you or the person you support.
- ✓ Think about the response you might get and plan ahead, can you suggest an alternative?
- ✓ If compromise possible- what's your minimum?
- ✓ Use human rights language.
- ✓ Remember, if the situation is urgent, raise the issue immediately!
- ✓ Have a look at our advocacy guide here;
<https://www.bihar.org.uk/resources-for-individuals>

NEW! Communities of Practice

An online platform where you can:



- Access our resources and information and find out about further training. We will also be holding Q&A sessions with a BIHR staff member.
- Discuss and create change with people in a similar situation to you, whether that is about your life or your work.
- Share your expert experience with us. This will inform what we tell those in positions of power about the human rights issues that impact you.

Get involved: <https://www.bihar.org.uk/bihrs-communities-of-practice>

Have your say

We are still gathering evidence to share with the Equalities and Human Rights Committee at the Scottish Parliament:

<https://www.surveymonkey.co.uk/r/YHS2YW6>



A Final Thought



Eleanor Roosevelt
First Chairperson of
United Nations
Commission on Human
Rights

“ Where do universal human rights begin? In small places, close to home - so close and so small that they cannot be seen on any maps of the world.

Yet they are the world of the individual person; the neighbourhood he lives in; the school or college he attends; the factory, farm, or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere.

Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world. ”

Any questions?

