

**Equality and
Human Rights
Commission**

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Ours to own

Understanding
human rights



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Introduction by Francesca Klug

Talking about human rights isn't always easy. Understanding how they work in practice can be harder still. There's a lot of information about human rights available from many different sources – from the government and the law courts to the media and voluntary organisations – but such information can often be contradictory, confusing, legalistic or simply not complete enough to give us what we need to make sense of what human rights are and how they work in action.

This guide is designed to look at what human rights mean in the context of everyday life, how they have affected real people and why they are therefore so important.

It aims to give you a clear explanation of what human rights are and how they relate to your life and the lives of everyone in Britain, plus some examples of human rights in practice that you might not be expecting. It also looks at some of the general criticisms that are made about human rights to see how accurate these are. At the end you'll find a list of organisations that can give you information about the history of human rights legislation or guidance on your legal rights.

Human rights aren't a new invention for Britain. They are as old as the Magna Carta, widely recognised as the first rights charter in the world. But over the last decade we haven't had a national organisation responsible for raising awareness and understanding of what human rights are – and perhaps as importantly, what they aren't.

The Equality and Human Rights Commission was set up in 2007 partly to fill that very gap. Our role is to make the case for human rights and why they matter to us all. That means explaining what they are and how they work in language we can all understand. It means showing how they can make a difference to our lives and how they set a framework for a just and fair society. And it means honestly acknowledging and examining why some people are critical of human rights.

This guide is just one of the things we're doing as part of our work on human rights. We hope you find it interesting, useful and occasionally even surprising.

A handwritten signature in black ink, appearing to read 'Laurence King', with a stylized flourish at the end.

Commissioner, Equality and Human Rights Commission

Imagine the following scenario...

Your parents, having lived together until well into their seventies, are now struggling to remain independent. One increasingly has to care for the other but as they both get older it's becoming too much for them to cope with.

Your local council says it can offer your father a place in the nearby council-run care home but there's no room for your mother. They are distraught at the prospect of being separated and you protest but the council says that's the best it can do and it has no legal obligation to keep them together.

It could happen to any of us, right?

Actually, thanks to a certain piece of legislation, such stories could be a thing of the past.

The rights in the Human Rights Act protect you in a number of ways you may not be aware of. The Act is different from other laws. Like bills of rights in democracies around the world, it sets the framework for other legislation and the enduring principles that should govern decisions in public life.

The rights in the Act mean that no one should treat you in an inhuman or degrading way, no matter what the situation. They give you the right to privacy and to enjoy your family life. They uphold the choices you make in many important areas, such as who to associate with or the freedom to express your beliefs. And because the rights in the Act specifically recognise that we are not just individuals, but live in a democratic society, both yours and other individuals' rights are balanced against the wider needs of the community you live in.

principles into practice 1

In 2005, Mr and Mrs D, both aged 89, were separated when Mr D needed residential and nursing care. Mrs D was told that she didn't qualify for a subsidised place in the council-run home and went to live with her son.

Human rights experts and older people's organisations pointed out that this was a breach of the couple's right to respect for their private and family life (Article 8), which is protected by the Human Rights Act.

Following publicity and a campaign by the family, Mrs D's needs were reassessed and Gloucestershire County Council offered her a subsidised place in the same care home as her husband.

What are human rights and where do they come from?



In 1948 a group of prominent men and women from all over the world came together to draft one of the most famous rights charters known today. The Universal Declaration of Human Rights is based on a simple idea – that we are all human and thus entitled to basic rights and freedoms. In the wake of the horrors of the Second World War it sought to prevent future atrocities and oppression by setting out the values that underline human dignity and equal worth.

Drawing on the basic precepts of all the major world religions, the Declaration was explicitly drafted to promote mutual respect and responsibilities, as well as to limit arbitrary state power over individuals. It has inspired all the human rights treaties and charters which have followed it.

Now the Human Rights Act sets out how human rights fit into British society and legislation. Its aim is to make the guiding principles behind human rights part of our law and part of how we treat each other.

In legal terms the Human Rights Act brings into effect the rights from the 1950 European Convention on Human Rights (which in fact was largely drafted by British lawyers and supported by British leaders like Winston Churchill). It brings human rights into Britain so that our own courts can deal with human rights issues and people don't have to go to the European courts to have their cases heard.

You might not realise it but human rights are nothing new. The first rights charter is widely recognised to be the 1215 Magna Carta and the first bill of rights was passed in Britain in 1689. The Convention drew from these historic documents and English common law but updated them for the twentieth century to reflect many of the values and standards in the Declaration.

Some people call human rights common sense. Others see them simply as good manners. They are based on five principles:

**Fairness.
Respect.
Equality.
Dignity.
Autonomy.**

Human rights were created to bring these principles to life by setting out a series of rights and freedoms that we are all entitled to as a result of our shared humanity.

At their most basic human rights are about how we treat each other. As a result they are particularly important for some of the more vulnerable or less powerful in our society, such as people in care, young children or people with learning difficulties.

principles into practice 2

N, a disabled 10 year-old girl, was admitted to hospital with a chest infection that developed into pneumonia. Against the wishes of the girl's mother, the hospital refused to ventilate her and placed a 'Do Not Resuscitate' order on her file. N was subsequently transferred to another hospital where she was put on a ventilator for two weeks and discharged three months later as her health had returned to normal.

The former Disability Rights Commission was already concerned that decisions by health professionals about the care of disabled people were sometimes influenced by their perceptions of the disabled person's quality of life. The DRC was granted permission to challenge the first hospital's decisions in court, using human rights arguments based on the right to life (Article 2) and the right not to be subjected to inhuman or degrading treatment (Article 3). The case was settled on confidential terms.

Who do human rights apply to?

Regardless of the way human rights are sometimes reported, they apply to everyone. They belong to each and every one of us and they apply close to home as well as abroad.



If you see a campaign for patients' rights, calls for greater scrutiny to prevent abuse in old people's homes or protests about the treatment of children with learning disabilities – you're seeing human rights in action.



principles into practice 3

Diane Blood found that she was unable to register her deceased husband as the father of her two children on their birth certificates. This was because they had been conceived by IVF treatment after their father had died. The Human Fertilisation and Embryology Act in place at the time contained rules that prevented a deceased father's name from being added to a child's birth certificate.

In 2003 Diane Blood successfully challenged the provisions in court and the Act was found to be incompatible with the Human Rights Act on the basis of the children's right to respect for family life under Article 8. As a result the law was amended and Diane was able to register her husband as the children's father.

How do human rights work?

By making public authorities accountable for their decisions, human rights can help to protect vulnerable individuals against public bodies such as government departments, hospitals, schools or local councils. They provide a consistent and fair method of weighing up situations to help tackle important social issues by finding the best solution for all involved. They also enable us to strike a balance between protecting individual rights and the rights of the wider community.

Some human rights are qualified and limited in certain circumstances where rights have to be balanced against wider concerns, such as security or the safety of others. The rights in the Human Rights Act put the onus on government to protect us from individuals and groups who would abuse our fundamental rights. You have the right to freedom of expression, for example, but that is limited if you endanger others by using your right irresponsibly – such as by inciting someone to harm someone else. A few rights are absolute: it is never justifiable to torture or enslave someone else.

Human rights work in practical and straightforward ways, bringing common sense into situations where bureaucratic procedures and systems lose sight of people and their individual needs.

You don't always need to take legal action to make human rights work – often simply knowing about your rights is enough to change a situation. In fact, the Human Rights Act was never intended to encourage more people to go to court. Its purpose is to prevent human rights abuses from taking place by encouraging public authorities to use human rights to help them do their job properly.

Human rights apply in a surprisingly broad range of contexts – they're not just about war and conflict. Sometimes human rights can offer you protection in a situation where you may not even realise that you need rights.

Human rights give you greater freedom to choose the kind of life you lead, acknowledging that people have different relationships and beliefs and enabling them to pursue what suits them without harming others. The Human Rights Act places obligations on public authorities to acknowledge those relationships where necessary and not to make assumptions about people's private lives. Examples of how this might work in practice have included official recognition of couples in same-sex partnerships as next of kin and the acknowledgement that individuals should make their own choices about who to involve in important decisions that affect them, as example 4 shows.

principles into practice 4

S was the same-sex partner of a woman with a mental health condition who had been detained as a patient. Liverpool Council refused to recognise S as being her partner's 'nearest relative'. Being someone's nearest relative is a statutory role with important responsibilities when it comes to making decisions about a patient's detention and treatment.

With heterosexual couples the wife or husband automatically qualifies for nearest relative status and couples living together qualify after a six-month period. For any other category of relationship the Mental Health Act states that people must have been living together for at least five years. S had only lived with her partner for three years. She argued that the right to respect for private and family life (Article 8) includes issues of sexual orientation, personal choice and identity.

Following her case, the definition of nearest relatives was found to be discriminatory and the court applied an identical qualifying period for all couples, regardless of their sexual orientation.

Are rights ever wrong?



There's no getting away from it: human rights attract a certain amount of criticism from many different sources. Some think that human rights should only apply to those who obey our laws or who are British citizens. Others see human rights as a problem for foreign dictatorships, nothing for us to concern ourselves about here. Many complain that human rights legislation puts our national security at risk and prevents us from enforcing law and order.

There will always be different viewpoints on an issue like human rights. But we can at least make sure we're all starting from an accurate basis. And that means checking whether some of the common assumptions and complaints about human rights have any merit, rather than taking them for granted.

‘Human rights are only good for criminals and lawyers: it’s political correctness gone mad’

We’ve all heard the scare stories about how human rights favour criminals over security, the dignity of victims and plain common sense. No wonder that for many of us the very concept seems questionable. But what happens if the source on which we base our beliefs about human rights turns out to be inaccurate?

The evidence shows that much reporting about human rights is not always factually correct. Sometimes cases are only covered at the start and outcomes are ignored. Mistaken or over-cautious public authorities may unwittingly give out incorrect information, leading to the Human Rights Act being treated as a scapegoat when things go wrong.



As a result there are some notorious popular myths in circulation. Here are just a few examples:

- A couple of years ago it was reported that a suspected car thief in Gloucester who bombarded police with bricks and tiles during a rooftop siege was given a Kentucky Fried Chicken takeaway meal by officers to ensure his 'well-being and human rights'. In fact, a police statement said that the food was simply part of their negotiation strategy.
- A police authority refused to publish photographs of convicted prisoners on the run in a high profile case. Some in the media wrongly interpreted this as being necessary in order not to breach the escaped convicts' human rights. In fact, the police decided against publication for operational reasons – and human rights legislation would not have prevented them from doing so.
- The serial killer Dennis Nilsen challenged a decision by the governor of Whitemoor prison to deny him access to pornographic material by arguing that the ban breached his human right of freedom of expression. The case failed at the very first hurdle: it never entered the judicial system at all, apart from to be thrown out. Of course human rights legislation would never legitimise his request for pornography.

Telling only half the story, or omitting elements if they don't suit a certain narrative, does us all a disservice.

‘Some people don’t deserve human rights’

A fundamental principle of human rights is that they are universal – they apply to every human being. They aren’t meant to be a reward for good behaviour but a framework for a just and fair society.

Their strength lies in the fact that although they can, and sometimes should, be limited to protect others from harm, they act as a safeguard against brutality or degradation. It has long been a principle of our democracy that people who are a danger to others should lose their liberty, but should never be tortured or lose their right to communicate with their family or lawyers.

We all benefit from knowing that we have human rights if we ever need to rely on them – but that means accepting that others are also entitled to them. Sometimes those others will be people who seem obviously deserving of rights, such as victims of crime, disabled people segregated by inaccessible facilities, children in care or elderly people in hospitals. But there are also people equally at risk but who are not always seen as equally



worthy, such as destitute asylum seekers, detained psychiatric patients or evicted Gypsies and Travellers.

Regardless of our particular circumstances, human rights are about acknowledging our shared humanity. That doesn't mean each of us has a license to do whatever we like or that our rights are more important than anyone else's. The Human Rights Act acknowledges that we all have rights and then gives us the means to balance these against each other and the greater good of society.

‘Human rights make us less safe’

Far from being out of control, human rights legislation in Britain is closely monitored and restricted. The rights of individuals have to be carefully weighed against wider community interests to make sure that they do not cause harm. That is why most laws that restrict individual rights to protect us from crime or public disorder have been found to comply with the Human Rights Act.

Did you know that the Act doesn’t apply directly between individuals – you cannot sue your neighbour for a breach of your human rights, however much you may wish to! Nor do private organisations come under its remit except in certain circumstances, such as where they provide services on behalf of a public authority.

The rights in the Act regulate the relationship between individuals and public authorities (like government departments, police services, hospitals and local councils) to protect you by making sure that such organisations use their powers responsibly. Some public bodies, such as the

police, are required to protect you from the life-threatening acts of others and they can be held liable in certain circumstances where they fail to do so.

Most of the rights in the Human Rights Act are subject to limitations to protect ‘public safety’ or ‘national security’. The balancing mechanisms it contains also help to prevent governments from abusing these limitations.

‘Human rights are an issue for other countries: abuses don’t happen here’

Most of us think that human rights are needed in other parts of the world, in situations of genocide, brutal dictatorships or starvation in developing countries – they don’t really apply here.

As you can see from the examples in this guide, human rights apply as much in Britain as anywhere else.

Human rights are about you. If you have children who go to school, if you have a relative in care, if you are detained by the police or if you need medical treatment – your human rights and those of your family may be directly affected.

principles into practice 5

Mr PL was a secondary school teacher who became obsessed with a 15 year-old pupil, A. Mr PL stalked A and made threats against him and his family. In 1988 Mr PL killed A's father and wounded A. He was convicted of manslaughter on grounds of diminished responsibility and was sentenced to indefinite detention in a secure mental hospital.

A's family had told the police several times about threats that Mr PL made against them in the months before the attack, but the police did not take any action to protect them. Despite having information that should have made clear the extent of the danger to the family, the police didn't apprehend or interview Mr PL, search his home or charge him with any offence before the attacks.

A and his mother took a case first to the UK courts and then before the European Court of Human Rights, arguing that under Article 2 (the right to life) the police should have done more to protect them. Although the Court did not uphold their claim, the case has since influenced police policy on protecting people who are at risk from the criminal activities of others. It led to the introduction of 'Osman warnings', where the police issue alerts to people whose lives may be in danger.

Finding out more about human rights

To find out more about human rights, what the law says, what each area of protection means, and how human rights affect our public services and institutions, visit our website:
www.equalityhumanrights.com

If you feel that your human rights may have been breached, you have a number of options. You may be able to deal with the problem informally or by making a formal complaint or by taking legal action. It usually makes sense to get advice first. There are various agencies, human rights organisations and legal advisors who may be able to help. As a start you could contact one of our helplines for information and guidance (see page 28).

There are many other organisations in Britain that offer information or advice on human rights. Visit their websites to find out more:

- British Institute of Human Rights: www.bihhr.co.uk
- Liberty: www.liberty-human-rights.org.uk
- Amnesty: www.amnesty.org.uk
- Justice: www.justice.org.uk
- The Joint Committee on Human Rights (in Parliament): www.parliament.uk/parliamentary_committees/joint_committee_on_human_rights.cfm
- The Ministry of Justice: www.justice.gov.uk/guidance/humanrights.htm

You can find out more about international human rights bodies from the United Nations Human Rights website: www.ohchr.org

principles into practice 6

In East Sussex, two disabled sisters living with their parents in a specially adapted house had a dispute with the local authority. They needed help in order to move around but the local authority claimed that manual lifting was too great a health and safety risk for its employees. As a result the sisters were unable to move or leave their home.

The judge who heard the case drew on human rights principles to establish the state's obligation to enable disabled people to participate in community life. He said that it had a responsibility to respect their dignity while doing so. He ordered the local authority to revisit its policy to strike a balance between the human rights of service users and the rights of carers to a safe working environment.

As a result of the case, East Sussex local authority amended its code of practice on manual handling to include the dignity and rights of those being lifted. The code was circulated to other local authorities, NHS trusts and care providers.

How we can help

The Equality and Human Rights Commission has a particular duty to promote and protect human rights, and this will be an important part of our work in the coming years. We share responsibility for promoting and protecting human rights in Scotland with the Scottish Commission for Human Rights.

Building greater awareness about human rights and making them real is an ongoing process – a ‘project for our society’. If we understand more about human rights we can help our public institutions bring these rights to life and make a real difference to the quality of people’s lives.

Human rights inquiry

In April 2008 we launched an independent inquiry into how well the Human Rights Act is working in England and Wales. The inquiry will run through 2008, reporting its findings in early 2009. We are collecting evidence from individuals as well as organisations that provide public services and organisations that represent people, and we are commissioning additional research to look into certain issues in more depth. This investigation will shape our future work on human rights and help us to promote them more effectively so that everyone can benefit.

You can find out more about it from our website:

www.equalityhumanrights.com/humanrightsinquiry

How to contact us

Equality and Human Rights Commission

www.equalityhumanrights.com

This document is also available in Welsh. If you would like a copy in another language or format (such as braille, audio CD, Easy Read or large print) please visit our website or contact one of our helplines.

All our helplines are open from 9am–5pm, Monday to Friday, except on Wednesdays when they are open from 9am–8pm.

Helpline – England

Email: info@equalityhumanrights.com
Telephone: 0845 604 6610
Textphone: 0845 604 6620
Fax: 0845 604 6630

Helpline – Wales

Email: wales@equalityhumanrights.com
Telephone: 0845 604 8810
Textphone: 0845 604 8820
Fax: 0845 604 8830

Helpline – Scotland

Email: scotland@equalityhumanrights.com
Telephone: 0845 604 5510
Textphone: 0845 604 5520
Fax: 0845 604 5530



The Equality and Human Rights Commission – the independent advocate for equality and human rights in Britain

The Equality and Human Rights Commission aims to reduce inequality, eliminate discrimination, strengthen good relations between people, and promote and protect human rights.

The Commission enforces equality legislation on age, disability, gender, race, religion or belief, and sexual orientation, and promotes compliance with the Human Rights Act.

The Equality and Human Rights Commission was established under the Equality Act 2006 and opened in October 2007. It is a non-departmental public body, accountable for its public funds, but independent of government.