

Adult Safeguarding and the Human Rights Act 1998

The Human Rights Act 1998 is very broad with a total of 13 articles outlining everyone's basic rights in law. There are 4 articles outlined below that you need to be aware of in relation to safeguarding adults at risk of abuse or neglect.

Article 2 protects the right to life.

Article 2 means public authorities must sometimes take positive steps to protect people if their lives are in danger. Article 2 applies in health and social care situations and requires an independent investigation into some deaths and may involve a breach of human rights with the state or public organisations implicated.

Article 3 affords freedom from degrading and inhumane treatment.

No one shall be subjected to torture or to inhuman or degrading treatment or punishment. Degrading treatment would occur if it "humiliates or debases an individual showing a lack of respect for or diminishing his or her human dignity or arouses feelings of fear, anguish, or inferiority capable of breaking an individual's moral and physical resistance." Case of *Pretty v the United Kingdom* (2002). Article 3 is breached when public bodies carry out or are responsible for abusive care and treatment; that is allowing or ignoring actions when they should not have done so.

There is a positive duty under Article 3 for a public body to intervene when abuse is performed by one private individual against another person.

Article 5 enshrines the right to liberty and security.

People who lack mental capacity are one of the categories when people can be deprived of their liberty. Legal procedures are set out in the Mental Capacity Act 2005 (MCA) and the Mental Health Act 1983 and should be followed. If they are not adhered to, it may lead to a breach of Article 5. A deprivation of liberty under the MCA describes a best interest decision made in regard to a person who lacks mental capacity to decide about care, treatment or living arrangements. Such deprivations must be legally authorised under the provisions of the MCA or by order of the Court of Protection.

Article 8 guarantees the right to a private life, family life, and a home life.

Article 8 protects a person's right to respect for their private life, their family life, their home and correspondence.

Private life has a broad meaning. It means people have the right to live their life with privacy and without interference by the state. This includes examples such as their sexuality, their body, their personal identity and how they look and dress, forming and maintaining relationships with other people and how their personal information is held and protected.

Family life includes the right to have and maintain family relationships. It covers people's right not to be separated from their family and to maintain contact if their family is split up. When deciding if a relationship is covered by family life what

matters is the closeness of the relationship rather than the legal status. Examples include relationships between parents and their children, including illegitimate and adopted children, husband and wife as well as unmarried couples and siblings.

Same sex couples are protected under article 8 but their protection falls under their private life rather than family life.

Everyone has a right to enjoy their existing **home** peacefully. Public bodies, therefore, should not stop a person from entering or living in their home without very good reason. They also cannot enter it without the person's permission. However, a right to home life does not mean a right to be given housing.

Correspondence includes things like letters, emails, fax and telephone.

Article 8 is not an absolute right. Public bodies can interfere with people's right to respect for private and family life, home and correspondence but they must be able to show that such action is lawful, necessary and proportionate in order to protect national security, public safety, the economy, health or morals, prevent disorder or crime or protect the rights and freedoms of other people.