

Creating a framework for human rights compliance in the health sector

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Starting points: human rights

Universal Declaration of Human Rights 1948

- All human beings are born free and equal in dignity and rights.
- Everyone is entitled to all the rights and freedoms set forth, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

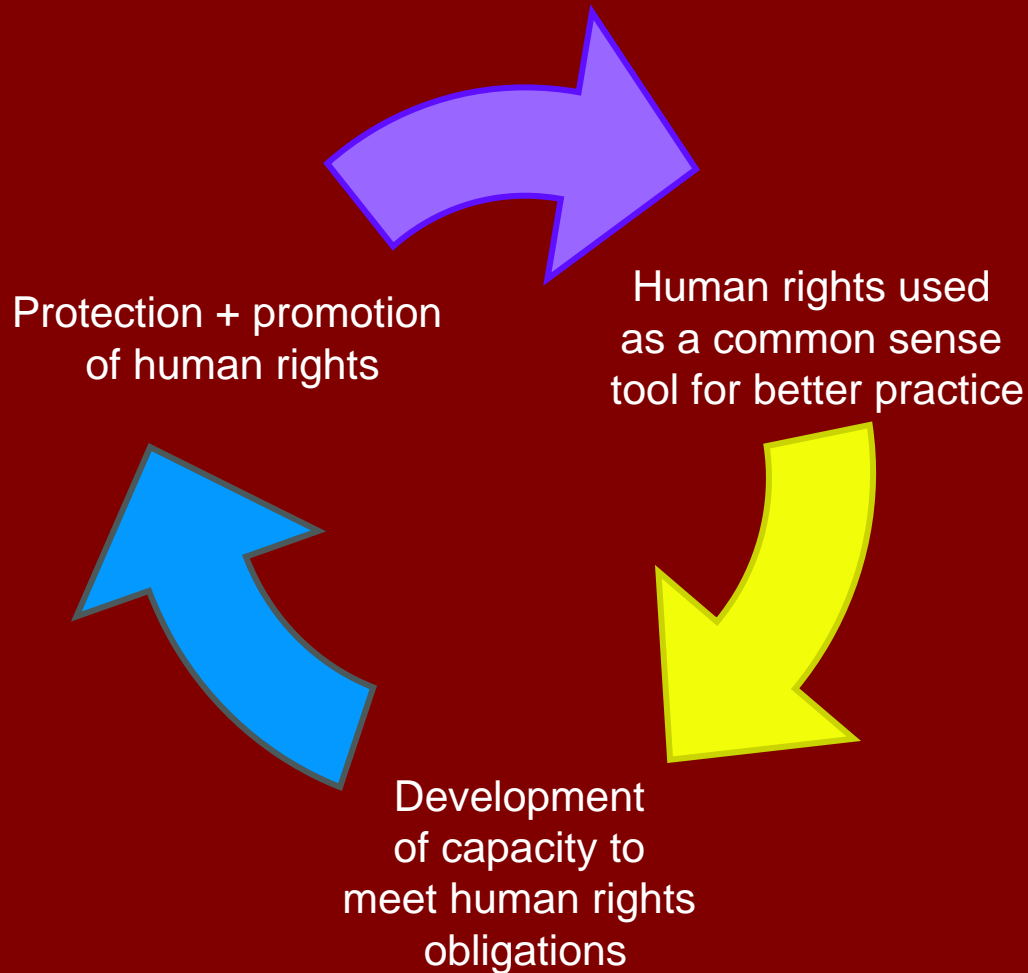
Starting points: health

- Health care system = core social institution
- DHSSPS mission: to improve health + social well-being of the people of NI
- Grounded on the principles of dignity, respect, independence, equality
(DHSSPS Quality Standards for Health & Social Care 2006)

Health + HR: common purpose

- Right to the enjoyment of the highest attainable standard of physical and mental health = a fundamental human right
- Dependent upon the realisation of other human rights
- Indispensable for the exercise of other human rights
- Embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life

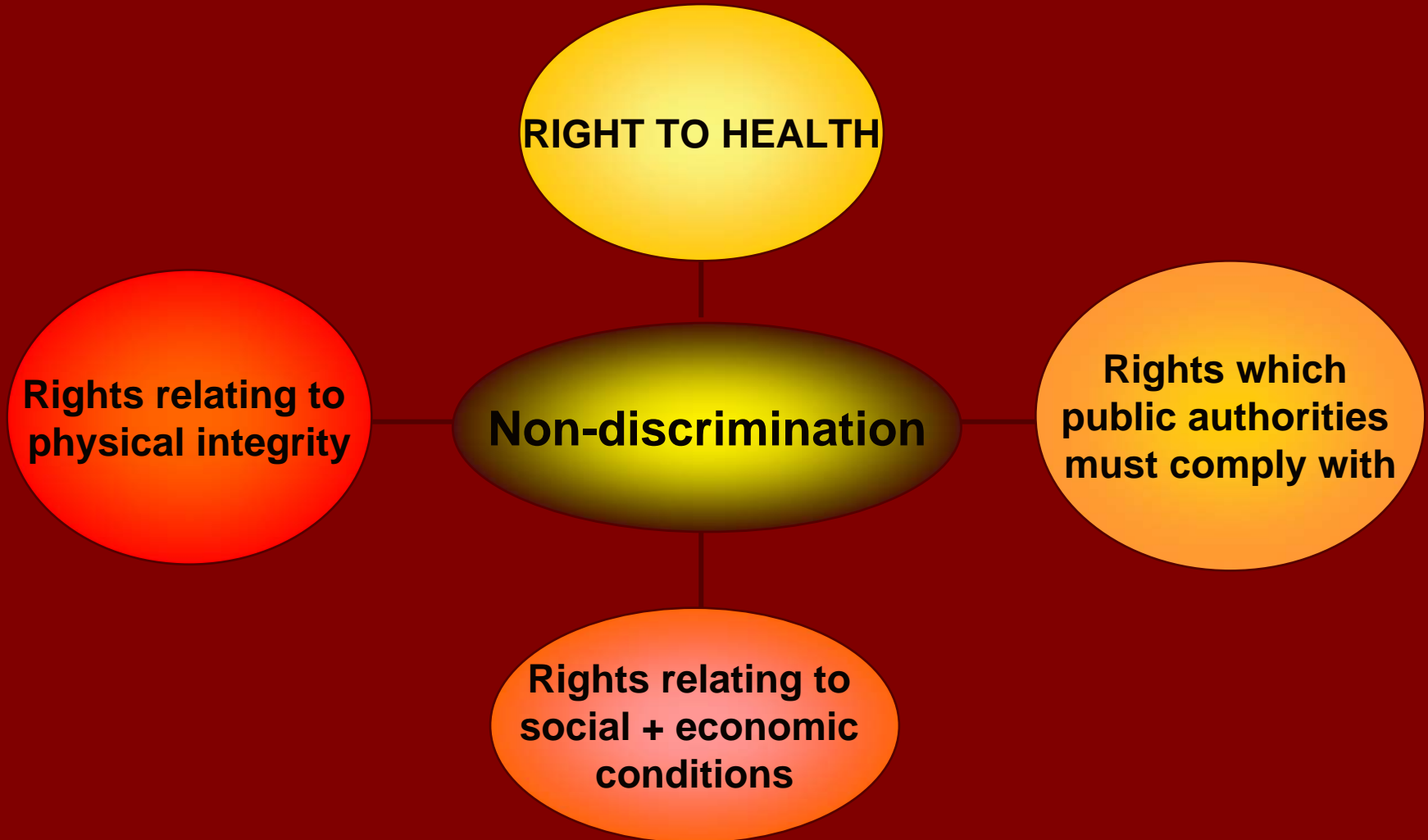
Human rights compliance



Health + HR: the legal framework

- International standards: ICESCR
- Domestic standards: Human Rights Act 1998
- Aim = an effective and integrated health system of good quality responsive to national and local priorities + accessible to all

Human rights: the legal framework



Promotion + protection of human rights at the domestic level

1. Judicial approach

- Interpretation
- Standard setting
- Remedies for violations

2. Policy approach

- Mainstreaming human rights in policy and decision-making processes

Impact of the HRA 1998: right to treatment

- Lack of proper care when someone suffering from a serious illness: could breach Article 3
- Delay in providing medical care where State has a duty to provide it and where excessive delay could have a serious impact on the patient's health: could violate Article 8
- When considering whether to provide a residential or home-based package of care for a severely disabled individual: Primary Care Trust must give proper weight to Article 8.

Impact of the HRA 1998: confidentiality

- Only an “overriding requirement in the public interest” can justify breaching medical confidentiality.
- It was permissible for a judge to order disclosure of medical records, with conditions, to a health authority for disciplinary purposes.

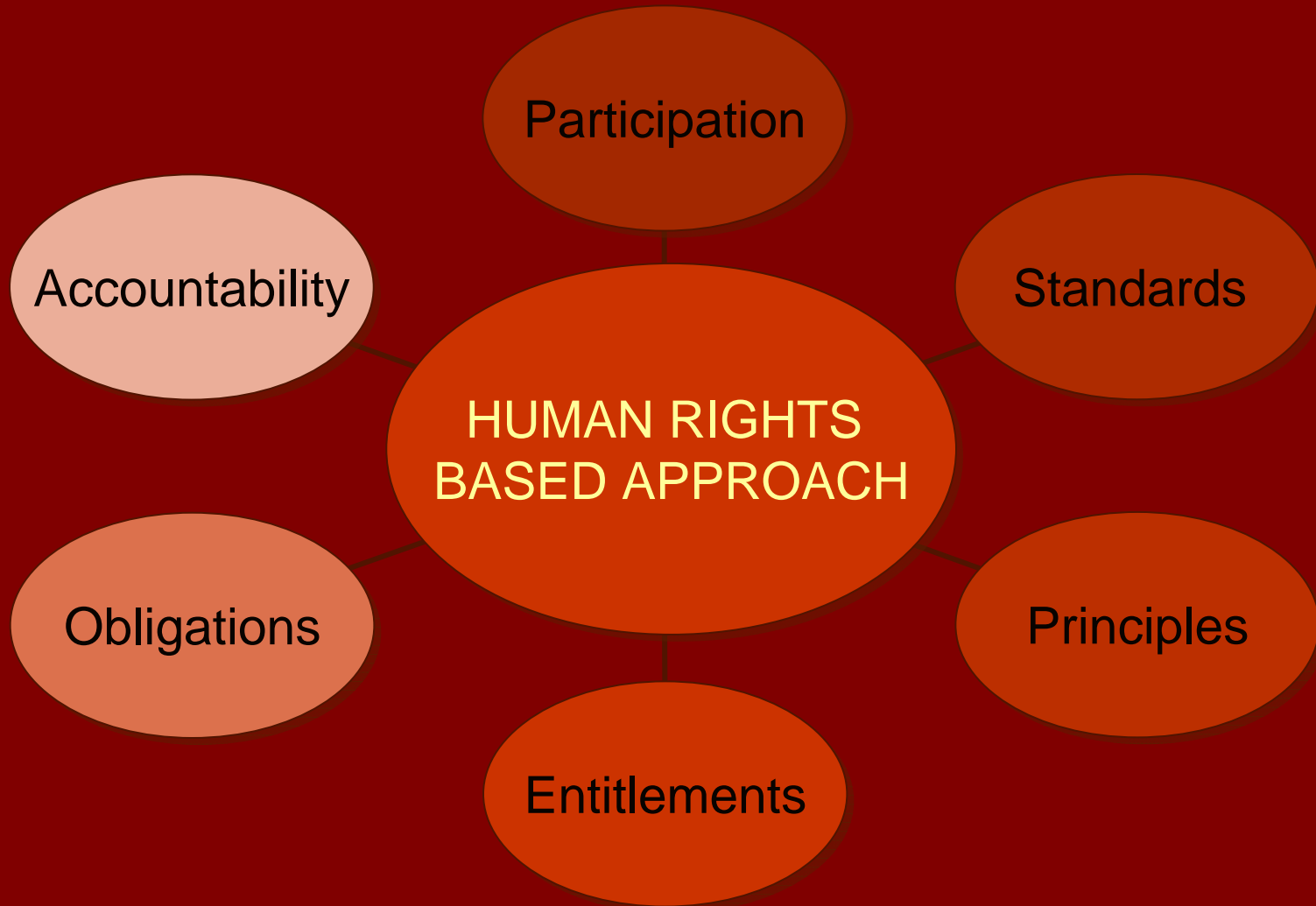
Impact of the HRA 1998: resource allocation

- The closure of a residential home did not breach Articles 2, 3 + 8. There was no evidence that Articles 2 + 3 were engaged. If Article 8 was engaged, this was justified by the council's needs to balance competing claims on resources.
- Refusal to supply a disabled young man with a robotic arm, even though it would significantly have enhanced his day-to-day functioning does not breach Article 8.

Impact of the HRA 1998: consent

- A compulsory medical intervention, even of minor importance, constitutes an interference with Article 8
- The failure to seek Court authorisation in a case where clinicians and a child's family are in fundamental disagreement over the child's treatment breached the child's Article 8 rights.

Human rights based approach



Practical impact of HRBA

- Based on fundamental principles of dignity, respect, independence, equality
- Demands effective + professional health + social care systems
- Requires policy development to be informed by needs and rights of individuals
- Common sense tool for decision-making
- Sets core minimum standards of conduct

Human Rights Framework



Measuring human rights compliance

- Based on defined set of criteria or standards
- Effective evaluation: processes + outcomes
- Establishes what works + what doesn't
- Engagement with third parties + stakeholders

Essentials of human rights accountability framework

- Objective scrutiny
- Measuring performance as a whole
- Transparent
- Dynamic
- Accessible
- Non-retrospective

Questions