

Human Rights, Equality and Healthcare

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About BIHR

We aim to **bring human rights to life** as a practical tool to promote social justice and tackle inequalities by:

- Raising awareness of the reality and relevance of rights
- Building capacity to use human rights based approaches (HRBAs)
- Influencing policy change

Currently working on National HRBA Project with Department of Health and NHS Trusts

Beyond the courtroom - human rights in action

- **Protecting dignity** – staff refusing to clean a man's bodily waste
- **Challenging discrimination** – non English speakers sectioned without an interpreter
- **Building bridges** – facilitating staff engagement on equality work around common values
- **Respecting family** – reuniting a mother with her children
- **Positive steps** – securing safe accommodation for a female domestic violence victim

Overview

- **The ideas** – human rights origins, principles and key features, and their relationship/relevance to equality
- **The law** – focus on ECHR/UK Human Rights Act
- **Benefits** – of a human rights framework to tackling equality
- **Human Rights Based Approaches in Health** – from principles to practice

Human rights

The ideas

Human rights: origins, purpose

- Modern human rights were first legally defined after WWII in the Universal Declaration of Human Rights 1948
- Led to the creation of a suite of core **international UN treaties** on CPESC rights, on issues (e.g. racism) and groups (e.g. women, children, disabled people) and **regional** and **domestic** instruments e.g. ECHR and UK HRA; potential NI Bill of Rights
- **Serve to make real key principles and values such as dignity, equality, freedom**

Human rights expressing core principles and values

- **Fairness** – right to a fair trial
- **Respect** – respect for family life
- **Equality – freedom from discrimination**
- **Dignity** – freedom from inhuman and degrading treatment

Human rights - key features

- Are **basic standards** that the state must not go below and sometimes must protect and fulfil
- **Belong to everyone** - as human beings (universal)
- **Are not 'given' and cannot be taken away** – only limited or restricted
- **Include both absolute and non absolute** rights – reflecting the need to protect individuals' rights whilst considering others and wider society
- Are indivisible and interdependent - **put together they are what we all need to flourish as human beings**

Human rights and equality

- **Equality is a core human rights principle**
 - Virtually all rights commence with the words 'everyone' or 'no-one'
- **Equality is also a fundamental human right**
 - e.g. freedom from discrimination in the ECHR
- These ideas inspired the post-WWII US civil rights movement and the South African anti-apartheid movement, but have become separated from much equality developments in the UK
- A human rights vision of equality is ambitious – going beyond tackling discrimination, which alone does not achieve equality

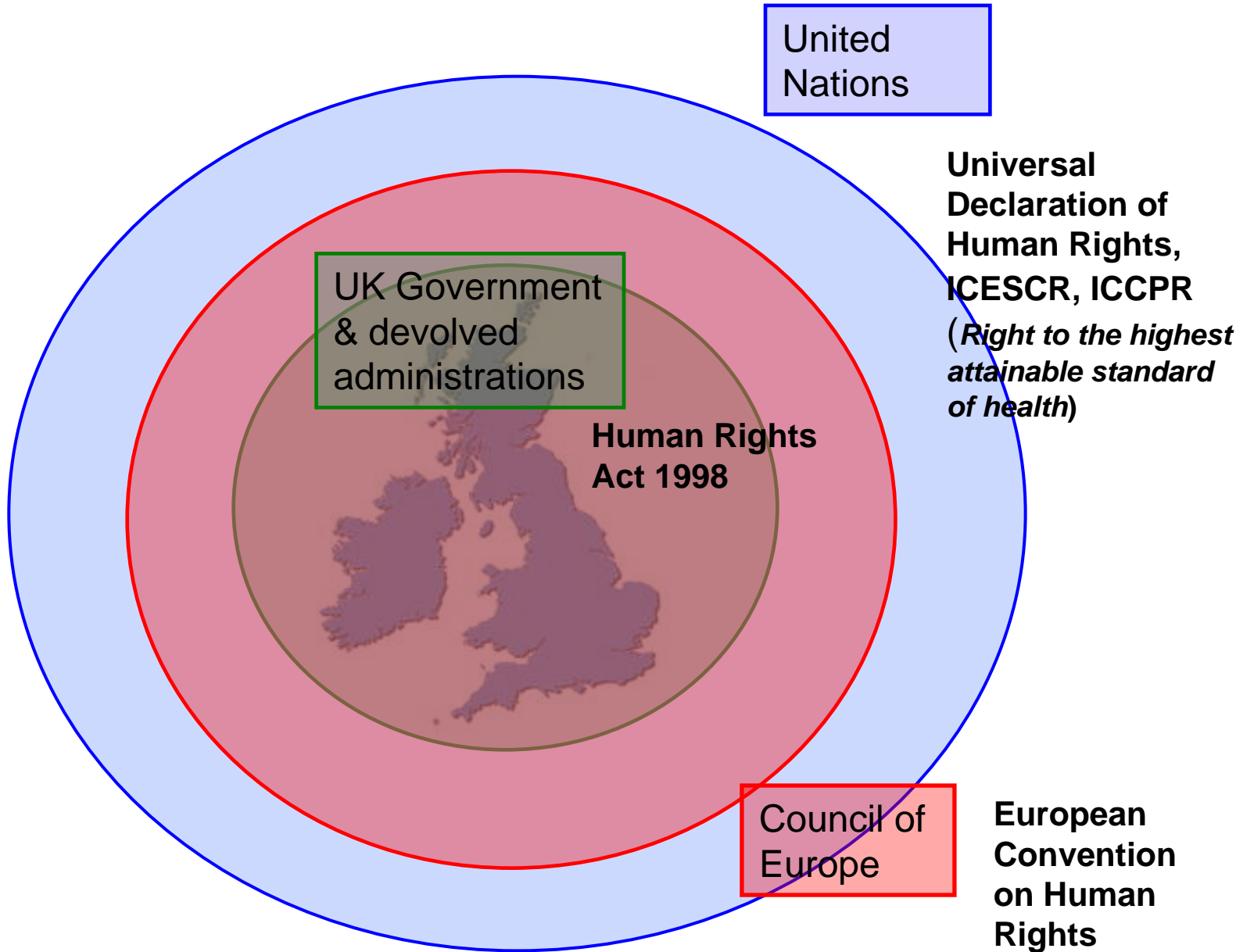
What do we mean by a *Human Rights Based Approach* to change?

The process by which rights are made **a reality** in peoples lives by:

- **Putting the realisation of human rights principles and standards at the heart of policy, planning and delivery (using a HR lens)**
- Ensuring clear **accountability** throughout the organisation
- **Empowering** staff and patients with knowledge, skills and commitment to realising human rights
- Enabling meaningful **participation** of all key stakeholders
- **Non-discrimination** and attention to **vulnerable groups**

Human rights:

The law



United Nations

Universal Declaration of Human Rights, ICESCR, ICCPR
(Right to the highest attainable standard of health)

UK Government & devolved administrations

Human Rights Act 1998

Council of Europe

European Convention on Human Rights

Human Rights Act 1998

- Aims to bring rights home (incorporates ECHR into domestic law) and create a culture of respect for human rights
- Human Rights Act 1998 – NHS Trusts must respect human rights in **all that they do** and ‘victims’ have a right to be heard
- A ‘super law’ (almost) – all legislation must respect and reflect the principles and standards in the ECHR

European Convention On Human Rights (ECHR)

- **Right to life**
- **Right not to be tortured or treated in an inhuman or degrading way**
- **Right to be free from slavery or forced labour**
- **Right to liberty**
- **Right to a fair trial**
- **Right to no punishment without law**
- **Right to respect for private and family life, home and correspondence**
- **Right to freedom of thought, conscience and religion**
- **Right to freedom of expression**
- **Right to freedom of assembly and association**
- **Right to marry and found a family**
- **Right not be discriminated against in relation to any of the rights contained in the European Convention**
- **Right to peaceful enjoyment of possessions**
- **Right to education**
- **Right to free elections**

Some key ECHR rights in healthcare

- **Freedom from inhuman and degrading treatment** – *poor conditions, lack of regard to dignity, neglect or abusive treatment, excessive force, treatment without consent*
- **Right to family, private life, home** – *privacy, family visits, sexual and other relationships, social participation, independent living*
- **The right not be discriminated against in the enjoyment of other rights**

ECHR Article 14 – prohibition of discrimination

- Not a freestanding right – must be linked to one of the other rights in the ECHR
- **Non-exhaustive list** of grounds upon which discrimination is prohibited
- Not all differential treatment is discrimination – can it be objectively and reasonably justified?

Types of rights

- **Absolute rights** (Freedom from torture) – can *never* be interfered with
- **Limited rights** (Liberty) – can be restricted in some tightly defined circumstances
- **Qualified rights** (Privacy and family life/ expression) – the right of the individual ***has to be balanced*** against the rights of others or in the interests of the wider community

Some core ECHR principles

- Interference with rights must have a legal basis, legitimate aim and **be proportionate** (*Don't use a sledge hammer to crack a nut.*)
- **Positive obligations** – sometimes a state must take positive action to protect rights (e.g. *freedom from inhuman treatment, right to respect for family life*)

Key questions for public healthcare bodies...

- What is the policy issue/need/situation to be addressed?
- Does this impact on or engage anyone's human rights, whose are they and what type of rights are they?
- How should our policy response/practice/decision reflect this?

Benefits of a human rights framework

Non-exhaustive grounds for discrimination

- ECHR prohibits discrimination on any ground e.g. caring status, sexuality, marital status
- This applies to totality of the activities of all public authorities

Protects against universally bad treatment

- Provides a remedy for poor treatment when *everyone is being treated equally badly* – don't have to show discrimination

Benefits continued

Protection against other forms of ill treatment not recognised as discrimination

- e.g. disabled people being treated in manner that denies their dignity, positive obligation to protect domestic violence victims

A more holistic approach

- Treats individual as whole people not labels, focuses on the poor treatment of a human being

Framework for “balancing rights

- A mechanism for conflict between “strands” or weighing individual needs against the wider community based on proportionality

Human rights based approaches: principles and practice

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Some examples

- Mersey Care – participative policy making and risk assessment
- Southwark – Commissioning guidelines
- Surrey - Revised Trust vision and principles and joint equality & human rights training using KSF
- Tees, Esk and Wear – Patient involvement in care planning
- Birmingham – combined equality and human rights strategy and tools

Equality Benefits of a HRBA to healthcare

- Improved quality of health services – patients treated with fairness, respect, equality and dignity
- More person-centred care
- Reduced risk of complaints and litigation
- Improved decision making overall
- Broader range of marginalised groups involved and considered
- More meaningful engagement of patients, carers and families

‘We expect [by using human rights based approaches] that our users and their carers will notice a positive change in the way services are delivered.’

- Director, Primary Care Trust

‘By linking the human rights framework to other local equality and diversity strategies we hope to tackle some of the key health inequalities.’

- Equality and Diversity Manager, Primary Care Trust

Questions

- Any clarifications/general comments?
- In what ways do you think human rights and HRBA might add value to equalities strategy/policy and practice?
- What action/supports are needed to make this happen?