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| **Developed by:** | Update of previous guidance  |
| **Director leads:** | Director of Corporate Development |
| **Contact for advice:** | Director of Corporate Development |

**Introduction**

Public authorities in the UK have obligations to promote and protect human rights, and all public authorities must act in a way that is compatible with the European Convention on Human Rights. This means treating individuals fairly, with dignity and respect, whilst also safeguarding the rights of the wider community.

This requirement is also compatible with the International Bill of Human Rights (consisting of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols).

*“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”*

The Equality Act 2010 also legally protects people from discrimination in the workplace and in wider society. It replaced previous anti-discrimination laws with a single Act, making the law easier to understand and strengthening protection in some situations. It sets out the different ways in which it’s unlawful to treat someone.

South West Yorkshire Partnership NHS Foundation Trust is committed to ensuring all its services respect human rights, treat people fairly and equitably, recognise the needs of the diverse communities we serve and meet local needs.

To this end the Trust takes responsibility for ensuring that all of its policies, functions and services do not discriminate against any sections of our community and that our policies and practices are underpinned by valuing diversity and equality as set out in the Trust’s Equality First Strategy.

1. **What is the Human Rights Act?**

The Human Rights Act (HRA) 1998, which came into force in full on 2nd October 2000, brings the European Convention on Human Rights ("the conventions") into UK law. The Convention describes a number of specific rights, such as the right to life or the right to a fair trial and allows people to enforce the rights given by the Convention in the UK courts.

Public authorities in the UK have obligations to promote and protect human rights, and all public authorities must act in a way that is compatible with the European Convention on Human Rights. This means treating individuals fairly, with dignity and respect, whilst also safeguarding the rights of the wider community.

The Act urges public authorities to apply a human rights framework to decision making across public services in order to achieve better service provision.

Applying a ‘human rights framework’ means including core human rights values, such as equality, dignity, privacy, respect and involvement in decision making, whether a public service is being delivered directly to the public or a new plan or procedure is being devised.

The Act applies to all public authorities (such as central government departments, local authorities and NHS trusts) and other bodies performing public functions (such as private companies operating prisons). These organisations must ensure that they are acting compatibly with the Convention rights when providing a service or making decisions about individuals.

The Trust aims to support its staff in acting in accordance with the Convention Rights, through its Organisational Development approach to the delivery of its mission supported through the Trust values, which underpin all we do.

 **Our mission**

We help people reach their potential and live well in their community

**Our values**

We put the person first and in the centre

We know that families and carers matter

We are respectful, honest, open and transparent

We improve and aim to be outstanding

We are relevant today and ready for tomorrow

**How is the Human Rights Act structured and what does it cover?**

The Human Rights Act has its basis in the European Convention of Human Rights (ECHR). The Convention has two main parts: the original treaty and the Protocols. Protocols amend or supplement the original treaty, i.e. they give additional or extra rights, or expand on the rights in the original treaty.

The Act sets out a person’s human rights in a series of ‘Articles’. Each Article deals with a different right. These are all taken from the ECHR and are commonly known as ‘the Convention Rights’:

* Article 2 Right to life
* Article 3 Freedom from torture and inhuman or degrading treatment
* Article 4 Freedom from slavery and forced labour
* Article 5 Right to liberty and security
* Article 6 Right to a fair trial
* Article 7 No punishment without law
* Article 8 Respect for your private and family life, home and correspondence
* Article 9 Freedom of thought, belief and religion
* Article 10 Freedom of expression
* Article 11 Freedom of assembly and association
* Article 12 Right to marry and start a family
* Article 14 Protection from discrimination in respect of these rights and freedoms
* Protocol 1, Article 1 Right to peaceful enjoyment of your property
* Protocol 1, Article 2 Right to education
* Protocol 1, Article 3 Right to participate in free elections
* Protocol 13, Article 1 Abolition of the death penalty

**Articles 1 and 13**

Articles 1 and 13 of the ECHR do not feature in the Act. This is because the Human Rights Act in itself fulfils these rights. For example, Article 1 says that states must secure the rights of the Convention in their own jurisdiction. The Human Rights Act is the main way of doing this for the UK.

Equally, Article 13 ensures that if people’s rights are violated they are able to access effective remedy – this means they can take their case to court to seek a judgment. The Human Rights Act is designed to ensure that this happens.

### Human Rights implications for South West Yorkshire Partnership NHS Foundation Trust.

### As well as ensuring that all of the services it provides respect and promote the human rights of those using them, the Trust needs to monitor and mitigate any potential breaches. The organisation has a range of policies that are designed to ensure equity and fairness both as an employer and service provider. These are listed in appendix 1.

### Some Human rights – like the right not to be tortured – are absolute and cannot be interfered with in any circumstances. Most human rights are not absolute and can be limited in certain circumstances as set out in the specified Article of the European Convention on Human Rights, i.e. where this is necessary to protect the rights of others or in the interests of the wider community.

1. **The Human Rights Act Articles and their relevance to South West Yorkshire Partnership NHS Foundation Trust**

The following Articles and Protocols are relevant to the work of South West Yorkshire Partnership NHS Foundation Trust as a provider of healthcare services and as an employer. The following rights are protected by the Human Rights Act 1998.

**Article 2** - **Right to life**

Under this Article, a public authority must do what it can to protect a person's life if the public authority is responsible for that person. Article 2 often works alongside Article 3, particularly in relation to a person's right to access healthcare.

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| This applies to the Trust in our duty of care to people using our services, for example, in our duty to safeguard individuals who may be at risk of death due to self harming behavior or when making decisions which may put an individual in danger or affect their life expectancy. This duty will be addressed through the Trusts policies and procedures around risk assessments and care plans. The Trust also has a duty of candor to report any failings to individuals and their families as applicable.  |

**Article 3 – Freedom from torture and inhuman or degrading treatment**

Article 3 says ''no one should be subjected to torture or to inhuman or degrading treatment'. Inhuman treatment can cover serious physical assaults, psychological interrogation, inhuman detention, failure to give medical treatment, treatment causing severe mental harm. Degrading treatment means treatment that is grossly humiliating and undignified.

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| For example, the Trust has a duty to protect people using its services from harm as a result of serious abuse; it also has a duty to intervene if we believe you maybe suffering inhuman or degrading treatment from someone else. **The Equality Act 2010** - draws together the previous public sector duties into a broader approach that covers other equality groups that are offered protection from unfavourable treatment. These are now known as **protected characteristics** and cover:* Race
* Gender
* Disability
* Age
* Sexual orientation
* Religion or belief
* Gender reassignment
* Marriage/civil partnerships
* Pregnancy/maternity

The Trust’s approach to the Equality Act 2010 is set out in its Equality First Strategy. |

**Article 4 – Freedom from slavery and forced labour**

Nobody shoul be held in slavery or servitude, or made to do forced labour. Slavery is when someone actually owns you like a piece of property. Servitude is similar to slavery - you might live on the person’s premises, work for them and be unable to leave, but they don’t own you.

Forced labour means you are forced to do work that you have not agreed to, under the threat of punishment. Your right to be protected against slavery and servitude is absolute, which means it can never be restricted. The right relating to forced labour is also absolute. However, it does not apply to work that you have to do as part of a prison or community sentence or is partt of normal civic obligations, like jury service.

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| This could be relevant where a person has volunteered their services to the Trust, through supervision we need to ensure they are happy and supported doing the work allocated. |

**Article 5 - Right to liberty and security**

Everyone has the right to liberty and personal freedom (but it is not the right to be free to do whatever you want). This means that a person should not be kept by police or arrested without a good reason. The right to liberty is a limited right, it can be limited in a number of specific circumstances, i.e. the lawful detention of someone who has mental health issues.

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| This could be relevant if a person is being detained in a unit against their wishes, or if failure to provide appropriate support in the community means that a person has to be cared for in hospital, note the Trust is required to comply with the Mental Health Act.This could also be relevant in cases where mental health detainees or inpatients are not provided with interpreting if English is not their first language. The Trust has implemented the accessible information standard which aims to make sure that people who have a disability, impairment or sensory loss are given information in a way that they can access and understand, and any communication support that they need is identified and provided.This is also relevant to the safety of patients and staff being protected from harm from other patients or staff through MAV training, reminders around behaviours i.e. Respect and Dignity posters. |

**Article 6 - Right to a fair trial**

You have the right to a fair and public hearing if:

* you are charged with a criminal offence and have to go to court;
* a public authority is making a decision that has a decisive impact upon your civil rights or obligations.

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| Patients may claim breaches in their human rights when making claims for negligence in treatment.Staff may cite this article in relation to a fair hearing in relation to disciplinary investigations and action. Service users may cite this article in relation to the Trust’s responsibilities in administering statutory hearings such as MHA Tribunals and Managers Appeals Hearings. |

**Article 8 - Right to respect for private and family life, home and correspondence.**

Article 8 gives a person a right to respect for their privacy, private life, family life and home, home and correspondence, but at the same time, they must also respect the rights of other people.

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| **Privacy**This includes the right for a person to access information relating to their private life, including medical records. Public authorities have to justify why they do not provide access to these records, if they are withheld under the Data Protection Act.The courts have interpreted the concept of ‘private life’ in a very broad way. It covers things like your right to choose your sexual identity, your lifestyle, and the way you look and dress. It also includes your right to control who sees and touches your body. For example, this means that public authorities cannot do things like leave you undressed in a busy ward, or carry out any invasive treatment without your permission, unless this is covered by other legislation such as the Mental Health Act or Mental Capacity Act. |

**Family life**

You have the right to enjoy your family relationships without interference from the government. This includes the right to live with your family and, where this is not possible, the right to regular contact.

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| ‘Family life’ can include the relationship between an unmarried couple, an adopted child and the adoptive parent, and a foster parent and fostered child. The right to respect for family life could be used where a family member is refused permission to visit someone in the Trust’s care. |

**Home**

The right to respect for your home is not a right to housing. Instead, it is a right to enjoy your existing home peacefully. This means that public authorities should not stop you entering or living in your home without very good reason.

Your correspondence should generally be kept confidential and should not be interfered with. Correspondence includes telephone calls, letters, emails, faxes etc.

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| This may be relevant for communicating with speakers of other languages or people with learning difficulties who are living / being cared for at home. It may also apply where the absence of appropriate support services prevents someone continuing to live independently.Where it is necessary for services to vet a person’s mail or telephone calls for reasons of safety or security, the Trust must obtain legal authority to do so. |

**Article 9 – Freedom of thought, belief and religion**

The Human Rights Act protects your right to have your own thoughts, beliefs and religion. This includes the right to change your religion or beliefs at any time. You also have the right to put your thoughts and beliefs into action.

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| For example, public authorities cannot stop you practising your religion, publicly or privately, without very good reason, as outlined in the restrictions. Importantly, this right protects a wide range of religious beliefs and other beliefs including veganism, pacifism, agnosticism and atheism. The Trust supports this right through the provision of multi-faith/quiet rooms.The Trust has a responsibility to ensure service users (in particular inpatients) are able to practice their beliefs around diet, washing, and observance of particular customary practices.  |

**Article 10 - Freedom of expression**

Individuals have the freedom to have their own opinions and to express them freely without government interference, but individuals have a duty to behave responsibly and to respect other people’s rights. Freedom of expression includes the right to receive information and give information to other people.

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| This includes the requirement to make sure that any information provided to people is accessible, i.e. deaf people have signers at public meetings or literature is available in a variety of languages and formats. Article 10 could be used to reinforce complaints brought under the Disability Discrimination Act.This could also apply to patients receiving information – written or verbal - about their conditions and treatment in a way that they can understand, including people with learning difficulties, deaf people and people for whom English is not their first language.  |

**Article 11 - Freedom of assembly and association**

This gives people the right to hold meetings, marches and demonstrations in public places. You have the right to protest by holding meetings and demonstrations with other people. But you must act peacefully and without violence or threat of violence.

You also have the right to form and be part of a trade union, a political party or another association or voluntary group.  Nobody has the right to force you to join a protest, trade union, political party or another association.

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| This article is relevant to South West Yorkshire Mental Health NHS Trust staff and union membership being recognized, but staff not being pressured into joining a union because union members are or are perceived to be treated differently by the Trust. |

**Article 12 - The right to marry**

Men and women of marriageable age have the right to marry and to start a family. The courts have decided that this right extends to trans-gender people who are now able to marry in their new sex.

The Civil Partnership Act 2004 means that gay men and lesbian women in the UK are now able to register civil partnerships. Couples who register a civil partnership have the same rights as heterosexual married couples in areas like tax, social security, inheritance and workplace benefits.

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| Challenges under this article could apply where a person with a learning disability is given contraception without consent because of a learning disability or where a person has a child taken into care because of a learning disability or mental health problem.This is also relevant for the rights of same sex partners to be involved in treatment decisions or get information about a civil partner’s condition.  |

**Article 14 – Prohibition of Discrimination**

The enjoyments of the rights and freedoms set out in the Act, must be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

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| This would include the refusal of medical treatment to an older person solely because of their age and non-English speakers being presented with health options without the use of an interpreter. |

**Protocol 1 : Article 1 - protection of property**

This ensures that a person's belongings are not unfairly interfered with, it guarantees a person's right to be able to enjoy their possessions, but there are two exceptions: the Government can take those possessions away in some circumstances, and in some situations, the Government can control how someone uses their possessions.

A person's belongings could include benefits and equipment provided for a person e.g. because of their deafness.

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| This could apply where property required for daily living is removed from someone during an inpatient stay.This may also apply to a person’s belongings in residential care or during an inpatient stay, if they are denied access to them without good reason or if property removed for safe keeping is mislaid. Documentation needs to be clear around the reason for removal such as safe guarding the service user and/or others. |

1. **Limitations**

Courts must, when considering cases brought under this Act:

* Balance the interests of the individual bringing the case with the interests of society.
* Make sure that if a right under the Act is being restricted then the reason for doing this, is important enough to justify limiting the rights.
* Make sure that the public authority is acting consistently and is not being unfair.
* Check that the measures the public authority has used to limit the rights of an individual must be balanced with the purpose of the public authority.

To bring a case against a public authority you must be:

* A person (individual or organization, although not a public authority) directly affected by the act in question. An ''indirect victim'' can bring a claim if they are a close relative of the victim, if they have suffered some injury as well and the ''victim'' is unable to proceed.
* Bring a case within one year of the unlawful act by the public authority. (Although this can be extended if the court thinks this would be fair to do so. If the case is a judicial review, the time limit is three months).
1. **Raising concerns about Human Rights**

South West Yorkshire Partnership NHS Foundation Trust is committed to treating all staff and service users equally, and with dignity and respect. Therefore, all policy authors must Equality Impact Assess Policies against equalities legislation and against the Human Rights Act to avoid potential breaches.

Staff who feel there may be a potential Human Rights breach should raise the issue with their manager. Staff also have access to the grievance procedure and whistle blowing policy for raising concerns about fair treatment at work or in the workplace.

Patients or service users who feel there has been a breach of their human rights whilst accessing South West Yorkshire Partnership NHS Foundation Trust services should use the organisation’s Complaints Procedure to raise their concerns.

An easy read version of the Human Rights Act can be accessed through the following link:

<https://www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/40/40ieasyread.pdf>

**Appendix One**

**Policies and procedures that support the Trust’s compliance with Human Rights legislation**

Adoption Rights and Benefits

Bedrails

Bathing of vulnerable service users

Cardio Pulmonary Resuscitation (Do not attempt)

Care records note management

Closed Circuit Television (CCTV)

Communication strategy

Complaints

Confidentiality

Code of Conduct

Consent to treatment/examination

Control of substances Hazardous to Health (COSHH)

Data Protection Act

Disciplinary procedures

Disclosure and Search (incorporating the searching of in-patients)

Domestic Violence (Service users)

Equal opportunities in Employment

Equality First strategy

Examination (physical) and care of patients

Flexible working time guidelines

Grievance procedures

Harassment and bullying

Health and safety

Incident Reporting and Management

Infection and Prevention control

Information Governance

Inpatient observation and engagement

Ligature and suicide risk

Lockdown

Lone working

Managing aggression and violence

Maternity leave

Mental Health Act policies: Section 132, Section 134, Section 17, Section 5 (2) and (4)

Multi Agency Public Protection Arrangements (MAPPA)

Paternity leave

Patients Property

Safeguarding and promoting the well being of children

Special leave

Sickness Absence

**Appendix 2 - Equality Impact Assessment Tool**

 *To be completed and attached to any policy document when submitted to the Executive Management Team for consideration and approval.*

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|  | **Equality Impact Assessment Questions:**  | **Evidence based Answers & Actions:** |
| **1** | **Name of the document that you are Equality Impact Assessing** | Human Rights Statement and Guidance  |
| **2** | **Describe the overall aim of your document and context?****Who will benefit from this policy/guidance/strategy?** | The overall aim of the statement and guidance is to describe the Trust’s approach to ensuring its policies, functions and services respect individual’s human rights.All users of our services and staff |
| **3****4** | **Who is the overall lead for this assessment?****Who else was involved in conducting this assessment?** | Director of Corporate DevelopmentSee below |
| **5** | **Have you involved and consulted service users, carers, and staff in developing this policy?****What did you find out and how have you used this information?** | Clinical leads, Managers, Practisce Governace Coaches, Human Resources, Trade Unions and the Executive Management Team was consulted on the development of the Statement and Guidance. (Members Council and service users were involved in the original version). N/A |
| **6****7** | **What equality data have you used to inform this equality impact assessment?** **What does this data say?** | N/AN/A  |
| **8** | **Taking into account the information gathered.****Does this policy/guidance affect any of the following groups less or more favourably than another on the basis of:** | Evidence based answers and actions. Where negative impact has been identified please explain what action you will take to remove or mitigate this impact. |
|  |  | **YES** | **NO** |  |
| **8.1** | **Race** |  | No | The aim of the Act is to ensure that all individuals’ human rights are respected irrespective of their individual characteristics. |
| **8.2** | **Disability** |  | No | As above |
| **8.3** | **Gender** |  | No | As above |
| **8.4** | **Age** |  | No | As above |
| **8.5** | **Sexual Orientation** |  | No | As above |
| **8.6** | **Religion or Belief**  |  | No | As above |
| **8.7** | **Transgender** |  | No | As above |
| **8.8** | **Marriage and Civil Partnership** |  | No | As above |
| **8.9** | **Pregnancy and Maternity** |  | No | As above |
| **8/10** | **Carers\* Trust requirement** |  | No | As above |
| **9** | **What monitoring arrangements are you implementing or already have in place to ensure that this policy:*** **promotes equality of opportunity for people who share the above protected characteristics**
* **eliminates discrimination, harassment and bullying for people who share the above protected characteristics**
* **promotes good relations between different equality groups**
* **Public Sector Equality Duty – “Due Regard”**
 | This statement and guidance aims to ensure policies and practices are underpinned by valuing diversity and equality, monitoring will be as set out in each specific policy and through the Equality Impact Assessments.  |
| **10** | **Have you developed an Action Plan arising from this assessment?** **If yes, then please attach any plans at the back of this template** | N/A |
| **11** | **Assessment/Action Plan approved by:** | **Signed**: Dawn Stephenson **Date**: 16.03.2017**Title:** Director of Cororate Development |
| **12** | **Once approved, you must forward a copy of this Assessment/Action Plan to the Partnership Team:****partnerships@swyt.nhs.uk****Please note that the EIA is a public document and will be published on the web. Failure to complete an EIA could expose the Trust to future legal challenge.** |  |

*If you have identified a potential discriminatory impact of this policy, please refer to the Director of Corporate Development or Equality and Development Managers together with any suggestions as to the action required to avoid/reduce this impact.*

*For advice in respect of answering the above questions, please contact the Director of Corporate Development or Equality and Engagement Development Managers.*![](data:application/x-msmetafile;base64...)![](data:application/x-msmetafile;base64...)