

SAMH'S VIEW: HUMAN RIGHTS

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ABOUT THE SAMH'S VIEW SERIES

SAMH's View statements set out SAMH's position on a particular policy topic. They are produced by the Public Affairs team.

Context

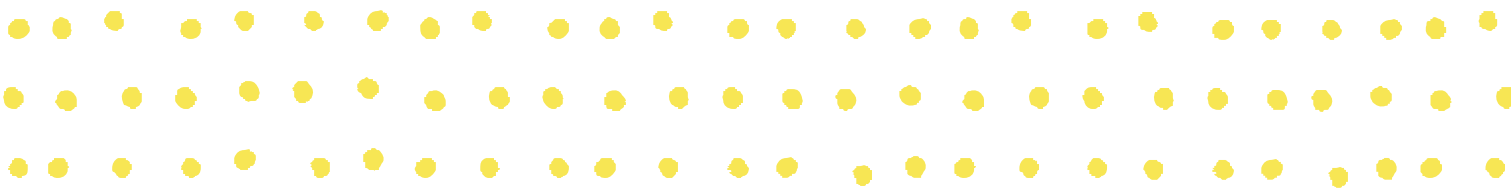
Everyone living in the United Kingdom - including people experiencing a mental health problem - should be able to benefit from the basic freedoms and protections set out in the [Human Rights Act 1998](#). We all have human rights, but people experiencing mental ill-health are more likely to have their human rights infringed.

Restrictions can legally be placed on a person's human rights if they are treated under the [Mental Health \(Scotland\) Act 2015](#); the Act used when people are detained in hospital or in the community. Whilst being treated under the Act a person's right to liberty, privacy, and, physical and psychological integrity may be restricted. The law contains safeguards to protect a person's human rights, including the right to: appeal against the detention, to nominate a named person and to set-out an advance statement.

By exiting the EU, the UK will lose protections offered under European human rights law, specifically the oversight of the European Court of Justice. However, the human rights of people living in the UK are protected in UK law by the [Human Rights Act 1998](#). [The Scotland Act 1998](#) requires that all laws passed by the Scottish Parliament are compatible with the [European Convention on Human Rights](#).

Key points

- Mental health care and treatment involves rights such as the right to life,¹ liberty,² freedom from inhuman and degrading treatment,³ and respect for private and family life.⁴
- The Human Rights Act prohibits discrimination, but people with mental health problems are still less likely to be employed,⁵ and more likely to live in poverty and have a lower life expectancy than the general population.⁶
- SAMH has consistently heard that people do not know how to enforce



their rights, with many being unaware that they have rights.⁷

- Rights aren't always respected by health professionals. People have felt they have been discriminated against by their doctors due to their history of mental illness, in some cases not receiving treatment for physical complaints.^{8 9}
- Public authorities including hospitals, local authorities, medical staff and courts are legally responsible for upholding the human rights of a person when in contact with their services
- The Scottish Government has committed to a human rights based approach in the Mental Health Strategy 2017-27.
- Abolishing the Human Rights Act 1998 would make it harder for people with mental health problems to access their rights.
- The Scottish Human Rights Commission has outlined a human rights based approach to the mental health strategy, using the PANEL principles (Participation, Accountability, Non-discrimination and equality, Empowerment and Legality).¹⁰
- The Rights for Life Declaration draws on international human rights laws to outline the rights of all people affected by mental ill-health.¹¹
- Sections 25-27 of the Mental Health (Scotland) Act 2015 note the duties public bodies – specifically, local authorities and health boards – have in relation to advance statements, advocacy services and ability to act when a person does not have a named person.

SAMH calls for:

- All practice relating to mental health in Scotland to take a human rights-based approach.
- The explanation, promotion and realisation of human rights in an accessible format in all publically funded settings.
- A human rights-based approach to treatment and communication in all healthcare training using the PANEL principles.
- The retention of the Human Rights Act 1998; any changes to UK human rights legislation must be progressive.
- The Rights for Life Declaration to be promoted and adhered to throughout all areas of mental health care and treatment.
- The Scottish Government to follow up the Scottish Human Rights Commission's suggestions regarding s25-27 of the Mental Health Act.



Further detail:

OFFICIAL DOCUMENTS

- [Human Rights Act 1998](#)
- [World Health Organisation: Human Rights instruments relevant for mental health](#)

SAMH RESEARCH

- [SAMH Know Your Rights](#)
- [SAMH Evidence to the Equalities and Human Rights Committee](#)
- [SAMH Evidence to the Health and Sport Committee's consultation on clinical governance](#)

OTHER INFO

- [Human Rights in Mental Health Care in Scotland](#)
- [Individual Rights in Mental Health Care](#)
- [Rights for Life Declaration](#)

Notes

¹ [Human Rights Act 1998, Article 2](#)

² [Human Rights Act 1998, Article 5](#)

³ [Human Rights Act 1998, Article 3](#)

⁴ [Human Rights Act 1998, Article 8](#)

⁵ Scottish Government, [Disability and Employment in Scotland: A Review of the Evidence Base](#), 2005, Ch 6

⁶ Mental Health Foundation, [Fundamental Facts about Mental Health](#), 2015, p89

⁷ [SAMH response to the Health and Sport Committee's consultation on Clinical Governance](#), 2017

⁸ The Royal College of Psychiatrists in Scotland, [Briefing Paper on Stigma – a harm and safety issue](#), 2015

⁹ [SAMH response](#) to the Scottish Parliament's Health and Sport Committee consultation on Clinical Governance, 2017

¹⁰ Scottish Human Rights Commission, [A Human Rights Based Approach](#) to the Mental Health Strategy, 2015

¹¹ [The Rights for Life Declaration](#)