

HUMAN RIGHTS POLICY

Version:	2
Title of originator/author:	Equality and Diversity Lead
Title of responsible committee / Group:	Regulation Governance Group
Date issued:	July 2013
Review date:	June 2016 extended until incorporated within the Equality and Diversity Policy
Relevant Staff Group/s:	All Trust staff, patients, carers and partner agencies.

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DOCUMENT CONTROL

Reference Number AS/Jul13/HRP	Version 2	Status Final	Author Equality and Diversity Lead
Amendments	Amended to reflect new Trust governance arrangements and following acquisition of Somerset Community Health.		
Document Objectives: This document sets out the Trust's arrangements for ensuring its commitment to equality and diversity and adherence to its legal obligations under the Human Rights Act 1998.			
Intended Recipients: All members of Trust staff, patients, carers and agencies with which the Trust is involved.			
Committee/Group Consulted: Regulation Governance Group			
Monitoring arrangements and indicators: Monitored through the Regulation Governance Committee.			
Training/resource implications: Detailed within the policy.			
Approving Body	Regulation Governance Group	Date: June 2013 May 2016	
Formal Impact Assessment	Part 1	Date: July 2013	
Clinical Audit Standards	No	Date: N/A	
Ratification Body	Senior Managers' Business Group	Date: July 2013	
Date of Issue	July 2013		
Review Date	June 2016 extended until incorporated within the Equality and Diversity Policy		
Contact for review	Equality and Diversity Lead		
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1. INTRODUCTION

- 1.1 The Human Rights Act 1998 came into effect on 2 October 2000 and has the effect of incorporating the European Convention on Human Rights into English law.
- 1.2 Under the Act, all public authorities in England and Wales have a responsibility to act in a way which does not breach the human rights of individuals. All NHS Trusts are public authorities for the purposes of the Act.
- 1.3 Somerset Partnership NHS Foundation Trust is required to ensure compliance with human rights legislation.
- 1.4 This policy will ensure human rights are integrated into the Trust's day-to-day operations and implemented through its other policies and procedures. This policy sets out the Trust's intentions for ensuring operational policies and practices preserve and protect individual human rights.
- 1.5 The policy sets out the actions to be taken to develop a human rights culture by raising awareness of the legislation and its implications for the Trust and for individual members of staff.

2. AIMS AND OBJECTIVES

- 2.1 Rights provided for by the Act include:

Article 2	Right to life.
Article 3	Prohibition of torture.
Article 4	Prohibition of 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	Right to respect for private and family life.
Article 9	Freedom of thought, conscience and religion.
Article 10	Freedom of expression.
Article 11	Freedom of assembly and association.
Article 12	Right to marry.
Article 13	Prohibition of discrimination.

- 2.2 Human rights can be restricted if the following applies:

In the interest of national security, territorial integrity, public safety or the economic well-being of the country, for the prevention of disorder or crime, to protect health or morals or for the protection of rights and freedoms of others.

- 2.3 The Articles of the Human Rights Act are described in more detail in Appendix 1.

2.4 Later additions to the European Convention on Human Rights include:

Article 1, Protocol 1	Protection of property
Article 2, Protocol 1	Right to education
Article 3, Protocol 1	Right to free elections
Article 1, Protocol 6	Abolition of the death penalty

2.5 The Trust acknowledges its legal obligations under the Human Rights Act 1998:

- Not to act incompatibly with the Convention rights in its policy making, practices and decision-making processes.
- To interpret its powers and duties in a way which is compatible with the Convention rights
- To secure the enjoyment of the Convention rights without discrimination on any ground such as gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2.6 In order to meet these obligations, the Trust will:

Always take the Convention rights into account.

- Consider whether any Trust policy, practice or decision could breach these rights directly or indirectly whether by action or inaction
- If a right could be breached, consider whether it is an absolute right or a qualified right.
If qualified, ensure there is legal advice that any restriction is lawful.
Consider whether a restriction is for one of the specified reasons.
- Consider whether a restriction is proportionate – try and strike a fair balance between the restriction and the individual's rights.
- Any restrictions must be as least restrictive and for the shortest duration possible.

2.7 Where there is a restriction in place, or a dispute arises, the Trust will:

- Ensure all decision making processes are fair and what the individual has to say is taken fully into account.
- Ensure individuals are given a reasonable opportunity to have their say under conditions which do not place them at a substantial disadvantage.
- Where appropriate, ensure individuals who might wish to challenge a Trust decision have sufficient and understandable information to pursue an appeal, either internal or external, to the Trust.
- Where appropriate, ensure individuals have the right to be present.
- Where appropriate, ensure the matter is considered and decided in public.

- Where appropriate, ensure individuals have the right to present their own information and evidence and challenge that relied on by the Trust.
- Where appropriate, ensure documentary evidence is disclosed to individuals and individuals have the right to comment on any submissions or advice put before the Trust.
- Where appropriate, simplify and explain procedures.
- Conclude the Trust decision-making process within a reasonable time.
- Implement Trust decisions within a reasonable time.
- Make sure subsidiary bodies, contractors, other providers of Trust services and recipients of grants are under obligations not to act incompatibly with the Convention rights.
- Provide general Trust information to the public on their rights under human rights legislation.
- Provide guidance and training for Trust staff at an appropriate level.
- Ensure there are designated officers within the Trust with responsibilities for implementing human rights legislation.

2.8 The Trust will ensure patients are informed of their rights under the Human Rights Act.

3. DUTIES AND RESPONSIBILITIES

3.1 The **Chief Executive** has overall accountability for ensuring the Trust recognises and adheres to its legal obligation as set out in the Human Rights Act 1998.

3.2 The **Director of Governance and Corporate Development** will be responsible for the implementation and monitoring of human rights legislation and practice within the Trust.

3.3 The **Executive Directors, Heads of Service and Senior Managers** have responsibility for ensuring compliance with the Human Rights Act within their service areas.

3.4 **All managers** should ensure their staff are aware of this policy and the provisions of the Human Rights Act as it affects their practice.

3.5 **All staff** must raise any concerns through their line management arrangements or if this is not possible through the Trust's Whistleblowing Policy. Any issues of concern regarding human rights should be discussed with a **Senior Manager** or an **Executive Director** who may seek legal advice from the Trust's solicitors. Out of hours, any query should be addressed to the On Call Manager. Any queries relating to employment issues should be directed through the Human Resources Department, who again may seek Trust legal advice.

4. EXPLANATION OF TERMS USED

4.1 Human rights are described as being **inherent**, **inalienable** and **universal**. They are:

- **Inherent** because they are acquired by individuals simply by reason of their birth.
- **Inalienable** because the rights cannot be taken away.
- **Universal** because they apply to all persons regardless of nationality, status, sex or race.

4.2 Some rights provided for by the Act are **absolute** whilst others are **qualified**.

- An **absolute** right exists without any limitations or exceptions unless those exceptions are expressly provided for in the Act/Convention itself.
- A **qualified** right is one that exists in certain **qualified circumstances** which mean the limitations and restrictions imposed are justified as being **necessary** in a democratic society.

5. EFFECT OF HUMAN RIGHTS

5.1 The Human Rights Act means all public bodies must pay proper attention to individuals' rights when they make decisions affecting those individuals. Staff, patients, carers, their relatives and/or visitors will be able to rely on many of these rights in their dealings with the Trust

5.2 The Act is very broadly defined and has an impact on all health services. It is important therefore all Trust staff are familiar with the Act so operational practices and policies preserve and protect individual rights.

5.3 All policies developed or reviewed will be equality impact assessed (see Equality Impact Assessment Policy) in the light of human rights guidance to see whether particular practice could breach human rights or whether changes could strengthen and foster human rights.

5.4 Where the position is unclear e.g. where rights of different client groups seem to conflict, expert advice will be sought, including legal advice if necessary.

5.5 Existing policies will be kept under review to ensure case law developments, particularly new court judgements, which have a bearing upon the interpretation of human rights, are as necessary reflected in changes and innovations in practice within the Trust. For example, Article 2 the right to life underpins many policies and procedures.

5.6 Human rights principles extend across the whole range of Trust internal processes and service decisions. The principles and requirements of the Act should be incorporated into all existing and future Trust policies and procedures, with cross reference to this policy where appropriate. This is addressed by the process for initiating and reviewing policies within the Trust.

5.7 Human rights principles go to the very heart of clinical decision-making and in particular should be reflected in record-keeping to justify decisions and record the thinking behind decisions.

- 5.8 There are five key principles to take into account:
- Is the decision justified i.e. in accordance with best practice?
 - Is it auditable i.e. can the process be traced through good record-keeping?
 - Is it proportional i.e. is the restraint or the medication proportionate to the need?
 - Has it been authorised i.e. has the authority been delegated to you or do you need to obtain approval from a manager or senior clinician or nurse?
 - Is the treatment or procedure necessary? Is there another alternative, less invasive option?

6 RAISING THE PROFILE OF HUMAN RIGHTS

6.1 In order to develop a human rights culture within the Trust, staff must be aware of the Human Rights Act and its implications

6.2 This will be achieved through:

- Integrating human rights training into existing training;
- Reporting developments in human rights and related legislation on the Intranet and through newsletters;
- Developing guidance for staff, patients and others;
- Including areas for reporting of risk susceptible to challenge under the Act through the Trust's risk management processes.

7. HUMAN RIGHTS DEFICITS

7.1 A commitment by the Trust to working with staff, patients and carers to respect and foster human rights will not of itself ensure human rights are met.

7.2 It is reasonable to foresee instances where a right is identified but cannot be met because of existing resource constraints or because of existing legal constraints i.e. the requirement to adhere to primary legislation.

7.3 The first of these may and the second necessarily will require, government action to resolve. The result of this is that at any one time the Trust may have known areas where it is working towards human rights which it cannot currently fulfil.

8. TRAINING REQUIREMENTS

8.1 The Trust will work towards all staff being appropriately trained in line with the organisation's Staff Mandatory Training Matrix (training needs analysis). Policies referred to in this policy are accessible to staff within the Learning and Development Section of the Trust Intranet.

8.2 New staff will receive Induction training, which includes Trust policies. Existing staff will receive training appropriate to their level of responsibility as directed by their Service Manager.

8.3 The Trust recognises the critical role training and development has in ensuring the organisation is able to meet the human rights of the community which it serves. Human rights issues will be included wherever appropriate within Trust mandatory and other training programmes.

9. EQUALITY IMPACT ASSESSMENT

9.1 All relevant persons are required to comply with this policy and must demonstrate sensitivity and competence in relation to diversity and in particular the nine protected characteristics defined in the Equality Act 2010. If you, or any other groups, believe you are disadvantaged by this policy please contact the person responsible as set out within the policy. The Trust will then actively respond to the enquiry.

10. MONITORING COMPLIANCE AND EFFECTIVENESS

10.1 Process for Monitoring Compliance

- Overall monitoring will be by the Regulation Governance Group.

10.2 Responsibilities for conducting the monitoring

- The Equality and Diversity Lead will be responsible for monitoring the effectiveness of the policy and for reporting concerns or issues to the Regulation Governance Group or Executive Management Team as appropriate.

10.3 Methodology to be used for monitoring

- Incident reporting and monitoring;
- Equality and Diversity Quarterly reports;
- Workforce Governance Group quarterly reports.

10.4 Frequency of monitoring

- The Regulation Governance Group will receive quarterly reports or more frequently when required.

11. STANDARDS AND KEY PERFORMANCE INDICATORS

11.1 The standards or key performance indicators, which inform this procedural document, are as follows:

Section	Outcome
Information and involvement	1 Respecting and involving people who use services
Personalised care, treatment and support	4 Care and welfare of people who use services
Safeguarding and safety	7 Safeguarding people who use services from abuse
Suitability of staffing	12 Requirements relating to workers
Quality and management	15 Statement of purpose 16 Assessing and monitoring the quality of service provision 17 Complaints

12. COUNTER FRAUD

- 12.1 The Trust is committed to the NHS Protect Counter Fraud Policy – to reduce fraud in the NHS to a minimum, keep it at that level and put funds stolen by fraud back into patient care. Therefore, consideration has been given to the inclusion of guidance with regard to the potential for fraud and corruption to occur and what action should be taken in such circumstances during the development of this procedural document.

13. REFERENCES, ACKNOWLEDGMENTS AND ASSOCIATED DOCUMENTS

13.1 Associated documents

Equality Impact Assessment Policy

Human Rights Policy

Annual EDS Report and Equality Outcomes

http://www.sompar.nhs.uk/about_us/equality_and_diversity/delivery_system

The Department of Constitutional Affairs publish several useful guides, including:

- Making sense of human rights: a short introduction
- Human rights: human lives: a handbook for public authorities
- A guide to the Human Rights Act 1998: third edition

These may be obtained at

<http://www.justice.gov.uk/guidance/humanrights.htm>.

NHS Litigation Authority website: www.nhs.uk/NHSLA/About/Information/Information%20for%20the%20Public/Information%20for%20the%20Public%20-%20Human%20Rights

Human Rights in Healthcare – A Framework for Local Action (PDF, 1171K) - Department of Health – 2007 (a useful guide to Human Rights in relation to the NHS.

http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_088972.pdf.

14. APPENDICES

- 14.1 For the avoidance of any doubt the appendices in this policy are to constitute part of the body of this policy and shall be treated as such.

Appendix One – Human Rights Act Convention Rights

HUMAN RIGHTS ACT Convention Rights

- Article 1 THE CONVENTION**
- Article 2 RIGHT TO LIFE**
- Article 3 PROHIBITION OF TORTURE**
- Article 4 PROHIBITION OF SLAVERY AND FORCED LABOUR**
Exclusions from meaning of “forced labour” defined (military service, penal sentence etc.).
- Article 5 RIGHT TO LIBERTY AND SECURITY**
No deprivation of liberty except in the cases specified in accordance with law. E.g. of those of unsound mind. Right to damages for unlawful arrest/detention
- Article 6 RIGHT TO A FAIR TRIAL**
Provides for a fair, timely, and public hearing except in the interests of morals, public order, national security, juveniles or the protection of the private life of the parties.
- Article 7 NO PUNISHMENT WITHOUT LAW**
- Article 8 RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE**
No interference except in accordance with the law or in the interests of national security, public safety, the economic well being of the country, the prevention of disorder or crime, the protection of health or morals, or for the protection of the rights and freedoms of others.
- Article 9 FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION**
Includes freedom to change religion or beliefs and to manifest these in worship, teaching, practice and observance.
- Article 10 FREEDOM OF EXPRESSION**
Includes freedom to hold opinions and to receive and pass on information and ideas. *Exclusions include the rights of others and disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*
- Article 11 FREEDOM OF ASSEMBLY AND ASSOCIATION**
Includes the right to form and join trade unions, or refuse membership of a union.
- Article 12 RIGHT TO MARRY**
- Article 14 PROHIBITION OF DISCRIMINATION**
The enjoyment of Convention rights and freedoms irrespective of

sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 16 RESTRICTIONS ON POLITICAL ACTIVITY OF ALIENS

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

Article 17 PROHIBITION OF ABUSE OF RIGHTS

The Convention does not authorise any activity aimed at the destruction of any of the rights and freedoms it contains.

Article 18 LIMITATION ON USE OF RESTRICTIONS ON RIGHTS

Restrictions permitted under the Convention on rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

The First Protocol

Article 1 PROTECTION OF PROPERTY

Entitlement to peaceful enjoyment of possessions subject to the securing of payment of taxes or other contributions or penalties.

Article 2 RIGHT TO EDUCATION

No person shall be denied the right to education. Where the State assumes functions in relation to education and teaching, it shall respect the right of parents to ensure such education and teaching conform with their own religious and philosophical convictions.

Article 3 RIGHT TO FREE ELECTIONS

Free elections at reasonable intervals by secret ballot.

The Sixth Protocol

Article 1 ABOLITION OF THE DEATH PENALTY

Article 2 DEATH PENALTY IN TIME OF WAR

A government may derogate from its Convention obligations during war or other public emergency.

Source: Human Rights Unit (2002) *Study Guide Human Rights Act 1998*, Lord Chancellor's Department.