

# Using human rights as a practitioner

## Responding to behaviours of concern in a learning disability setting

This flowchart is for practitioners working in learning disability settings, to help you use a human rights approach to responding to behaviours of concern.

### Which of my Human Rights Act duties are triggered?



**Duty to protect person's private life (well-being, participation in community and autonomy)**



**Duty to respect person's private life (autonomy)**



**Duty to respect right to liberty**

### Step 1

Is the person's well-being or right to participate in their community at risk?

Protecting private life

YES

If the person's own well-being or the well-being of others is at risk as a result of their behaviour, or they are unable to participate in their community, then you must take reasonable steps to protect these rights. You should also take positive steps to understand the meaning and function of the behaviour.

NO

### Step 2

Are you considering intervening in the person's private life to resolve a behaviour-related issue?

Respecting autonomy

YES

This right can be restricted, if you follow the three stage test:

- 1. Lawful:** the Mental Capacity Act will only permit interference with the person's autonomy if they lack capacity to make that decision. Arrange a mental capacity assessment. If assessed as not having capacity, make a best interests decision which protects the person's autonomy as much as possible.
- 2. Legitimate aim:** is your planned intervention likely to protect the person/others' well-being?
- 3. Proportionate:** will the interference be proportionate to the seriousness of the harm it is aiming to prevent?

NO

### Step 3

In taking steps to prevent risk to the person's well-being, are you at risk of depriving them of their liberty?

Respecting liberty

YES

Yes: the right to liberty can be limited. But first, you should take all practicable steps to avoid this and only deprive someone of their liberty if:

- the person is assessed as lacking capacity to make the decision
- the person needs care or treatment to protect them from harm or abuse and there is no other way to provide it
- a best interests decision has been made to deprive them of their liberty

NO

If your restriction of the person's liberty doesn't amount to a 'deprivation of liberty', you will need to refer to your internal policies on seclusion, restraint etc. to apply the correct procedural safeguards ensuring any restrictions on the person's liberty are lawful.

### Obtain deprivation of liberty authorisation

This flowchart is taken from BIHR's toolkit 'Learning Disability and Human Rights: A practitioner's guide'

The toolkit gives more information on these rights, your duties as a practitioner and covers other key issues for learning disability.

Other toolkits in this series include flowcharts on key issues for dementia, young people and rehab. Get your free copy at:

[www.bihr.org.uk/health](http://www.bihr.org.uk/health)  
0207 882 5850

[info@bihr.org.uk](mailto:info@bihr.org.uk)  
@BIHRhumanrights

