

The Human Rights Act & HIV

What action can be taken?

Organisations may want to take advice about preventive action, such as an audit of the organisation's systems, which can be taken to ensure that they comply with *Convention* rights. Advice can be obtained through professional associations or the relevant Council for Voluntary Organisations (see Contacts below).

The Act allows legal action to be taken by individuals through an appropriate UK Court or Tribunal against a public authority. If the case is unsuccessful in the UK Courts, it is possible to take the case to the European Court on Human Rights. To challenge an existing piece of legislation on human rights grounds, a Declaration that the legislation is incompatible with a *Convention* right can be sought. It is also possible for individuals to raise arguments based on rights under the Act if they are being sued. Individuals should be referred for legal advice if they wish to take legal action for breach of a *Convention* right (see advice contacts below).

Useful contacts

NCVO (England)	Phone e-mail	020 7713 6161 ncvo@ncvo-vol.org.uk
SCVO (Scotland)	Phone e-mail	0131 556 3882 enquiries@scvo.org.uk
NICVA (Northern Ireland)	Phone e-mail	02890 877 777 nicva@nicva.org
WCVA (Wales)	Phone e-mail	02920 431 700 enquiries@wcva.org.uk
Liberty (human rights legal advice)	Legal line e-mail	020 7378 8659 info@liberty-human-rights.org.uk
THT Advice Service (for people living with HIV)	Help line e-mail	020 7242 1010 advice@tht.org.uk

You can download a copy of the Human Rights Act and related laws from the Home Office website:
<http://www.homeoffice.gov.uk/hract/>

Briefing papers on the Human Rights Act for voluntary organisations can be found on NCVO's website:
<http://www.ncvo-vol.org.uk/main/about/info/briefings.html>

This fact sheet was produced by the Human Rights Subgroup of the UK HIV Policy Forum. The UK HIV Policy Forum comprises HIV agencies from across the UK including: Network of Self Help HIV and AIDS Groups, UK Coalition of People Living with HIV and AIDS, Scottish Voluntary HIV and AIDS Forum, Wales Reference Group on HIV, English HIV Policy Forum, BMA Foundation for AIDS, Positively Women, African HIV Policy Network, Terrence Higgins Trust, Gay Mens Health Network, Sigma Research, British HIV Association, Providers of AIDS Care and Treatment, South West Regional HIV Network, National AIDS Trust.

The UK HIV Policy Forum is serviced by NAT (National AIDS Trust Reg. Charity 297977). For more information contact NAT ph 020 78146767 email: info@nat.org.uk web www.nat.org.uk

The Human Rights Act & HIV

September 2001

WHAT IS THE HUMAN RIGHTS ACT?

The Human Rights Act is a new law that incorporates the *European Convention* on Human Rights into UK law. The Human Rights Act allows individuals to enforce their rights under the *European Convention* in UK courts. The rights under the *Convention* that are most relevant to HIV are:

- Right to life.
- Right not to be subjected to inhuman or degrading treatment or punishment.
- Right to liberty.
- Right to a fair trial.
- Right to respect for private and family life.
- Right to enjoyment of rights and freedoms without discrimination.

The meaning of these '*Convention* rights' can be established by looking at court cases decided both within the UK and at the European Court of Human Rights.

The Human Rights Act can now be used to change other laws throughout the UK to ensure that they comply with the *European Convention*. As a result of the introduction of the Human Rights Act, other laws must now be interpreted so far as is possible to be compatible with rights under the *European Convention*. The Human Rights Act allows people to challenge legislation and regulations made by the Westminster Parliament, the Scottish Parliament and Welsh and Northern Ireland Assemblies, on the grounds that the relevant law is not compatible with the *European Convention*.

Who is bound by the Act ?

The Act binds **public authorities**, which include:

- Government Departments.
- Health Authorities, NHS Trusts, Health Boards and Local Authorities.
- Police and emergency services.

The public functions of other organisations outside of government are also covered by the Act. These might include:

- Voluntary organisations and charities.
- Hospitals, hospices and clinics.
- Housing Associations.

Under certain circumstances it may also be possible for one individual to sue another individual for breaching their *Convention* rights.

How does the Act apply to people living with HIV and affected communities?

Because the Human Rights Act is new, the precise way in which the Act will apply is still unclear. Until more cases are decided by UK courts and tribunals it will be difficult to predict outcomes.

Public authorities have a range of defences available to them against claims made under the Human Rights Act. Whilst certain *Convention* rights should be considered as absolute, others are 'qualified'. This means that an authority will not have acted unlawfully if they can justify their actions against defined and transparent criteria. For example, an authority will have a defence to an allegation of breach of the right to non-discrimination where there is a reasonable and objective reason for the difference of treatment, balancing the need to protect individual rights and the interests of the wider community.

The following are examples of some issues where the Human Rights Act may have direct benefits to people living with HIV and HIV affected communities. These examples are provided to give an indication of the potential scope of the Act, but it is by no means an exhaustive list.

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Treatment rights

There is no express right to healthcare or medical treatment under the *Convention*. However, it may be possible to argue that there is a right to life-preserving medical treatment implied by the right to life. Discrimination in access to healthcare based on HIV status may be in breach of the right to non-discrimination in enjoyment of the right to life.

Depending upon the circumstances, failure to diagnose or treat may be considered to be inhuman or degrading treatment. Access to health care also raises issues of the right to a private life. The right to respect for private life has a broad definition and failure to treat or prescribing inappropriate treatment may interfere with private life which then, to be lawful, must be justified by the public authority.

Health Authorities are usually allowed broad discretion to decide how to spend limited NHS funds, but in extreme circumstances decisions not to fund essential treatments may be able to be challenged based on *Convention* rights.

Immigrants and asylum seekers

Immigrants, visitors and asylum seekers sometimes face difficulties accessing treatments through the NHS. If a person is denied access to essential HIV treatments by a hospital or clinic because of their immigration status, this may constitute a breach of their *Convention* rights.

People with AIDS who are deported from the UK to a country where HIV treatments are not available may face dramatically reduced life expectancy and acute suffering. There has been one case where the deportation from the UK of a man with AIDS was found to amount to inhuman or degrading treatment under the *Convention*. However the facts of that case were exceptional and it is unlikely to be followed except in extreme cases.

Limits to welfare entitlements such as reliance on vouchers may result in asylum seekers being unable to meet basic health, food and shelter needs. Such restrictions may in some circumstances breach *Convention* rights, particularly where the health consequences are potentially life threatening.

Medical records

Sometimes HIV records are disclosed without consent. Inappropriate sharing of data without consent can cause harm to individuals. For example, it can lead to discrimination if information becomes public. Disclosure of medical information may be in breach of the right to a private life. Disclosure may not breach *Convention* rights if there are legitimate interests for it and adequate safeguards are in place.

Gay men

Gay youth often face homophobic educational environments in schools and colleges and may have little access to support and health education relevant to their sexuality. Gay youth may suffer bullying, abuse and violence within schools and this is associated with mental health problems such as depression and low levels of self esteem. Where there is a failure to provide information within schools about safer sex, HIV vulnerability is heightened. Educational institutions now need to consider whether failing to support gay students and address their sexual health education needs on a non-discriminatory basis is in breach of *Convention* rights.

Prisoners

Prisoners with HIV often face a range of practical difficulties in accessing HIV treatments, particularly if they are frequently moved between different prisons. Under the *Convention*, countries are obliged to provide medical care for people in detention. A failure to do so may mean that the right to life has been breached.

Prisoners with HIV may wish the impact of imprisonment on their health prospects to be taken into account when they are being sentenced or when their parole or early release is being considered. A failure to take HIV into account may in some circumstances breach the prisoners' *Convention* rights.

Failure by prison authorities to address prevention issues may also raise Human Rights Act issues. For example, where access to educational resources and condoms and clean needles and syringes is limited and HIV transmission occurs within prisons, it may be argued that the authorities are in breach of their obligations arising under the *Convention*.

Drug users

Injecting drug users sometimes face difficulties in accessing medical treatments, including drugs for HIV and hepatitis C. Sometimes drug users are restricted in accessing treatment (such as methadone maintenance) to particular times, places or under strict conditions such as supervision. Depending on the circumstances, where access to treatments is restricted or refused this may be a breach of *Convention* rights.

HIV service providers

Human rights obligations under the *Convention* may be owed to service users by HIV service providers. Privacy and non-discrimination rights under the *Convention* provide legal protection for individuals which is additional to protections provided by existing UK laws on data protection and confidentiality. Organisations need to ensure that they respect the privacy rights of service users by ensuring files are kept securely and that staff are aware of the importance of respecting confidentiality regarding issues such as HIV status and sexuality.

Obligations may also be owed to employees of HIV services. For example, providing less favourable terms and conditions to an employee on the ground of their sexuality may in some cases be a breach of the right to non-discrimination in enjoyment of the right to privacy.

HIV organisations should review their current activities to ensure compliance with human rights requirements established by the *Convention*. This may involve looking at the impact of decision-making procedures; personnel issues; service delivery standards and administrative procedures.