

## Case studies

### 1. Investigating unexplained bruising on a boy living in a care home

Challenging the treatment of a young man in residential care. An advocacy example, without court action.

Amrit is a young man who was placed in residential care on a short-term basis, due to mental health problems. During a visit one day, his parents noticed bruising on his body, which no one seemed to be able to explain. They raised the issue with the managers at the home but their concerns were dismissed. They were also told that they were no longer permitted to visit Amrit. After participating in a BIHR training session the parents approached the care home once again and invoked Amrit's right not to be treated in an inhuman and degrading way (Article 3) and their own right to respect for family life (Article 8). As a result, the ban on their visits was revoked and an investigation was conducted into the bruising on their son's body.

### 2. Ensuring accountability when older people can't speak up for themselves

How to protect the rights of older people who can't speak up for themselves when public officials overstep the line. An example from the courts.

Wendy, a former magistrate, is 81 years old. She has lived in her home for 32 years. Wendy has recently developed severe dementia. Her son John cares for her at home, with the help of the local authority. When social workers ask Wendy about some scratches and bruises she can't remember how they happened. The social workers decide to visit Wendy when John was out shopping and take Wendy away to a nursing home. They had no authorisation to do this.

When he returned home, John could not find his mum and no one told him where she was. It took John 19 days to find Wendy, and only after he had asked a lawyer to write to the council to try and locate her. John wanted to visit his mother, but because of the unexplained injuries, the council restricted John and Wendy's contact, despite not investigating how the injuries had occurred. John and Wendy were not allowed to meet unsupervised for more than a year.

After sixteen months, the council dropped its (uninvestigated) allegations of abuse against John. The family decided to take court action because they believed keeping

Wendy in the care home was a breach of her right to liberty, which is protected by the Human Rights Act (Article 5).

The judge found the way the council had handled their concerns about Wendy's welfare was 'woefully inadequate'. They had not investigated whether she was at risk before they took her away from her home, and they had not got the correct authorisation to keep her in a care home. Therefore, the local authority had breached Wendy's right to liberty. In addition, the judge said the council had breached her right to respect for her private life in her own home, protected by the HRA in Article 8. This right also protects Wendy's right to a family life with her son, John, which was breached when their visits were restricted. Wendy and John are now free to visit whenever they want.

### 3. Helping an older couple live in the same care home

Helping an older couple live in the same care home. An advocacy example, without court action.

Dora and Simon had been married for 59 years. Dora was blind and had recently developed Alzheimer's. She and Simon were injured in a fall at home, and Simon was no longer able to care for her while he recovered. During this time, Dora was moved into a local publically funded nursing home.

It became clear that Dora would have to stay in a nursing home, but Simon visited her every day. However, their relationship was threatened when the local authority decided to move Dora into a permanent nursing home that was too far away for Simon and their children to visit.

Simon contacted Counsel and Care. They helped Simon to challenge the decision to move Dora on the basis that his and Dora's right to family life under Article 8 of the Human Rights Act was threatened by the move and the local authority needed to consider this right when making their decision. This helped Simon to persuade social services to allow Dora to remain in the nursing home close to her family and to Simon.

Source: BIHR & EDF 'Human Rights and Equality in the Voluntary Sector' (2010)

#### 4. **Securing support for a boy with Down's syndrome and his family**

Using the Human Rights Act to secure proper support from the local authority for a boy with Down's syndrome, and his family. An advocacy example, without court action.

Mrs Smith has a 13-year-old son, Daniel. Daniel has Down's syndrome and a long history of causing harm to himself and his family due to diagnosed behavioural disorders. As a result of the local authority's refusal to provide additional support, Daniel had not been out of the family home for weeks and Mrs Smith was extremely concerned that he was going to seriously harm himself or another member of his family.

The Down's syndrome Association had previously worked with BIHR on using the Human Rights Act to support the families and carers they work with. Their approach is not a combative one – instead they encourage local authorities and service providers to use the HRA as a decision-making framework. This makes it easier for carers to explain to local authorities how their decisions might have a negative impact on families, even when the local authority is trying to act according to what it thinks are their best interests.

In this case, the DSA wrote to the local authority arguing that their failure to provide the family with necessary support risked breaching the rights of Daniel and his mother to respect for private and family life (Article 8).

Daniel's respite care was soon increased, and arrangements were made by the local authority for him and his family to access further assessment and support. Daniel had lots more to do and his behavioural disorders gradually began to improve; as a result he and his family were able to enjoy their time spent together again.

#### 5. **Making sure people with mental health problems are not being unlawfully detained**

Using human rights to make sure that people with mental health problems who have not been sectioned don't have their right to liberty unlawfully taken away. An advocacy example, without court action.

Peter was admitted to a London mental health hospital. He is an informal patient, so he has not been "sectioned" under the Mental Health Act. This means he is entitled to leave the hospital whenever he likes. If staff have concerns about Peter's health or safety they could use powers under the Mental Health Act to detain him.

Peter wants to leave the ward to visit his sister and his friends. On the three occasions he tries to do this the nurses tell him it was not in his best interests to leave. So even though Peter was not detained and free to leave, in practice he was not able to.

Peter had access to an advocate, Rana, who had received human rights training from BIHR. After discussing the issue with Peter, Rana wrote to the hospital on his behalf flagging up concerns that this situation was breaching Peter's right to liberty, protected by Article 5 in the Human Rights Act. Rana explained that although Peter is an informal patient, he was being treated as though the procedures for detaining him had been used. So although he should have been free to leave, he was being detained without any of the safeguards that would have been available if he was detained under the Mental Health Act. Following this Peter's relationship with the nurses greatly improved, and he was permitted to leave when he wanted to. Peter's mental health improved greatly, and he was discharged shortly after.

Source: Cambridge House Mental Health In-Patient Advocacy Project

#### 6. Challenging a blanket policy that led to a learning disabled girl being unable to get to school

Helping a parent and head teacher to appeal a decision not to provide transport to and from school for a learning disabled girl. An advocacy example, without court action.

A local authority had a policy of providing school transport for children with special educational needs living more than 3 miles from their school. Sarah, a young learning disabled girl lived 2.8 miles from the special school she attended. Despite being unable to travel on her own, she was advised by the local authority that she should instead take two buses to and from school each day. An independent advocate who had attended a BIHR training session supported Sarah's mum to challenge the decision using human rights language. Sarah's mum approached the head of the school and explained that the transport decision was a disproportionate interference with her daughter's right to respect for private life (Article 8), given the failure to consider her individual circumstances. The head teacher took the issue to the local authority, and the decision was reversed. Sarah was provided with transport to and from school from then on, making a real difference to her life.