

Human rights in maternity care

Human rights in maternity care: the key facts

What are human rights?

Every human being has the same human rights.

Human rights law means that public organisations like hospitals must treat you with dignity and respect. They must consult you about decisions and follow your choices.

Every health professional who cares for you must respect your human rights in all the care they give.

What are my rights when I am pregnant and giving birth?

Human rights laws give you the right to receive maternity care.

Human rights laws give you the right to make your own choices about your maternity care.

They say that the care that health professionals give you in maternity must respect your dignity and your freedom to make decisions about yourself (this freedom is called autonomy).

Do human rights protect an unborn child?

In UK law a foetus doesn't have rights. An unborn baby doesn't become a separate person with legal rights until they are born and draw breath by themselves.

Where do human rights come from?

In the UK, human rights are protected by law. The [Human Rights Act 1998](#) incorporates into domestic law the rights protected by the European Convention on Human Rights. If someone believes that their human rights have been violated they can bring a legal claim in the UK courts. Human rights in maternity are not affected by Brexit.

Human rights are also protected by common law (decisions passed in the law courts in the UK over the years). This is particularly important in the areas of clinical negligence and consent.

The UK has also ratified (signed up to) the [Convention on the Elimination of all forms of Discrimination against Women](#). This prohibits pregnancy-related discrimination. It requires the provision of appropriate healthcare during pregnancy and the postnatal period. This Convention influences the UK Courts' interpretation of the law but it is not possible to bring a legal claim in the UK under the Convention.

How do human rights apply to maternity care?

Human rights law sets out the way we can expect to be treated by the Government and all public bodies, such as the NHS.

This means that public bodies must respect human rights when making decisions. It also means that caregivers working in public bodies must respect human rights as they go about their work.

Human rights are also protected by clinical negligence law, which is part of the common law throughout the UK. The right to autonomy and the requirement for health professionals to seek informed consent are a fundamental part of the law of negligence.

What rights do I have in maternity care?

Article 2 protects the right to life. This means that you have the right to basic life-saving health services. This includes maternity care.

Examples of experiences that might breach Article 2 include charging for maternity care if that means you decide not to receive care, or not giving enough postnatal care (care after the birth) to someone whose baby has been removed into care by social services.

- You can read more about charging for NHS care in our factsheet [NHS charging](#).

Article 3 prohibits inhuman or degrading treatment.

For example, if midwives or doctors fail to provide care which is needed to avoid preventable suffering, such as pain relief, this could be inhuman or degrading treatment.

If you ask for pain relief, or for your pain relief to be topped up, it should be given unless there are good reasons against providing it. For example, there may be a medical reason for refusing pain relief because it could cause you harm. This may be called a clinical contraindication.

Article 8 protects the right to respect for private and family life. The Courts have said that this includes the right to choose your place of birth and choice of birth companion.

- You can read more about these in our factsheets [Can I choose where I give birth?](#) and [Birth partners](#).

It also gives you the right to physical autonomy and integrity. This means that no medical procedure can be carried out without your consent. Carrying out a procedure without your consent violates your right to physical autonomy and

integrity under Article 8. It may also violate your right not to be subject to inhuman and degrading treatment under Article 3.

- You can read more in our factsheet [Consenting to treatment](#).

Failing to give you sufficient, objective and unbiased information for someone to make an informed choice, including by not providing adequate interpreting services, will also violate Article 8.

The right to make choices about childbirth includes the right to decline any medical care at all.

- You can read more in our factsheet [Unassisted birth](#).

Article 14 prohibits discrimination in the application of the other human rights and entitles people to equal treatment in their maternity care. This makes it unlawful for NHS organisations or individual caregivers within the NHS to discriminate against pregnant people on grounds such as disability, race, religion, immigration status and national origin.

In addition, the [Equality Act 2010](#) protects people against discrimination and harassment. It recognises nine 'protected characteristics': age, disability, gender reassignment (that is, if you are transgender), marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation. The Equality Act also means that it is unlawful for NHS organisations or individual caregivers within the NHS to discriminate against people on the basis of these characteristics.

This means that healthcare professionals should not make assumptions or treat you differently – either on purpose or because of unconscious bias – because of (one or more) of these characteristics. For example, a healthcare professional should not assume that a woman wearing a headscarf cannot speak

English, or that a Black woman requires less pain relief than a white woman.

Your healthcare professionals should use your preferred pronouns. They should ensure that they provide you with respectful and appropriate care if you are a trans man.

A Trust needs to make sure that its rules don't unintentionally discriminate. For example, a same sex couple where the non-birthing partner intends to breastfeed could be discriminated against by rules that say they have to go home overnight. The Trust should have good reasons for rules such as these. When they do have good reasons, they should make exceptions on a case-by-case basis to make sure that people are not discriminated against.

- If you experience discrimination or bias during your care, we can provide you with [advice](#).

The [Equality Act 2010](#) also requires public bodies, such as the NHS, to make sure that people with substantial physical and mental impairments can access the same maternity care as any other person. This means that maternity services have to make 'reasonable adjustments' so that people with disabilities are not placed at substantial disadvantage compared to other individuals who do not have the same impairment.

This does not mean that everyone should get exactly the same care. Under the law, treating someone equally can mean that someone should be given extra support, for example, being provided with an interpreter, in order to put them in the same position as other people who are having a baby.

- You can read more about your rights to reasonable adjustments if you are disabled or have a long-term health condition in our factsheet [Disability and long-term health conditions: your](#)

[right to reasonable adjustments in maternity care](#).

Do human rights protect an unborn child?

In UK law a foetus doesn't have rights. An unborn baby doesn't become a separate person with legal rights until they are born and draw breath by themselves.

You are free to make choices against medical advice and cannot be forced to accept treatment whether or not it is said to be in your unborn child's interest.

If healthcare providers believe your child will be at significant risk of harm once they are born, they may make a referral to social services. However, your birth choices alone should not be grounds for a social services referral.

- You can read more on our factsheet [Social services and maternity care](#)

Are there any circumstances in which treatment can be given without consent?

The only time health professionals do not need your consent to treatment is when you are not able to make a decision. This might be because it is an emergency and you are unable to make your wishes known. The only other circumstance is if you have been assessed as lacking mental capacity to make the decision about treatment. The law governing this is the Mental Capacity Act 2005 in England and Wales. In Scotland it is the Adults with Incapacity (Scotland) Act (2000).

It is very rare in law for someone to be unable to make their own decisions.

If you are deemed to lack mental capacity, decisions about your care must be made in your best interests.

- You can read more on our factsheet [Mental capacity and maternity care](#).

What can I do if my rights have been violated?

Birthrights provides a free and confidential advice service for individuals and healthcare professionals seeking advice and information about human rights in pregnancy and childbirth. You can contact us via [our contact form](#) or by email: advice@birthrights.org.uk.

If you are unhappy with your care, you can make a complaint to the relevant healthcare provider.

If you wish to seek financial compensation for ill-treatment, you should contact a solicitor specialising in medical negligence law.

- You can read more about complaints and seeking legal advice on our factsheet, *Making a complaint*.

Case law

Human rights cases

In ***Ternovszky v Hungary (2010)*** The European Court of Human Rights held that women are entitled to choose to give birth at home and the state is obliged to ensure that health professionals can attend them at home without fear of criminal, civil or disciplinary sanction for doing so.

In ***Dubska v Czech Republic (2014)*** the Grand Chamber of the European Court recognised that Article 8 protected women's right to make choices about childbirth, but found that the Czech government was entitled to decide whether or not to support women's choice of home birth by allowing midwives to attend them.

- Read our [commentary](#) on the case of *Dubska v Czech Republic (2014)*

In ***Konovalova v Russia (2014)*** the Court held that a woman's consent was necessary for the presence of medical students during labour. It held that Russian law did not contain adequate safeguards to protect patients from arbitrary interferences with their private life. There was no legal provision requiring patients' consent for students' participation in their treatment and the hospital's information about students was 'vague' and did not specify the extent of their involvement in treatment. As a result, any person who is providing maternity care should be clear about their status and explain if they are a student, so that the patient can decide whether they wish to receive care from them or to have them present.

- Read our [commentary](#) on the case of *Konovalova v Russia (2014)*

Common law cases

In ***Montgomery v Lanarkshire Health Board (2015)*** the UK Supreme Court affirmed a woman's right to autonomy in childbirth. It stated that:

'An adult person of sound mind is entitled to decide which, if any, of the available forms of treatment to undergo, and her consent must be obtained before treatment interfering with her bodily integrity is undertaken. The doctor is therefore under a duty to take reasonable care to ensure that the patient is aware of any material risks involved in any recommended treatment, and of any reasonable alternative or variant treatments. The test of materiality is whether, in the circumstances of the particular case, a reasonable person in the patient's position would be likely to attach significance to the risk, or the doctor is or should reasonably be aware that the particular patient would be likely to attach significance to it.'

This means that a birthing person is entitled to a personalised conversation about risks and benefits of the options they are considering and that they should be given information about the risks that are important to them as an individual, to support them to make their own decisions about their care.

Hospitals cannot rely solely on printed leaflets or online material to provide relevant information; there must always be a personal discussion between the individual and the health professional. This should be facilitated appropriately, for example, by providing interpreting services if required. If the person receiving care asks specific questions the healthcare professional must give full, honest and objective answers. A consent form on its own is not sufficient evidence of consent.

- Read our [commentary](#) on the case.

In ***Re MB (1997)*** the courts in England and Wales upheld the rights of patients to make important medical decisions affecting their lives for themselves: 'a

competent woman who has the capacity to decide may, for religious reasons, other reasons, or for no reasons at all, chose not to have medical intervention, even though, as we have already stated, the consequence may be the death or serious handicap of the child she bears or her own death.'

This was affirmed in *St George's Healthcare NHS Trust v S (1997)*, in which the court stated that 'an adult of sound mind was entitled to refuse medical treatment, even when his or her own life depended on receiving such treatment. In the case of a pregnant woman, that right was not diminished merely because her decision to exercise it might appear morally repugnant.'

The Scottish courts have taken the same approach (*Law Hospital NHS Trust v Lord Advocate (1996)*).

Inclusion

We believe human rights are for everyone. The law underpinning our human rights sometimes describes the rights of women who are pregnant and giving birth. We have used the language of the law and of policy where necessary for accuracy. However, we champion the rights of all those who are receiving maternity care. Our services and advice are for everyone, regardless of how they identify.

In our own advice and communications, we strive to use inclusive language to make sure all pregnant and birthing people feel welcome, safe and supported at Birthrights. You can read our [Inclusion Statement on our website](#).

About Birthrights

Birthrights factsheets give you information about your human rights when you are pregnant and giving birth.

- Contact Birthrights for help on our [advice form](#) or by emailing advice@birthrights.org.uk.

Birthrights champions respectful care during pregnancy and childbirth by protecting human rights. We provide advice and information to women and birthing people, train doctors and midwives, and campaign to change maternity policy and systems.

We are a charity, independent of the government and the NHS.

www.birthrights.org.uk

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