

Mental Health and Human Rights

From Law to Practice

Issues Covered

- What Are Human Rights?
- Rights Relevant to Mental Health
- How to Respect, Protect, Fulfill?
 - mainstreaming
 - impact assessments
- What Can SAMH do?



What Are Human Rights?

- “ranging from the rights to food, shelter, education-
Human rights are the basic rights we all have simply
because we are human”

BIHR

- HR are secured in Law
- Applies to all equally
- It guarantees basic minimum standard for all hence
protecting the most vulnerable



Human Rights Law

- UNDHR: 1948 - International
 - Civil and Political Rights
 - Social, Economic, Cultural and Environmental Rights
- EHRC: 1950-European
 - Focus on Civil and Political Rights
- BHRA: 1998-British
 - Bringing Rights home: places legal obligation on all public bodies to respect, protect, fulfill
 - Scotland Act: 1998



Absolute Rights...

- The right to life
- The right not to be subjected to torture or to inhuman or degrading treatment or punishment.



Qualified Rights...

- The right to respect for private and family life, home and correspondence
- The right to freedom of thought, conscience and religion
- The right to freedom of expression
- The right to freedom of assembly and association
- The right to protection of property



UK: Ratified following Treaties on International Law

- the International Convention on Civil and Political Rights
- the International Convention on Economic, Social and Cultural Rights
- the Convention on the Elimination of Discrimination Against Women
- the Convention on the Elimination of Racial Discrimination
- the Convention Against Torture
- the Convention on the Rights of the Child
- the Convention on the Rights of Persons with Disabilities.



The Convention on the Rights of persons with disability

- Convention sets out what should be done to break down the barriers which people with long term physical, mental, intellectual or sensory impairments may face in realising their human rights.
- People with disabilities have the same rights as everyone else and it sets out in some detail what is required to respect, protect and fulfill those rights in reality.



The Convention on the Rights of persons with disability

- People with disabilities have the right to make their own decisions in all areas of life, on the same basis as other people and there are duties to provide the support people need to exercise that capacity.
- Decisions should only be made on behalf of people with disabilities where necessary, and with appropriate safeguards
- people with disabilities should have real and effective access to justice
- People with disabilities have the right to live independently and be included in the community (for example the right to choose where they live and who they live with and not to be unlawfully forced into a particular living arrangement)
- People with disabilities have the right to be as mobile as possible.



Core Principles

- **Universality and inalienability** (all people everywhere are born with the same rights which cannot be taken away or given up)
- **Indivisibility, inter-dependence and inter-relatedness** (all rights are equally necessary for human life and dignity)
- **Equality and non-discrimination**
- **Participation and inclusion**
- **Accountability** and the rule of law



Rights and Accountability

- Both are shared
- But have Duty Bearers and Rights Holders in different contexts
- Rights can only be protected, respected and realised through joint co-operation
- So even though Direct accountability might be placed on Public Bodies: in Reality-all agencies and individuals play a part



A Role for SAMH?

How to ensure Respect:

non-interference in the enjoyment of HR

How to Protect:

don't create barriers to HR

How to Fulfill:

promote, invest actions to realise rights

These are state obligations which are devolved to relevant agencies via domestic legislation



Relationship between HR and Mental Health

Both...

- aim to promote well-being
- based on non-discrimination and dignity
- share an interest in positive outcomes for improving lives
- people centered
- reflect fundamental concern with institutions, policies, processes and participation

MAKES SENSE to mainstream as in dealing with Mental Health concerns - effectively dealing with Human Rights



Mainstreaming

What does it involve?

“Mainstreaming human rights involves deepening the understanding of the relationships between rights-holders and duty-bearers in order to help bridge the gaps between them. It moves away from seeing people as having needs to respecting everyone as having certain entitlements”.

NZAID: 2008



HOW to do this in Practice?

- Develop a 'rights' not a 'needs' based approach to strategic and business plans
- Build strategic plan/business plan on a platform of HR principles and relevant Mental Health and HR legislation
- Develop an HR based outcome framework: HRIA
- Develop an HR risk register to underpin key programmes of work



WHAT does this mean in practice?

A framework based on 4 mutually reinforcing principles:

- Participation-in policy, programme design, delivery evaluation
- Accountability-to set clear, deliverable outputs and outcomes
- Non-discrimination - All stakeholders have equal rights - need for balance and proportionality
- Empowerment - through information

ALL involved in the process are Rights holders but some are also Duty bearers



HR Impact Assessment

Human Rights Impact Assessment (HRIA) :measuring the impact of policies, programmes, projects and interventions on Human Rights - Mental Health.

Need to start from a database - initial analysis, identify priority areas, develop programme, implement, assess



Identify Rights-Holders

- Who are they?
- What are their needs?
- Are they aware of their rights or how and where to claim them?
- What are their assets and capabilities?
- How are they organised?



Conduct Accountability analysis

- Which rights are violated or unfulfilled?
- Who is responsible for fulfilling this right?
- What opportunities exist to fulfill the right?
- What are the barriers to fulfilling the right?
- How can the barriers be removed?



Identify Relevant to HR/ Mental Health Law

Article 2 - Right to life

Article 3 - Right not be subjected to torture or to inhuman or degrading treatment or punishment

Article 5 - Right to liberty and security

Article 6 - Right to a fair trial

Article 8 - Right to 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 14 - Prohibition of discrimination



Common Understanding Of Rights

- Do rights holders (e.g.SAMH Clients) and duty bearers (SAMH Trustees and their staff) share a common understanding of human rights goals and how to respect, protect and fulfill these?
- Are systems in place to educate and raise awareness of all relevant stakeholders?
- This includes not only ensuring that staff have skills and capacity in human rights, but also ensuring that patients and communities have the power, capacity and access to influence their own situations through participation and involvement.



What SAMH Can Do?

- Be more explicit/consistent in taking a 'rights to health' approach: Documents, Policies, Strategy, Operation
- Promote and Encourage decision-makers to reflect HR/MH in policies, laws, programmes and budget allocations: Be an HR/MH Authority
- Monitor the quality of government services: Lobby for HR/MH
- Establish and support human rights functions from MH perspective: Fact sheets/guidelines



What SAMH Can Do?

- Educate the public and decision-makers about HR/MH.
- Provide information seminars on relationship between HR and MH for all key stakeholders
- Ensure that services provided on behalf SAMH are HR proof
- Ensure that services provided by SAMH are HR Proof
- Develop an HR culture for SAMH:sustainable change over time

