

Chapter 9

The Right to Respect for Private and Family Life (Human Rights Act, Article 8)

**Please read Part II Guidance on using and interpreting the
Human Rights Measurement Framework first.**

9 The Right to Respect for Private and Family Life (Human Rights Act (HRA), Article 8)

Panel and indicators

Protection of the right to private and family life by the state, its agents or bodies fulfilling a public function					
Indicators	Actions/inactions by the state, its agents or bodies fulfilling a public function				
	Private life		Family life	Home	Correspondence
Physical and psychological integrity; personal, social and sexual identity; personal development, autonomy and participation	Personal information and surveillance				
<p>Structural (indicators of ‘commitment in principle’)</p>	<p>Indicator 41: Legal and constitutional framework</p> <ul style="list-style-type: none"> Protection of the right to respect for private and family life by the state, its agents or bodies fulfilling a public function (including constitutional/‘higher’ law) Status of ratification of relevant international treaties <p>Indicator 42: Legal precedents, gaps and standard-setting</p> <ul style="list-style-type: none"> Principles established in key cases (domestic and ECHR) and international standard setting processes Gaps in protection and non-implementation of legal judgements and recommendations 				
<p>Process (indicators of ‘steps taken’ – including legal, regulatory and public policy measures)</p>	<p>Indicator 43: Regulatory framework</p> <ul style="list-style-type: none"> Key regulators, inspectorates, ombudsmen Relevant responsibilities and powers, national minimum standard frameworks and inspection/complaints-handling criteria <p>Indicator 44: Public policy framework</p> <ul style="list-style-type: none"> Primary legislation Relevant codes and guidance Other relevant policies, plans, targets and goals Spotlight resource allocations 				

<p>Outcome (indicators of the position of individuals and groups in practice/emergence of a human rights 'culture')</p>	<p>Indicator 45: Outcomes of key judicial, regulatory and investigative processes</p> <ul style="list-style-type: none"> • Case law outcomes (covering, for example, negative obligations, positive obligations, sexual identity, respect, autonomy, support for disability) • Key concerns raised by human rights monitoring bodies • Outcomes of regulation, inspection, ombudsmen and complaints procedures that engage Article 6 • Outcomes of independent inquiries and investigations that engage Article 6 • Key allegations by private individuals and civil society organisations/reports in the media <p>Indicator 46: Respect for private and family life: Privacy, identity and autonomy</p> <ul style="list-style-type: none"> • Interference in private life and surveillance (DNA database; Use of Radio Frequency Identification; Use of CCTV (proportionate and necessary); targeted surveillance, etc.) • Gender identity and human rights <p>Indicator 47: Spotlight statistics: The detention context</p> <ul style="list-style-type: none"> • Reporting against HM Inspectorate of Prisons (HMIP) of 'Expectations Criteria' (cross-reference A3, which covers 'stopping out', overcrowding and prolonged containment in cells) for example, sanitation, family life, individual life, family life • The number of women who have been refused a place at a mother and baby unit in prison (or alternatively the availability of unit places compared to the demand) <p>Indicator 48: Spotlight statistics: Unmet basic needs that may meet the Article 8 threshold</p> <ul style="list-style-type: none"> • Deprivation in income/other basic goods and services that may meet the Article 8 threshold • Unmet support needs in health and social care that may meet the Article 8 threshold (support for disabled people, including disabled children; support for individuals to remain in their homes (rather than be moved to a private institution, for example to receive healthcare) • Asylum seekers and their families- destitution and separation of asylum seekers from family ties <p>Indicator 49: Spotlight statistics: Abuse, neglect, discrimination and dignity and respect</p> <ul style="list-style-type: none"> • Treatment and neglect of older people • Bullying in schools • Harassment and identity-based targeting • Financial and emotional abuse <p>Indicator 50: Spotlight statistics: Public attitudes, understanding and experiences</p> <ul style="list-style-type: none"> • Awareness of information rights legislation • Experiences of identity-based discrimination • Percentage with experience of unfair treatment, harassment or bullying at work in the last two years
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Panel and indicators (continued)

Indicators should be systematically disaggregated

Key disaggregation characteristics include ethnicity/race, gender, disability, sexual orientation, transgender, religion and belief, age, social class, area (region, urban/rural, remoteness) with separate reporting of the **non-private household population** and **at risk/vulnerable groups** including individuals staying in/resident/detained in public and private institutions; individuals living in poverty; refugees/asylum seekers, vulnerable children and young people (for example, children in need, 'looked after children', children who are carers), Gypsies and Travellers, etc.

Evidence base

Structural indicators

Indicator 41: Legal and constitutional framework

Table 216: Protection of the right to respect for private and family life in domestic law (including constitutional/‘higher’ law)

UK HRA Article 8.

Table 217: Status of ratification of relevant international treaties⁴³³

International Covenant on Civil and Political Rights (ICCPR) Article 17 – ratified.

ICCPR First Optional Protocol – not ratified (individual complaints mechanism).

ECHR and Protocols 1, 2, 3, 5, 6, 8, 10, 11, 13 and 14 – ratified.

Indicator 42: Legal precedents, gaps and standard-setting

Table 218: Principles established in key cases (domestic and ECHR)

Positive obligation to respect private and family life

- *Douglas and others v Hello! Ltd* [2003] EWHC 55⁴³⁴ – There is a positive obligation on the state to protect Article 8 rights against interference by other private parties.⁴³⁵

Interference in enjoyment of private and family life must be legal, necessary and proportionate

- *Gillan and Quinton v UK* no. 4158/05 [2010] ECHR⁴³⁶ – Stop and search powers under Section 44 Terrorism Act 2000 breached the right to respect for private life because the power is so broad that it fails to provide safeguards against abuse.
- *S & Marper v UK* (GC) nos. 30562/04 and 30566/04 [2008] ECHR⁴³⁷ – The policy of blanket DNA and fingerprint retention for all persons suspected of committing criminal acts (including those subsequently acquitted or against whom proceedings are discontinued) breached the right to private life.
- *R (Wright and others) v Secretary of State for Health and another* [2009] UKHL 3⁴³⁸ – The procedure under legislation allowing the provisional listing of care workers as being unsuited to work with vulnerable adults after a complaint had been made about them, without giving them an opportunity to answer the allegations, and which has the effect of barring them from care work, was a breach of Articles 6.1 and 8.

- *R (F and Thomson) v Secretary of State for the Home Department* [2010] UKSC 17 – The indefinite notification requirements for sexual offenders who had been sentenced to 30 months’ imprisonment or more were incompatible with the right to respect for private and family life because they did not contain any mechanism for reviewing the justification for continuing the requirements in individual cases.⁴³⁹
- *A v Scottish Ministers* [2007] CSOH 189, 2008 SLT 412⁴⁴⁰ – Resulted in the Scottish ministers making a remedial order under Section 14 of the Convention Rights (Compliance) (Scotland) Act 2001 to amend, for Scotland, the provisions of the Sex Offenders Act 2003, introducing a mechanism whereby those subject to indefinite notification can apply for their removal from what is known as the ‘sex offender register’.⁴⁴¹

‘Private life’ incorporates bodily integrity, personal autonomy, sexuality, personal identity and personal information⁴⁴²

Right to respect for physical integrity

- *R (Bernard) v Enfield London Borough Council* [2002] EWHC 2287 (Admin) – The duty to assist an elderly woman with a disability to maintain her basic physical and psychological integrity.⁴⁴³
- *R (C) v Royal Devon and Exeter NHS Foundation Trust* [2004]⁴⁴⁴ – An injunction granted requiring the Trust to provide female nursing staff to perform Ms C’s intimate care tasks (as had been done for over 30 years) until the High Court ruled whether this was a breach of Articles 3 and 8. Prior to the hearing, the matter was settled, with the Trust providing the guarantees that Ms C had sought. The case highlighted the need for choice, independence, autonomy and dignity for disabled people in the provision of healthcare services, particularly intimate care services.
- *R v East Sussex County Council Ex parte A, B, X and Y* [2003] EWHC 167 (Admin) (DRC – Intervener)⁴⁴⁵ – A blanket ban on manual lifting by carers of people with a disability is unlikely to be lawful because it does not consider a person’s individual circumstances. The court acknowledged that ‘the enhanced degree of protection which may be called for when the human dignity at stake is that of someone who is... so disabled as to be critically dependent on the help of others for even the simplest and most basic tasks of day to day living.’ The judgement also acknowledged that ‘the right of the disabled to participate in the life of the community and to have what has been described as “access to essential economic and social activities and to an appropriate range of recreational and cultural activities”’ is encompassed within Article 8’s protection of physical and psychological integrity. The Court ordered the local authority to revisit its policy to make sure it struck a better balance between the human rights of the sisters and the rights of the carers to a safe working environment.

- *Glass v UK* no. 61827/00 [2004] ECHR⁴⁴⁶ – The decision of authorities to override parental objection to a course of medical treatment proposed in respect of a child was a breach of Article 8. The European Court of Human Rights referred to Articles 5-9 of the Oviedo Convention (Council of Europe Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention of human Rights and Biomedicine) as relevant to interpretation of Article 8 (despite the fact that the UK is not a party to the Oviedo Convention). The Court found that treatment without consent (of the legal guardian) is an interference with Article 8, and the key question was whether it is based on the law, necessary and proportionate, a question under Article 8.2 not 8.1. The Court found that the treatment was in accordance with the law, that it was in pursuit of a legitimate aim (of relieving pain) – [having rejected at previous partial admissibility stage argument that Do Not Revive notices violated the right to life]. The case turned on the ‘necessity’ of the interference. The Court found that an immediate emergency cannot be isolated from the previous discussions between medical staff and applicants on what should happen in the event of an emergency. There was no satisfactory explanation as to why there was no legal recourse to the courts to resolve the dispute. The decision of the authorities to override C’s objection to treatment without recourse to the court violated Article 8.
- *Pretty V UK* no. 2346/02 [2002] ECHR⁴⁴⁷ – The European Court of Human Rights said that ‘the concept of ‘private life’ is a broad term not susceptible to exhaustive definition. It covers the physical and psychological integrity of a person... The very essence of the Convention is respect for human dignity and human freedom’.

The right to treatment

- *Bensaid v UK* no.44599/98 [2001] ECHR⁴⁴⁸ – Article 3 might be breached if an individual was deported to a country where no suitable treatment was available; ‘private life’, protected by Article 8, includes the preservation of the individual’s mental stability.
- *Dickson v UK (GC)* no. 44362/04 [2007] ECHR⁴⁴⁹ – Over-ruling an earlier decision of the chamber, the European Court of Human Rights found that in refusing to permit artificial insemination between a prisoner and his wife, a fair balance was not struck between the competing public and private interests involved, and that there had therefore been a violation of Article 8.

- *North West Lancashire Health Authority v A, D & G* [2000] 1 WLR 977⁴⁵⁰ – In a case of refusal by a health authority to fund gender reassignment surgery, the Court of Appeal held that ‘Health Authorities have to make hard and often invidious decisions in the allocation of avowedly inadequate resources. But those decisions must proceed from proper assessments of the conditions competing for treatment’. The authority’s policies ‘were made upon the premise that transsexualism is not a disease and that surgical treatment for it is of no proven clinical benefit’, and needed to be revisited. However, the Court of Appeal noted that ‘Article 8 imposes no positive obligations to provide treatment’.

Treatment, resource allocation and the right to health⁴⁵¹

- *R (on the application of F) v (1) Oxfordshire Mental Healthcare NHS trust (2) Oxfordshire Health Authority* [2001] EWHC Admin 535⁴⁵² – Article 8 was not breached when a health authority refused to fund a medium security placement in Manchester rather than Oxford. Whilst a decision on funding affects lives, that was not a reason to judicialise them.
- *R (on the application of H) v Mental Health Tribunal* [2002] EWHC 1522 Admin⁴⁵³ – The decision not to recommend the transfer of a patient to a hospital closer to his home did not breach Article 8. Decisions on such transfers ‘may also be affected by questions as to the availability of resources with which the court cannot interfere unless those resources, and the lack of them, lead to an infringement of a Convention right, for example, a right under Article 3. That is not the position in the present case’.
- *R (on the application of Haggerty) v St Helens Council* [2003] EWHC 803 Admin⁴⁵⁴ – In a case concerning the closure of a private residential home, the court held that the financial resources of the council were an important element to be considered in the balancing exercise required by Article 8.2.
- *R (on the application of Dudley and others) v East Sussex County Council* [2003] EWHC 1093 Admin⁴⁵⁵ – The High Court ruled that the closure of a residential home did not breach Articles 2, 3 and 8. There was no evidence that Articles 2 and 3 were engaged; if Article 8.1 was engaged, this was justified under Article 8.2 by the council’s needs to balance competing claims on resources.
- *R (on the application of Yvonne Watts) v (1) Bedford Primary Care Trust (2) Secretary of State for Health* [2003] EWHC 2228 (Admin)⁴⁵⁶ – In the context of a patient waiting in pain for a hip operation, the court held that neither Article 3 nor Article 8 rights were engaged in the request for reimbursement of medical costs incurred in an overseas hip replacement operation undertaken to avoid an NHS waiting list to perform the procedure in the UK.

Autonomy

- *Evans v UK* (GC)6339/05 [2007] ECHR⁴⁵⁷, *Pretty v UK* no. 2346/02 [2002] ECHR⁴⁵⁸ – The European Court of Human Rights found that autonomy and decision making are integral to the right to private and family life.
- *Shtukaturov v Russia* no. 44009/05 [2008] ECHR⁴⁵⁹ – The European Court of Human Rights found that any interference with legal capacity – such as a finding of full or partial incapacity or a guardianship order – is an interference with the right to private and family life and must be based on law, pursue a legitimate aim and be a proportionate means of achieving that aim. The European Court found a violation of Article 8 on account of the applicant's full incapacitation.
- *Alajos Kiss v Hungary* no. 38832/06 [2010] ECHR⁴⁶⁰ – The European Court of Human Rights found that blanket restrictions on a group of people to exercise capacity in a certain area simply due to the existence of a partial guardianship is disproportionate. The ECtHR found a violation of Protocol 1 Article 3.
- *Storck v Germany* no. 61603/00[2005] ECHR⁴⁶¹ – The European Court of Human Rights found that a positive duty on the state to protect an individual from interference with their capacity from others exists. The European Court found a violation of Article 8 (the placement in a private clinic from 1977 to 1979); no violation of Article 8 (a stay in a private clinic in 1981 and treatment in a university clinic).
- *Salontaji-Drobnjak v Serbia* no. 36500/05[2009] ECHR⁴⁶² – The European Court of Human Rights found that individuals have a right to a fair hearing (including right to participate in decisions and of access to a court to challenge decisions) in relation to a determination of their legal capacity(see Table 193). The European Court found a violation of Articles 6.1 and 8.
- *R (McDonald) v Royal Borough of Chelsea and Kensington* [2011] UKSC 33⁴⁶³ – The Supreme Court held that the borough's proposal for the applicant to wear incontinence pads or use special sheeting, thus avoiding the need for a night-time carer to assist her in accessing a commode was not in breach of her Article 8 rights.

Medical treatment and consent

- *Y.F. v Turkey* no. 24209/94 [2003] ECHR⁴⁶⁴ – The European Court of Human Rights found that a compulsory medical intervention, even a minor one, constitutes an interference with the right to private life. The Court found a violation of Article 8.

- *Jehovah's Witnesses of Moscow and others v Russia* no. 302/02 [2010] ECHR⁴⁶⁵ – The European Court of Human Rights found that the right to autonomy and self-determination (of a competent adult patient) extends to a right to accept or refuse specific medical treatment, or to select an alternative form of treatment, even where this might lead to a fatal outcome – in the absence of any indication of the need to protect a third party, the state must abstain from interfering with individual freedom of choice in healthcare. The Court found a violation of Article 9 read in the light of Article 11; a violation of Article 11 read in the light of Article 9; and a violation of Article 6.1.

Rape

- *X and Y v Netherlands* no.8978/80 [1985] ECHR⁴⁶⁶ – This decision began the process of developing positive procedural obligations in relation to the treatment of rape victims arising out of Article 8. The case turned on the need to ensure the criminal law is an effective remedy for sexual abuse. If the domestic law is unable or obstructs effective domestic investigation and prosecution this can render a remedy ineffective, even where a civil action is available. The Court found a violation of Article 8.
- *MC v Bulgaria* no. 39272/98 [2004] ECHR⁴⁶⁷ – The European Court of Human Rights took the view that acquaintance rape perpetrated by private individuals could also amount to a violation of Article 3 (as well as Article 8). The Court found a violation of Article 3 where the domestic legal prohibition of rape was inadequate due to a disproportionate emphasis on the need for violence to have been used. The definition of the offence in domestic law effectively required proof of physical resistance. The Court referred to developing state practice on rape definitions as broader than in the past and found that the Bulgarian definition was inadequate as it did not protect individuals from non-consensual sexual acts.

Sexual identity

- *Dudgeon v UK* no. 7525/76 [1983] ECHR⁴⁶⁸ – 'Private life' was held to include sexual life and laws which criminalised sexual activity between men were an interference with private life under Article 8.
- *Christine Goodwin v UK (GC)* no. 28957/95 [2002] ECHR⁴⁶⁹ – National laws which discriminate against transsexual people engage Article 8.
- *Ghaidan v Godin Mendoza* [2004] UKHL 40⁴⁷⁰ – A law which treated the survivors of a same sex relationship less favourably than survivors of heterosexual relationships to succeed in tenancy following the death of a partner breached Articles 8 and 14. Here the Court decided it was possible to give a Convention-compliant meaning to the law to extend to same sex couples and thus, any discriminatory effect could be eliminated.

Personal information

- *Liberty and others v UK* no. 58243/00 [2008] ECHR⁴⁷¹ – Interception of communications breached the right to respect for private life and correspondence and was not undertaken in accordance with the law.
- *Szuluk v UK* no. 36936/05 [2009] ECHR⁴⁷² – Reading of a prisoner’s medical correspondence with his doctor was a breach of Article 8.
- *Potter v Scottish Ministers* [2007] CSIH 67⁴⁷³ – The addition of a message to every outgoing call from a Scottish prison that the call was emanating from a prison was a breach of Article 8. This is currently under appeal.⁴⁷⁴
- *R (on the application of GC) v Commissioner of Police of the Metropolis; R (on the application of C) v Commissioner of Police of the Metropolis* [2011] UKSC 21⁴⁷⁵ – The Supreme Court found that the indefinite retention of the biometric data of all suspects breached individuals’ Article 8 rights, but held that the Police and Criminal Evidence Act 1984 could be read so as to not require indefinite retention.

Respect for the home

- *Connors v UK* no. 66746/01 [2004] ECHR⁴⁷⁶ – The lack of security of tenure of accommodation offered to Gypsy and Traveller communities in the UK was incompatible with respect for home, private and family life. ‘The vulnerable position of gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases.... To this extent, there is thus a positive obligation imposed on the Contracting States by virtue of Article 8 to facilitate the gypsy way of life.’ (see also Table 340).
- *McCann v UK* no. 19009/04 [2008] ECHR⁴⁷⁷ – The lack of adequate procedural safeguards in possession proceedings violated the right to respect for the home.
- *Manchester City Council v Pinnock* [2010] UKSC 4⁴⁷⁸ – Where a person’s home is at stake, Article 8 enables the courts to review the proportionality as well as the reasonableness of that decision. [Important because previously, reasonableness focused on whether procedures had been followed not whether the procedures lead to a proportionate decision.] See also *Hounslow LBC v Powell*; *Leeds CC v Hall*; *Birmingham CC v Frisby* [2011] UKSC 8.⁴⁷⁹

- *Ghaidan v Godin-Mendoza* [2004] UKHL 30⁴⁸⁰ – The House of Lords ruled that the same sex partner of a deceased statutory tenant should have the equivalent right to succeed to the tenancy of a flat as a heterosexual partner would have had. Whilst Article 8 ‘does not require the state to provide security of tenure for members of a deceased tenant’s family, nor the right to be provided with a home, but if the state makes legislative provision it must not be discriminatory; it must not draw distinction on the grounds of sexual orientation unless the difference in treatment can be ‘objectively justified’. The distinction on grounds of sexual orientation in this case had no legitimate aim and was made without good reason. Therefore, the difference of treatment infringes article 14 read in conjunction with article 8’ (Klug and Wildbore, no date).⁴⁸¹

Environmental protection

- *López Ostra v Spain* no. 16798/90 [1994] ECHR⁴⁸² – The European Court of Human Rights found that the state did not succeed in striking a fair balance between the interest of the town’s economic well-being – that of having a waste-treatment plant – and the applicant’s effective enjoyment of her right to respect for her home and her private and family life. The Court held that Article 8 could include a right to protection from severe environmental pollution, since such a problem might ‘affect individuals’ well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health’. The Court found a violation of Article 8; no violation of Article 3.
- *Hatton v UK* (GC) no. 36022/97 [2003] ECHR⁴⁸³ – The European Court of Human Rights accepted that excessive noise could constitute a violation of Article 8.
- *Taskin v Turkey* no. 46117/99[2005] ECHR⁴⁸⁴ – The European Court of Human Rights viewed Article 8 through the lens of the Aarhus Convention and therefore, introduced clear procedural rights of participation and access to information, and access to justice in environmental matters, even though Turkey is not a party to Aarhus. The Court found a violation of Articles 6.1 and 8.
- *Powell and Rayner v UK* no. 931081 [1989] ECHR⁴⁸⁵ – In a case where the applicants had complained about disturbance from daytime aircraft noise, the European Court of Human Rights held that Article 8 was relevant, since ‘the quality of [each] applicant’s private life and the scope for enjoying the amenities of his home [had] been adversely affected by the noise generated by aircraft using Heathrow Airport’.
- *Guerra and Others v Italy* (GC) no. 14967/89 [1998] ECHR⁴⁸⁶ – In a case concerning environmental pollution, the European Court of Human Rights observed that ‘[the] direct effect of the toxic emissions on the applicants’ right to respect for their private and family life means that Article 8 is applicable’.

Respect for family life

- *R (Morris) v Westminster City Council* [2004] EWHC 2191 (Admin) – Refusal to prioritise a claimant’s request for housing assistance due to the immigration status of her child infringed Article 8.
- *Rachel Gunter (by her litigation friend and father Edwin Gunter) v South Western Staffordshire Primary Care Trust* [2005]⁴⁸⁷ – A disabled woman who required 24-hour care wanted to be cared for at home with her family, through an extensive care package. However, her local Primary Care Trust (PCT) wanted to place her in residential care due to the high cost of home care, and because of the higher quality of care in the residential care home in the event of a crisis. The High Court found that the PCT had not properly considered the impact of this on her family life. They had not taken into account her improved quality of life at home, or her own wishes to be placed at home. The PCT was, therefore, told to remake their decision, taking her right to respect for her family life under Article 8 into account.

The best interests of the child

- *ZH (Tanzania) (FC) v Secretary of State for the Home Department* [2011] UKSC 4⁴⁸⁸ – The Supreme Court upheld the mother’s appeal against her deportation on the ground that her removal will constitute a disproportionate interference with her right to respect for her private and family life, guaranteed by Article 8. ‘The court held that the best interests of a child must be taken into account in such cases, meaning the well-being of the child, and will involve asking whether it is reasonable to expect the child to live in another country. An important part of discovering the best interests of the child is to discover the child’s own views’ (Wagner, 2011b).⁴⁸⁹

Issues in prison detention

- *Carson* [2005] NIQB 80⁴⁹⁰ – The lack of in-cell sanitation facilities fell within the ambit of Article 8 – ‘The prisoner is entitled to expect that there will be in place sufficient and adequate toileting and hygiene facilities to cope with her requirements and if those facilities are not adequate then her private life rights may well have been infringed.’

- *Napier v the Scottish Ministers* [2004]⁴⁹¹ – In relation to Article 8 the Court stated: ‘In applying this right to the situation where a public authority has responsibility for the control and care of a person in an institution, ‘private life’ includes the conditions in which the person is held and the circumstances in which he has to undertake the particularly personal, regular activities of daily life, such as discharging bodily waste and maintaining a standard of cleanliness particularly where he suffers from a serious skin complaint which requires a regular regime of care...It is plain that the detention of the petitioner in the squalid conditions which I have recounted, taken together with subjecting him to the regime of slopping out as it effected his routine, necessary, personal activities amounts, on the face of it, to an infringement of Article 8’.
- *Slawomir Musial v Poland* no. 28300/06 [2009] ECHR⁴⁹² – Regarding an alleged violation of Article 8 due to overcrowding in detention, the European Court of Human Rights ruled that having found a violation of Article 3 ‘the Court considers that no separate issue arises under Article 8 of the Convention with regard to the conditions of the applicant’s detention and the medical treatment he received’.
- *Somerville v Scottish Ministers* [2007] UKHL 44⁴⁹³ – It was argued that ‘the decision on the part of the Scottish Ministers to make provision for the effective imposition of a punishment regime in segregation as the only means of management, control and containment of prisoners involved a disproportionate interference with his rights under article 8 of the Convention to respect for his psychological integrity, personal development and autonomy and self-determination and to his physical and moral security’.
- *R (Munjaz) v Mersey Care NHS Trust and others* [2003] EWCA Civ 1036⁴⁹⁴ – The Court of Appeal noted that ‘Thus far, in the prison and mental hospital cases, it seems that the court has not found it necessary to consider the conditions of imprisonment as such separately under article 8 if they have not reached the threshold of severity required by article 3... the notion of the moral and physical integrity of the person extends to situations of deprivation of liberty and [the court] does not exclude the possibility that there might be circumstances in which article 8 could be regarded as affording a protection in relation to conditions during detention which do not attain the level of severity required by article 3’.

Prescribed by law

- *Malone v UK* no. 8691/79 [1984] ECHR⁴⁹⁵ – The European Court of Human Rights considered whether police intercepting telephone conversations was justified under Article 8.2. The European Court found that there was a violation as the interference was not ‘prescribed by law’. This precipitated the introduction of the Criminal Proceedings and Investigation Act 1996, which provided the necessary legal basis for the interception of communications by police.

- *R (on the application of Debbie Purdy) v Director of Public Prosecutions* [2009] UKHL 45⁴⁹⁶ – The House of Lords found the Code for Crown Prosecutors was insufficient to satisfy the Article 8 requirements for accessibility and foreseeability in assessing how prosecutorial discretion was likely to be exercised in cases of assisted suicide under the Suicide Act 1961 Section 2(1). The Director of Public Prosecutions was required to promulgate an offence-specific policy identifying the facts and circumstances that he would take into account in deciding whether to consent to a prosecution under Section 2(1).⁴⁹⁷

See Table 252 for additional cases in relation to Article 8 and the right to the highest attainable standard of physical and mental health.

Table 219: Principles established in international standard setting processes

- UNHRC General Comment 16⁴⁹⁸ – No interference with privacy, family, home or correspondence can take place except in cases envisaged by law. Even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be reasonable in the particular circumstances.

Table 220: Gaps in legal protection

Individual complaint under ICCPR First Optional Protocol

In March 2011 the EU Justice Commissioner announced the overhaul of the EU Data Protection Directive, identifying gaps in current legal protection. The Commissioner argued that people's rights to the protection of personal data needed to be built on three pillars (Reding, 2011):

- 'The first is the 'right to be forgotten': a comprehensive set of existing and new rules to better cope with privacy risks online. When modernising the legislation, I want to explicitly clarify that people shall have the right – and not only the 'possibility' – to withdraw their consent to data processing. The burden of proof should be on data controllers – those who process your personal data. They must prove that they need to keep the data rather than individuals having to prove that collecting their data is not necessary.

- The second pillar is ‘transparency’. It is a fundamental condition for exercising control over personal data and for building trust in the Internet. Individuals must be informed about which data is collected and for what purposes. They need to know how it might be used by third parties. They must know their rights and which authority to address if those rights are violated. They must be told about the risks related to the processing of their personal data so that they don’t lose (sic) control over their data or that their data is not misused. This is particularly important for young people in the online world. I want to make sure that greater clarity is required when signing up to social networking. Unfavourable conditions – restricting control of users over their private data or making data irretrievably public – are often not clearly mentioned. In particular, children should be fully aware of the possible consequences when they first sign up to social networks. All information on the protection of personal data must be given in a clear and intelligible way – easy to understand and easy to find.
- The third pillar is ‘privacy by default’. Privacy settings often require considerable operational effort in order to be put in place. Such settings are not a reliable indication of consumers’ consent. This needs to be changed. The ‘privacy by default’ rule will also be helpful in cases of unfair, unexpected or unreasonable processing of data – such as when data is used for purposes other than for what an individual had initially given his or her consent or permission or when the data being collected is irrelevant. ‘Privacy by default’ rules would prevent the collection of such data through, for example, software applications. The use of data for any other purposes than those ‘specified should only be allowed with the explicit consent of the user or if another reason for lawful processing exists.
- The fourth principle is ‘protection regardless of data location’. It means that homogeneous privacy standards for European citizens should apply independently of the area of the world in which their data is being processed. They should apply whatever the geographical location of the service provider and whatever technical means used to provide the service. There should be no exceptions for third countries’ service providers controlling our citizens’ data. Any company operating in the EU market or any online product that is targeted at EU consumers must comply with EU rules (Reding, 2011).⁴⁹⁹

Table 221: Non-implementation of legal judgements and recommendations

- *R (F and Thomson) v Secretary of State for the Home Department* [2010] – A declaration of incompatibility was made by the Supreme Court as the indefinite nature of the requirement of Section 82 of the Sexual Offenders Act 2003 was deemed incompatible with Article 8 rights.⁵⁰⁰
- *S & Marper v UK* [2008] – The Crime and Security Act 2010 provision for retention of DNA from innocent people and children for up to six years is in violation of the ECtHR finding that UK provision for retention of DNA and other samples from adults and children who had never been convicted of any offences is in violation of right to respect for private life.⁵⁰¹

Process indicators

Indicator 43: Regulatory framework

Table 222: The right to respect for private and family life – identification of key regulators, ombudsmen, etc.

Press Complaints Commission
OFCOM
Office of Information Commissioner

Indicator 44: Public policy framework

Table 223: Right to respect for family and private life – policy guidance and training guidelines

- Anti-bullying strategies.
- Policies and codes for the regulation, collection, storage, sharing dissemination and use of all forms of personal data, including intrusive surveillance (CCTV, bugging, etc.)
- Policies, guidance and training on the use of entry, and seizure including phone tapping by police and other agencies.
- Guidance and policies to ensure planning application processes adequately take account of Article 8 rights.
- Guidance and processes regarding those subject to immigration control, to ensure protection of their family life.
- Guidance and policies in relation to children separated from their families to ensure protection of their family life (including children looked after by the state, and children in divorce or separation proceedings).

- Guidance and policies in relation to those in prison and medical detention or care (including care homes).
- Policies, guidance, etc. in relevant sectors (e.g. for example, schools, workplace, hospitals, police, or social services) for respect of individuals' identity including sexual identity).
- Policies and guidance to ensure environmental impact assessments and proposals adequately take account of Article 8 rights.
- Policies and guidance on the functional approach to legal capacity, consent and decision making – including supported decision making, advance statements, etc.
- Privacy and Electronic Communications Regulations 2003.
- Environmental Information Regulations.
- Data Protection Act 1998.
- Privacy and Electronic Communications (EC Directive) Regulations 2003.

Outcome indicators

Indicator 45: Outcomes of key judicial, regulatory and investigative processes

Table 224: Violations of the right to respect for private and family life: case law outcomes

- *Douglas and others v Hello! Ltd* [2003] EWHC 55⁵⁰² – There is a positive obligation on the state to protect Article 8 rights against interference by other private parties.⁵⁰³ (see Table 218).

Interference in enjoyment of family life must be legal, necessary and proportionate

- *Gillan and Quinton v UK* no. 4158/05 [2010] ECHR⁵⁰⁴ – Violation of Article 8 (see Table 218).
- *S & Marper v UK* (GC) nos. 30562/04 and 30566/04 [2008] ECHR⁵⁰⁵ – Violation of Article 8 (see Table 218).
- *R (Wright and others) v Secretary of State for Health and another* [2009] UKHL 3⁵⁰⁶ – breach of Articles 6.1) and 8 (see Table 218).
- *R (F and Thomson) v Secretary of State for the Home Department* [2010] UKSC 17 – The indefinite notification requirements for sexual offenders who had been sentenced to 30 months' imprisonment or more were incompatible with the right to respect for private and family life.⁵⁰⁷ (see Table 218).

- *A v Scottish Ministers* [2007] CSOH 189, 2008 SLT 412⁵⁰⁸ – The judge found that Sections 81 and 82 of the Sexual Offences Act 2003, in so far as they apply to the petitioner, were compatible with Article 8 (see Table 218).

Right to respect for physical integrity

- *R (Bernard) v Enfield London Borough Council* [2002] EWHC 2287 (Admin) – The duty to assist an elderly woman with a disability to maintain her basic physical and psychological integrity⁵⁰⁹ (see Table 218).
- *R (C) v Royal Devon and Exeter NHS Foundation Trust* [2004]⁵¹⁰ – The matter was settled, with the Trust providing the guarantees that Ms C had sought (see Table 218).
- *R v East Sussex County Council Ex parte A, B, X and Y* [2003] EWHC 167 (Admin) (DRC – Intervener)⁵¹¹ – The blanket ban on manual lifting by carers of people with a disability is unlikely to be lawful in terms of Articles 3 and 8 (see Table 218).
- *Glass v UK* no. 61827/00 [2004] ECHR⁵¹² – Violation of Article 8 (see Table 218).
- *Pretty v UK* no. 2346/02 [2002] ECHR⁵¹³ – No violation of Articles 2, 3, 8, 9 and 14 (see Table 218).

The right to treatment

- *Bensaid v UK* no. 44599/98 [2001] ECHR⁵¹⁴ – No violation of Articles 3 and 8 (see Tables 218 and 252).
- *Dickson v UK* (GC) no. 44362/04 [2007] ECHR⁵¹⁵ – The refusal to permit artificial insemination between a prisoner and his wife was a violation of their Article 8 rights (see Tables 218 and 252).
- *North West Lancashire Health Authority v A, D & G* [2000] 1 WLR 977⁵¹⁶ – Whilst noting that ‘Article 8 imposes no positive obligations to provide treatment’, the Court held that the Health Authority’s policies on transsexualism needed to be revisited (see Tables 218 and 252).

Treatment, resource allocation and the right to health

- *R (on the application of F) v (1) Oxfordshire Mental Healthcare NHS trust (2) Oxfordshire Health Authority* [2001] EWHC Admin 535⁵¹⁷ – No violation of Article 8 (see Tables 218 and 252).
- *R (on the application of H) v Mental Health Tribunal* [2002] EWHC 1522 Admin⁵¹⁸ – The decision not to recommend transfer of a patient to a hospital closer to his home did not breach Article 8 (see Tables 218 and 252).

- *R (on the application of Haggerty) v St Helens Council* [2003] EWHC 803 Admin⁵¹⁹ – The Court held that the financial resources of the council were an important element to be considered in the balancing exercise required by Article 8.2 (see Tables 218 and 252).
- *R (on the application of Dudley and others) v East Sussex County Council* [2003] EWHC 1093 Admin⁵²⁰ – The High Court ruled that the closure of a residential home did not breach Articles 2, 3 and 8 (see Tables 218 and 252).
- *R (on the application of Yvonne Watts) v (1) Bedford Primary Care Trust (2) Secretary of State for Health* [2003] EWHC 2228 (Admin)⁵²¹ – The Court held that neither Article 3 nor Article 8 rights were engaged in the request for reimbursement of medical costs incurred in an overseas hip replacement operation undertaken to avoid an NHS waiting list (see Tables 218 and 252).

Autonomy

- *Evans v UK* (GC) 6339/05 [2007] ECHR⁵²² – No violation of Article 8 (see Table 218).
- *Pretty v UK* no. 2346/02 [2002] ECHR⁵²³ – No violation of Article 8 (see Table 218).
- *R (McDonald) v Royal Borough of Chelsea and Kensington* [2011] UKSC 33⁵²⁴ – No violation of Article 8 (see Table 218).

Sexual identity

- *Dudgeon v UK* no. 7525/76 [1983] ECHR⁵²⁵ – Violation of Article 8 (see Table 218).
- *Christine Goodwin v UK* (GC) no. 28957/95 [2002] ECHR⁵²⁶ – Violation of Article 8 (see Table 218).
- *Ghaidan v Godin Mendoza* [2004] UKHL 40⁵²⁷ – A law which treated the survivors of a same sex relationship less favourably than survivors of a heterosexual relationship to succeed in tenancy following the death of a partner breached Articles 8 and 14 (see Table 218).

Personal information

- *Liberty and others v UK* no. 58243/00 [2008] ECHR⁵²⁸ – Violation of Article 8 (see Table 218).
- *Szuluk v UK* no. 36936/05 [2009] ECHR⁵²⁹ – Violation of Article 8 (see Table 218).
- *Potter v Scottish Ministers* [2007] CSIH 67⁵³⁰ – The addition of a message to every outgoing call from a Scottish prison that the call was emanating from a prison was a breach of Article 8 (see Table 218).⁵³¹

- *R (on the application of GC) v Commissioner of Police of the Metropolis; R (on the application of C) v Commissioner of Police of the Metropolis* [2011] UKSC 21⁵³² – The indefinite retention of the biometric data of all suspects breached individuals' Article 8 rights (see Table 218).

Respect for the home

- *Connors v UK* no. 66746/01 [2004] ECHR⁵³³ – Violation of Article 8 (see Table 218).
- *McCann v UK* no. 19009/04 [2008] ECHR⁵³⁴ – Violation of Article 8 (see Table 218).
- *Manchester City Council v Pinnock* [2010] UKSC 4⁵³⁵ – Article 8 enables the courts to review the proportionality as well as the reasonableness of that decision (see Table 218).
- *Ghaidan v Godin-Mendoza* [2004] UKHL 30⁵³⁶ – The distinction on grounds of sexual orientation infringed Article 14 read in conjunction with Article 8 (see Table 218).

Environmental protection

- *Hatton v UK (GC)* no. 36022/97 [2003] ECHR⁵³⁷ – No violation of Article 8; violation of Article 13 (see Table 218).
- *Powell and Rayner v UK* no. 9310/81 [1989] ECHR⁵³⁸ – No violation of Article 13 (see Table 218).

Respect for family life

- *R (Morris) v Westminster City Council* [2004] EWHC 2191 (Admin) – The refusal to prioritise the claimant's request for housing assistance due to her child's immigration status infringed Article 8 (see Table 218).
- *Rachel Gunter (by her litigation friend and father Edwin Gunter) v South Western Staffordshire Primary Care Trust* [2005]⁵³⁹ – The PCT was told to remake their decision, taking her right to respect for her family life under Article 8 into account (see Table 218).

The best interests of the child

- *ZH (Tanzania) (FC) v Secretary of State for the Home Department* [2011] UKSC 4⁵⁴⁰ – The Supreme Court upheld the mother's appeal against her deportation on the ground that her removal will constitute a disproportionate interference with her right to respect for her private and family life, guaranteed by Article 8 (see Table 218).

Prison detention

- *Carson* [2005] NIQB 80⁵⁴¹ – The lack of in-cell sanitation facilities fell within the ambit of Article 8 (see Table 218).
- *Napier v the Scottish Ministers* [2004]⁵⁴² – Infringement of Article 8 (see Table 218).
- *Somerville v Scottish Ministers* [2007] UKHL 44⁵⁴³ – ‘...segregation as the only means of management, control and containment of prisoners involved a disproportionate interference with his rights under article 8 of the Convention to respect for his psychological integrity, personal development and autonomy and self-determination and to his physical and moral security.’ (see Table 218).
- *R (Munjaz) v Mersey Care NHS Trust and others* [2003] EWCA Civ 1036⁵⁴⁴ – The Court of Appeal noted that ‘... the notion of the moral and physical integrity of the person extends to situations of deprivation of liberty and [the court] does not exclude the possibility that there might be circumstances in which article 8 could be regarded as affording a protection in relation to conditions during detention which do not attain the level of severity required by article 3’ (see Table 218).

Prescribed by law

- *Malone v UK* no. 8691/79 [1984] ECHR⁵⁴⁵ – Violation of Article 8 (see Table 218).
- *R (on the application of Debbie Purdy) v Director of Public Prosecutions* [2009] UKHL 45⁵⁴⁶ – The House of Lords found the Code for Crown Prosecutors was insufficient to satisfy the Article 8 requirements for accessibility and foreseeability in assessing how prosecutorial discretion was likely to be exercised in cases of assisted suicide under the Suicide Act 1961 Section 2(1) (see Table 218).

Table 225: Key concerns raised by human rights monitoring bodies

Domestic

- Equality and Human Rights Commission (2010d), *Stop and think. A critical review of the use of stop and search powers in England and Wales*⁵⁴⁷, detailed the Commission’s concern that the current use of stop and search powers under the Police and Criminal Evidence Act 1984 may be ‘unlawful, disproportionate, discriminatory, and damaging to relations within and between communities’.
- The Joint Committee on Human Rights (JCHR) (2007), *The Human Rights of Older People in Healthcare, Eighteenth Report of Session 2006-07*, raised concerns around poor treatment, neglect, abuse, discrimination and ill-considered discharge⁵⁴⁸ (see Table 262).
- EHRC (2011) suggested poor treatment of older people in home care is breaching their human rights.

Table 226: Outcomes of inspection, regulation and complaints procedures that engage Article 8**House of Commons Home Affairs Committee Inquiry**

- House of Commons Home Affairs Committee (2008), *A Surveillance Society? Fifth Report of Session 2007-08*, 20 May 2008⁵⁴⁹). Recommendations of the report included:

Rules for Government as a whole

- The Government should give an explicit undertaking to adhere to a principle of data minimisation and should resist a tendency to collect more personal information and establish larger databases. Any decision to create a major new database, to share information on databases, or to implement proposals for increased surveillance, should be based on a proven need.
- The Government should take responsibility for safeguarding the personal information it collects and should exercise this responsibility before collection takes place: when it is possible by obtaining consent for collecting and processing data, and when it is not possible by providing an explanation.
- The Government should hold information only as long as is necessary to fulfil the purpose for which it was collected. If information is to be retained for secondary purposes as well as for service delivery it should normally be anonymised and retained only for a previously specified period.
- Every system for collecting and storing personal information should be designed with a focus on security and privacy. This process should involve planning not only the technical aspects of access to systems but also the staff management protocols for access and information-handling.
- The Information Commissioner should lay before parliament an annual report on surveillance. The Government should make a formal response to his report, also to be laid before parliament.

Rules for the Home Office

- The Home Office should explicitly address these questions in every proposal for extending or changing its powers and functions with regard to the collection and use of personal information: in the fight against crime: Where should the balance between protecting the public and preserving individual liberty lie? How should this balance shift according to the seriousness of the crime? What impact will there be on the individual and on our society as a whole?
- The Home Office should not routinely use the administrative information collected and stored in connection with the National Identity Register to monitor the activities of individuals.

- The Home Office should maintain plans for securing the National Identity Register databases, and contingency plans to be implemented in the event of a loss or theft of biometric information from its databases.
- The Home Office should take every opportunity to raise awareness of how and why the surveillance techniques provided for by the Regulation of Investigatory Powers Act might be used, and should keep under review the effectiveness of the statutory oversight of RIPA powers.
- The Home Office should ensure that any extension of the use of camera surveillance is justified by evidence of its effectiveness for its intended purpose, and that its function and operation are understood by the public.

House of Commons Home Affairs Committee (2011), *Unauthorised tapping into or hacking of mobile communications*, July 2011⁵⁵⁰, recommended that additional powers should be given to the Information Commissioner's Office to deal with breaches of data protection, including phone hacking and blagging.⁵⁵¹

Information Commissioner's Office (ICO)⁵⁵²

- The ICO issues information notices, undertakings, enforcements or monetary penalty notices to individuals and organisations that collect, use and keep personal information. The First-tier Tribunal (Information Rights), part of the General Regulatory Chamber (GRC), hears appeals of enforcement notices, decision notices and information notices issued by the Information Commissioner. The GRC brings together a range of previously separate tribunals that hear appeals on regulatory issues. Some recent cases include:
 - A monetary penalty of £80,000 was issued to **Ealing Council** following the loss of an unencrypted laptop which contained personal information. Ealing Council breached the Data Protection Act by issuing an unencrypted laptop to a member of staff in breach of its own policies.
 - The **Identity and Passport Service** has signed an undertaking which commits the organisation to taking remedial action after the ICO found it in breach of the Data Protection Act for losing the passport renewal applications of 21 individuals.
 - **NHS Blood and Transplant** has signed an undertaking which commits the organisation to being more robust in checking information is accurate. This follows the discovery that due to a software error, the organ donation preferences of 444,031 people were recorded inaccurately on the Organ Donation Register, which is managed by NHS Blood and Transplant.
 - A formal undertaking has been signed by the **Scottish Court Service** after the ICO discovered, following a newspaper report about a data breach by the Court Service, that papers containing personal information had been lost by the editor of a series of law reports. The Court Service had failed to check how this individual intended to keep the information secure.

The ICO (2009) reported to parliament on the state of surveillance in September 2006 and lodged an updated report in November 2010.⁵²³ The response to the report by the Surveillance Studies Network (SSN), published as part of the ICO's update, identified 'a host of privacy and human-rights issues involved in, for instance, techniques for analysing data about individuals, the sharing of data among organisations – often for undeclared and unconsented purposes – and the flow of data across national boundaries'. The SSN specifically identified body scanning, video analytics, drones and the flow of data into new domains of application as posing significant concerns.

Treatment of older people in health and social care

- *Rights, Risks and Restraints study*⁵⁵⁴ (Commission for Social Care Inspection (CSCI), 2007a), found that the use of restraint in elderly care services is 'unacceptable' and denies the human right to 'dignity and choice'. The study looked at the experiences of elderly people – not at the prevalence of restraint methods – in residential care homes, nursing homes and individual's homes. The incidents in the study were taken from CSCI inspection reports, reviews of concerns and complaints made to CSCI, and the Rights, Risks and Restraints survey.
- Parliamentary and Health Service Ombudsman (PHSO), *Care and Compassion. Report of the Health Services Ombudsman on 10 investigations into NHS care of older people*⁵⁵⁵, February 2011.
- Dignity and nutrition reports. Care Quality Commission (CQC) is publishing 12 reports from an inspection programme which examines whether elderly people are receiving essential standards of care in 100 hospitals across England. The inspection programme has identified recurring concerns in relation to both nutrition and dignity, including people not being given assistance to eat, not having their nutritional needs monitored and not being given enough to drink; and staff not treating patients in a respectful way or involving them in their own care.⁵⁵⁶

Table 227: Key concerns and allegations raised by private individuals and civil society organisations/reports in the media

Interference in private life and surveillance

Liberty, *Overlooked: Surveillance and personal privacy in modern Britain*, October 2007 (Crossman et al., 2007)⁵⁵⁷, detailed a number of concerns in relation to:

- Targeted surveillance – the framework for state sanctioned surveillance against specific targets created under the Regulation of Investigatory Powers Act 2000 ‘lacks accountability and transparency. In particular, there is a need for judicial authorization for the most intrusive forms of surveillance and an improved complaints mechanism. Further, the bar on intercepted material in criminal trials needs to be lifted.’
- Mass surveillance – ‘New data protection legislation is needed to allow better regulation of data and to improve the ability and resources of the ICO to provide effective enforcement. There should be greater accountability to parliament.’
- Visual surveillance – ‘New legislation is required to effectively regulate CCTV.’
- DNA – detailing concerns with the National DNA Database (NDNAD), including the retention of data for people arrested (though not necessarily charged or convicted) with any recordable offence, which impacts disproportionately on black men.

The report’s recommendations included a call for updated data legislation protection; increased role and powers for the ICO; greater accountability to parliament; judicial oversight of interceptions of communications; extending the role of the Investigatory Powers Tribunal; removal of the bar on intercept; no further extension of powers to retain DNA; and making the process for deletion of samples from the NDNAD simpler.

Sexual identity

Stonewall, *No going back. Lesbian and Gay People and the Asylum System*, 2010 (Miles, 2010)⁵⁵⁸, recommended that the UK Border Agency (UKBA) urgently implement a series of measures to prevent lesbian, gay and bisexual people from being treated differently when they seek asylum. The report contains detailed recommendations in relation to UKBA policy and training; the need for Country of Origin Information Service reports to include accurate and up-to-date information about the situation on the ground for lesbians and gay men and to accurately reflect the scale and nature of anti-gay persecution in all overseas jurisdictions; and the need for judges to receive comprehensive training on the unique issues in sexual identity-based claims.

Treatment of older people in health and social care

- Daily Mail, *Dignity for the Elderly* campaign for better standards in hospitals and care homes, which has run since 2002.⁵⁵⁹
- *Still hungry to be heard* (Age UK, 2010), the most recent report from the campaign Malnutrition in hospitals: Hungry to be heard, described the lack of detection and treatment of malnutrition in hospital as a ‘national disgrace’, and called on the Government to introduce compulsory monitoring of malnutrition.⁵⁶⁰
- Patients Association Report (2011) *We’ve been listening, have you been learning?* details 16 accounts of poor hospital care heard by its helpline focusing on care communication, access to pain relief, assistance with toileting and help with eating and drinking.

Indicator 46: Privacy, identity and autonomy

Table 228: Interference in private life and surveillance

See Table 226.

Table 229: Gender identity and human rights

The COE (2009, *Human rights and gender identity*, July 2009 (Hammarberg,2009), set out a series of recommendations to COE member states. A number of these have been identified as relating to particular concerns in England, Scotland and Wales. These are:

Recommendations to Council of Europe member states

Member states of the Council of Europe should:

2. Enact hate crime legislation which affords specific protection for transgender persons against transphobic crimes and incidents;
3. Develop expeditious and transparent procedures for changing the name and sex of a transgender person on birth certificates, identity cards, passports, educational certificates and other similar documents;
5. Make gender reassignment procedures, such as hormone treatment, surgery and psychological support, accessible for transgender persons, and ensure that they are reimbursed by public health insurance schemes;
6. Remove any restrictions on the right of transgender persons to remain in an existing marriage following a recognised change of gender;
9. Address the human rights of transgender persons and discrimination based on gender identity through human rights education and training programmes, as well as awareness-raising campaigns;
10. Provide training to health service professionals, including psychologists, psychiatrists and general practitioners, with regard to the needs and rights of transgender persons and the requirement to respect their dignity;
12. Develop research projects to collect and analyse data on the human rights situation of transgender persons including the discrimination and intolerance they encounter with due regard to the right to privacy of the persons concerned.

Indicator 47: Spotlight statistics: The detention context

Table 230: Self-reported access and problems with the use of telephones and sending/receiving mail in detention, England and Wales

Type of prison/ establishment:	Problems sending or receiving mail		Problems getting access to the telephones		Able to use the telephone everyday		Easy or very easy to receive incoming calls		Easy or very easy to make outgoing calls	
	N	%	N	%	N	%	N	%	N	%
Local N=4,323	1,736	44	1245	32	-	-	-	-	-	-
High security N=418	214	52	127	31	-	-	-	-	-	-
Young offenders (18-21) N=1,858	719	42	541	32	-	-	-	-	-	-
Category B trainers N=855	328	39	119	15	-	-	-	-	-	-
Category C trainers N=4167	1,403	37	753	20	-	-	-	-	-	-
Open N=1,254	249	22	130	11	-	-	-	-	-	-
Female N=1,352	414	34	281	22	-	-	-	-	-	-
Children and young people (under 18) N=776	278	39	-	-	533	72	-	-	-	-
Immigration removal centres N=1,019	224	29	-	-	-	-	432	50	401	47

Source: HMIP for England and Wales (2010a).

Notes: The n-value refers to the total number of respondents for each survey. Percentages may vary in regard to the n-value as all comparator data is weighted. Local comparator from 2006 onwards. High security comparator from 2007 onwards. Young offender institutions comparator from 2005 onwards. Category B trainers comparator from 2005 onwards. Category C trainers comparator from 2005 onwards. Opens comparator from 2005 onwards. Children and young people comparator from 2009 onwards. Female comparator from 2005 onwards. Immigration removal centre comparator from 2005 onwards. [Comparators available from source document]

Data for children and young people only includes responses from males because of the small number of female respondents. Percentages are calculated only from those who answered the question; missing data has been excluded. See Appendix 2 for demographic information.

Table 231: Adult male prisoners who self-report that they have problems with access and use of telephones and sending/receiving mail, by ethnicity, religion and disability, England and Wales, 2008-09

	Black and minority ethnic prisoners	White	Muslim prisoners	Non-Muslim prisoners	Consider themselves to have a disability	Do not consider themselves to have a disability
Number of completed questionnaires	1,037	2,890	422	3,435	559	3,170
Problems sending or receiving mail	43%	40%	49%	39%	44%	40%
Problems getting access to the telephone	27%	22%	31%	23%	26%	22%

Source: HMIP for England and Wales (2010b).

Notes: Light grey boxes denote where the group is significantly worse than the comparator. (Emphasis as in publication.)

Table 232: Detained people who self-report that they are able to have a shower, England and Wales

Type of prison/establishment	Able to have a shower every day	
	N	%
Local N=4,323	3191	78
High security N=418	385	94
Young offenders (18-21) N=1,858	1270	69
Category B trainers N=855	820	98
Category C trainers N=4,167	3826	94
Open N=1,254	1188	98
Female N=1,352	1169	87
Children and young people (under 18) N=776	608	81
Immigration removal centres N=1,019	859	93
	Offered a shower	
	N	%
	93	9

Source: HMIP for England and Wales (2010a).

Notes: The n-value refers to the total number of respondents for each survey. Percentages may vary in regard to the n-value as all comparator data is weighted. Local comparator from 2006 onwards. High security comparator from 2007 onwards. Young offender institutions comparator from 2005 onwards. Category B trainers comparator from 2005 onwards. Category C trainers comparator from 2005 onwards. Opens comparator from 2005 onwards. Children and young people comparator from 2009 onwards. Female comparator from 2005 onwards. Immigration removal centre comparator from 2005 onwards. Police custody comparator from 2008 onwards. [Comparators available from source document.]

Data for children and young people only includes responses from males because of the small number of female respondents. Percentages are calculated only from those who answered the question; missing data has been excluded. See Appendix 2 for demographic information.

Table 233: Percentage of adult male prisoners who self-report that they are normally able to have a shower every day, by ethnicity, religion and disability, England and Wales, 2008-09

	Black and minority ethnic prisoners	White	Muslim prisoners	Non-Muslim prisoners	Consider themselves to have a disability	Do not consider themselves to have a disability
Number of completed questionnaires	1,037	2,890	422	3,435	559	3,170
Percentage who report that they are normally able to have a shower every day	84%	90%	80%	90%	87%	89%

Source: HMIP for England and Wales (2010b).

Notes: Light grey boxes denote where the group is significantly worse than the comparator. (Emphasis as in publication.)

Table 234: Detained people who self-report that they are treated with respect by most staff, England and Wales

Type of prison/establishment	N	%
Local N=4,323	2,864	69
High security N=418	240	61
Young offenders (18-21) N=1,858	1,177	67
Category B trainers N=855	602	74
Category C trainers N=4,167	2,984	74
Open N=1,254	888	76
Female N=1,352	916	72
Children and young people (under 18) N=776	503	72
Immigration removal centres N=1,019	576	62

Source: HMIP for England and Wales (2010a).

Notes: The n-value refers to the total number of respondents for each survey. Percentages may vary in regard to the n-value as all comparator data is weighted. Local comparator from 2006 onwards. High security comparator from 2007 onwards. Young offender institutions comparator from 2005 onwards. Category B trainers comparator from 2005 onwards. Category C trainers comparator from 2005 onwards. Opens comparator from 2005 onwards. Children and young people comparator from 2009 onwards. Female comparator from 2005 onwards. Immigration removal centre comparator from 2005 onwards. [Comparators available from source document.]

Data for children and young people only includes responses from males because of the small number of female respondents. Percentages are calculated only from those who answered the question; missing data has been excluded. See Appendix 2 for demographic information.

Table 235: Adult male prisoners who self-report that they are treated with respect by most staff, by ethnicity, religion and disability, England and Wales

	Black and minority ethnic prisoners	White	Muslim prisoners	Non-Muslim prisoners	Consider themselves to have a disability	Do not consider themselves to have a disability
Number of completed questionnaires	1,037	2,890	422	3,435	559	3,170
Percentage who feel that they are treated with respect by most staff	64%	72%	60%	71%	65%	70%

Source: HMIP for England and Wales (2010b).

Notes: Light grey boxes denote where the group is significantly worse than the comparator. (Emphasis as in publication.)

Table 236: Detained people who self-report that they have ever felt unsafe in their establishment, England and Wales

Type of prison/establishment	N	%
Local N=4,323	1,625	41
High security N=418	241	58
Young offenders (18-21) N=1,858	601	34
Category B trainers N=855	327	39
Category C trainers N=4,167	1,190	30
Open N=1,254	190	16
Female N=1,352	492	39
Children and young people (under 18) N=776	212	29
Police custody N=1,011	382	41
Immigration removal centres N=1,019	458	53

Source: HMIP for England and Wales (2010a).

Notes: The n-value refers to the total number of respondents for each survey. Percentages may vary in regard to the n-value as all comparator data is weighted. Local comparator from 2006 onwards. High security comparator from 2007 onwards. Young offender institutions comparator from 2005 onwards. Category B trainers comparator from 2005 onwards. Category C trainers comparator from 2005 onwards. Opens comparator from 2005 onwards. Children and young people comparator from 2009 onwards. Female comparator from 2005 onwards. Immigration removal centre comparator from 2005 onwards. [Comparators available from source document.]

Data for children and young people only includes responses from males because of the small number of female respondents. Percentages are calculated only from those who answered the question; missing data has been excluded. See Appendix 2 for demographic information.

Table 237: Adult male prisoners who self-report that they have ever felt unsafe in their establishment, by ethnicity, religion and disability, England and Wales, 2008-09

	Black and minority ethnic prisoners	White	Muslim prisoners	Non-Muslim prisoners	Consider themselves to have a disability	Do not consider themselves to have a disability
Number of completed questionnaires	1,037	2,890	422	3,435	559	3,170
Percentage who have ever felt unsafe in their establishment	45%	38%	50%	38%	57%	36%

Source: HMIP for England and Wales (2010b).

Notes: Light grey boxes denote where the group is significantly worse than the comparator. (Emphasis as in publication.)

Table 238: Detained people who self-report that their religious beliefs are respected, England and Wales⁵⁶¹

Type of prison/establishment	N	%
Local N=4,323	2,220	54
High security N=418	185	48
Young offenders (18-21) N=1,858	884	50
Category B trainers N=855	432	60
Category C trainers N=4,167	2,179	55
Open N=1,254	684	58
Female N=1,352	765	60
Children and young people (under 18) N=776	416	55
Immigration removal centres N=1,019	614	66

Source: HMIP for England and Wales (2010a).

Notes: The n-value refers to the total number of respondents for each survey. Percentages may vary in regard to the n-value as all comparator data is weighted. Local comparator from 2006 onwards. High security comparator from 2007 onwards. Young offender institutions comparator from 2005 onwards. Category B trainers comparator from 2005 onwards. Category C trainers comparator from 2005 onwards. Opens comparator from 2005 onwards. Children and young people comparator from 2009 onwards. Female comparator from 2005 onwards. Immigration removal centre comparator from 2005 onwards. [Comparators available from source document.]

Data for children and young people only includes responses from males because of the small number of female respondents. Percentages are calculated only from those who answered the question; missing data has been excluded. See Appendix 2 for demographic information.

Table 239: Adult male prisoners who self-report that their religious beliefs are respected, by ethnicity, religion and disability, England and Wales, 2008-09⁵⁶²

	Black and minority ethnic prisoners	White	Muslim prisoners	Non-Muslim prisoners	Consider themselves to have a disability	Do not consider themselves to have a disability
Number of completed questionnaires	1,037	2,890	422	3,435	559	3,170
Percentage who feel their religious beliefs are respected	56%	53%	61%	53%	53%	54%

Source: HMIP for England and Wales (2010b).

Notes: Dark grey boxes denote where the group is significantly better than the comparator.

Indicator 48: Spotlight statistics: Unmet basic needs that may meet the Article 8 threshold

See Treatment of older people in health and social care. For relevant statistical evidence on malnutrition and dehydration by place, and variations in support for eating by age during hospital stays, see Tables 28, 29, 30, 31, 304 and 305.

Indicator 49: Spotlight statistics: Abuse, neglect, discrimination, lack of dignity and respect

See Treatment of older people in health and social care. For relevant statistical evidence see Tables 28, 29, 30, 31, 302, 303, 304, and 305.

Table 240: Experiences of bullying

For relevant evidence under this Indicator, see Table 342.

Table 242: Reasons given for discrimination in recruitment and promotion, England and Wales, 2008-09

	Discriminated against when refused a job %	Discriminated against with regards to promotion %
Gender	1	1
Age	3	2
Race	2	1
Religion or belief	*	*
Colour	1	1
Disability or long-term illness	1	*
Sexual orientation	*	*
Where you live	*	*
*Other reason	2	2
Don't know	*	*
All	7	7
Respondents ²	6,000	5,813

Source: CLG (2010).

Notes: All columns based on core sample.

- 1 Respondents could mention an unlimited number of reasons.
- 2 Figures for “Discriminated against when refused a job’ include respondents who had been employees or had looked for work in the last five years. Figures for ‘Discriminated against regarding promotion’ include respondents who had been employees in the last five years. Excludes respondents with missing answers.

**Indicator 50: Spotlight statistics: Public attitudes,
understanding and experiences**

Table 243: Awareness of information rights legislation – access to information, England and Wales, 2010

What laws are you aware of, if any, that give people rights to obtain information from public authorities? (Wave 14)	Percentage of respondents to the Information Rights Tracker Survey who are aware of the information rights legislation listed below %
Freedom of Information Act	31
Data Protection Act	29
Human Rights Act	13
Citizens' Charter	3
'Open Government' Code of Practice	1
Environmental Information Regulations	2
Privacy and Electronic Communications regulations	1
Others	11
Don't know	38

Source: Ministry of Justice (MoJ) (2010e), derived from Information Rights Tracker Survey, Key Wave 14 results.

Notes:

Unprompted question; all applicable answers coded, so respondents could mention more than one item on the list.

Wave 14 Fieldwork of the Information Rights Tracker Survey was conducted between 21-28 January 2010. The sample was: 1,877 adults aged 15 and over in England and Wales (Ministry of Justice, 2010e: 3).

Table 244: Awareness of information rights legislation – holding of personal information, England and Wales, 2010

I have the legal right to find out what personal information is held about me by businesses or public authorities (Wave 14)	
	Respondents to the Information Rights Tracker Survey (Wave 14)
	%
True	85
False	11
Don't know	3

Source: MoJ (2010e), derived from Information Rights Tracker Survey, Key Wave 14 results.

Notes:

Wave 14 Fieldwork of the Information Rights Tracker Survey was conducted between 21-28 January 2010. The sample was: 1,877 adults aged 15 and over in England and Wales (MoJ, 2010e: 3).

Table 245: Public attitudes towards 'respect for private and family life'

	Which of the following, if any, would you say are the most important values for living in Britain today?	And which four of five, if any, are most important to you personally?	And which, if any, do you consider to be fundamental human rights?
Respect for private and family life	63%	43%	53%

Source: Kaur-Ballagan et al. (2009).

Notes: This data is based on a demographically representative, face-to-face omnibus survey with 1,994 British adults over the age of 16, undertaken in August 2008.

Table 246: Attitudes towards being treated with dignity and respect

	Which of the following, if any, would you say are the most important values for living in Britain today?	And which four of five, if any, are most important to you personally?	And which, if any, do you consider to be fundamental human rights?
Being treated with dignity and respect	75%	63%	62%

Notes: This data is based on a demographically representative, face-to-face omnibus survey with 1,994 British adults over the age of 16, undertaken in August 2008.

Table 247: Attitudes towards ‘being treated fairly regardless of gender, race, disability, etc.’

	Which of the following, if any, would you say are the most important values for living in Britain today?	And which four of five, if any, are most important to you personally?	And which, if any, do you consider to be fundamental human rights?
Being treated fairly regardless of gender, race, disability, etc.	65%	46%	56%

Source: Kaur-Ballagan et al. (2009).

Notes: This data is based on a demographically representative, face-to-face omnibus survey with 1,994 British adults over the age of 16, undertaken in August 2008.

Table 248: Public attitudes towards the right to be treated fairly and equally by population subgroup (continued)

Religion/belief	Odds ratio	p-value	95% Conf Interval	Odds ratio	p-value	95% Conf Interval
Reference group = Christian						
Buddhist	2.706	0.134	0.736 9.950	1.241	0.481	0.679 2.268
Hindu	0.851	0.754	0.308 2.351	2.051	0.026*	1.090 3.860
Jewish	2.769	0.359	0.313 24.512	0.973	0.930	0.523 1.807
Muslim	0.963	0.933	0.398 2.326	1.258	0.507	0.639 2.477
Sikh	0.956	0.936	0.317 2.881			
Any other religion	1.641	0.358	0.569 4.732			
No religion	0.723	0.136	0.472 1.108	1.256	0.513	0.634 2.487
Country of birth (p<0.05)						
Reference group = UK						
Irish Republic	1.157	0.837	0.287 4.668	1.710	0.104	0.895 3.269
India	0.577	0.128	0.284 1.173	2.134	0.013*	1.175 3.877
Pakistan	0.689	0.283	0.349 1.362	2.547	0.008*	1.280 5.068
Bangladesh	0.711	0.391	0.326 1.553	2.394	0.009*	1.250 4.584
Jamaica	0.899	0.836	0.330 2.452	1.856	0.074	0.942 3.657
East African New Commonwealth	1.872	0.120	0.849 4.126			
Rest of New Commonwealth	0.412	0.018*	0.198 0.859			
Other	0.395	0.000*	0.235 0.664			svygof: 0.875

Source: Vizard (2010). Notes: Author's calculations from the Citizenship Survey. The data in this table is for England only. It represents the combined sample, corrected for complex survey design. The findings are accurate to three decimal places. * Significance tests are based on logistic regression analysis controlling for gender, long-term limiting illness or disability, ethnicity, age, religion/belief, country of birth, equivalent household income, highest educational qualification, social class, social housing, index of multiple deprivation ranking, Government Office Region.

Table 249: Attitudes towards respect for private and family life and the home: Liberty polling exercise

	Gender		Age							Social Grade					Region										
	Total	Male	Female	18-25-		34-44			45-54		55-64		65+		AB	CI	C2	DE	South		Midlands	North		Wales and South West	Scotland
				24	34	35-44	45-54	55-64	65+	AB	CI	C2	DE	East					West	England		West			
Unweighted base	1,000	434	566	93	163	194	184	159	207	376	198	157	269	259	252	259	252	253	145	144	140	140	145	145	91
Weighted base	1,000	490	510	120	160	190	170	150	210	270	290	210	230	254	264	254	264	251	144	144	140	140	144	144	87
Net: Of use at all	986	480	506	117	158	187	170	150	203	268	288	209	221	252	259	252	259	249	140	140	140	140	140	140	86
Net: Of use at all	99%	98%	99%	98%	99%	99%	100%	100%	97%	99%	99%	99%	96%	99%	98%	99%	98%	99%	97%	97%	97%	97%	97%	97%	99%
Net: Vital/important	942	453	488	107	155	181	163	139	196	258	276	199	208	236	252	236	252	237	132	132	132	132	132	132	85
Net: Vital/important	94%	93%	96%	89%	97%	96%	96%	93%	93%	95%	95%	95%	91%	93%	95%	93%	95%	95%	91%	91%	91%	91%	91%	91%	98%
Vital	575	275	300	60	98	98	101	92	126	162	178	114	120	146	145	146	145	151	88	88	88	88	88	88	45
Vital	57%	56%	59%	50%	61%	51%	60%	61%	60%	62%	62%	54%	52%	57%	55%	57%	55%	60%	61%	61%	61%	61%	61%	61%	52%
Important ³	367	179	188	47	56	84	62	48	70	96	98	85	88	90	106	90	106	87	44	44	44	44	44	44	40
Important ³	37%	36%	37%	39%	35%	44%	36%	32%	33%	35%	34%	41%	38%	35%	40%	35%	40%	35%	30%	30%	30%	30%	30%	30%	46%
Useful ²	44	27	17	10	4	6	7	11	7	11	12	9	12	16	7	16	7	12	8	8	8	8	8	8	1
Useful ²	4%	5%	3%	8%	2%	3%	4%	7%	3%	4%	4%	4%	5%	6%	3%	6%	3%	5%	6%	6%	6%	6%	6%	6%	1%
Unnecessary ¹	5	3	2	1				4					5		1		1	1	2	2	2	2	2	1	
Unnecessary ¹	*	1%	*	1%				2%		1%	1%	1%	2%	1%	2%	1%	2%	*	2%	2%	2%	2%	2%	2%	-

Continued

Table 249: Attitudes towards respect for private and family life and the home: Liberty polling exercise (continued)

	Gender				Age										Social Grade										Region				
	18-24		25-34		35-44		45-54		55-64		65+		AB		CI		C2		DE		South East		Midlands		North England		Wales and South West	Scotland	
	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male
Don't know	9	7	3	2	2	2	3	-	-	-	3	2	2	2	1	1	1	5	2	2	4	4	1	1	3				
	1%	1%	1%	2%	1%	1%	1%	-	-	-	2%	1%	1%	1%	1%	1%	2%	2%	1%	1%	2%	2%	*	2%	2%				
Mean	3.53	3.50	3.55	3.41	3.60	3.49	3.56	3.56	3.54	3.54	3.54	3.56	3.58	3.50	3.44	3.51	3.52	3.51	3.51	3.51	3.52	3.55	3.55	3.54	3.48				
Standard deviation	0.61	0.63	0.58	0.68	0.54	0.56	0.57	0.63	0.66	0.66	0.66	0.57	0.57	0.58	0.69	0.62	0.57	0.69	0.62	0.62	0.57	0.61	0.61	0.66	0.59				
Standard error	0.02	0.03	0.02	0.07	0.04	0.04	0.04	0.05	0.05	0.05	0.05	0.03	0.04	0.04	0.05	0.04	0.04	0.05	0.04	0.04	0.04	0.04	0.04	0.06	0.06				

Base: All respondents

Source: Liberty (2011).

Note: Respondents were asked the following question [several rights were actually listed and respondents' responses to each right are shown in the relevant chapter]: 'In modern Britain, would you say each of the following rights are vital, important, useful, or unnecessary? Respect for privacy, family life and the home.'

Chapter notes

- 433 The status of UN treaty ratification is drawn from the UN Treaty Database, www.unhchr.ch/tbs/doc.nsf/Statusfrset?OpenFrameSet (accessed 4 November 2010). The status of European treaty ratification is drawn from the Council of Europe Treaty Office website, conventions.coe.int/ (accessed 4 November 2010). When a state signs an international treaty this signals its preliminary endorsement of the treaty, it does not create a binding legal obligation. A state which ratifies or accedes to a treaty is asserting that it considers itself to be legally bound by the treaty. Ratification requires the state to have previously signed the treaty, whereas accession is a single step which does not require previous signing. It should be noted that a treaty which has been acceded to or ratified by the UK does not automatically become part of the domestic law; separate legislative action is required to incorporate international law into domestic law (for example, the HRA making the ECHR enforceable in the UK). Nonetheless, ratification or accession is a state's expression that it consents to be legally bound by the treaty, including respecting and implementing its provisions.
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- 451 Cases in this section are drawn from the NHS Litigation Authority document, 'What the courts have said about... Resource allocation and human rights', downloaded from: www.library.nhs.uk/healthmanagement/ViewResource.aspx?resID=267515 (accessed 28 February 2011).
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- 562 The right to respect for religious belief is protected under Article 9. It is unlikely a case concerning religion would fall under Article 8 alone. The data here is being collated and analysed within the conditions of detention context.