

HUMAN RIGHTS

Balancing Human Rights in Family Court Public Proceedings

What are Human Rights

Human rights are fundamental rights and freedoms that belong to every person in the world, from birth until death. These rights are based on principles of dignity, equality, and mutual respect, which are shared across cultures, religions, and philosophies. They are protected by international and national laws and are designed to ensure that everyone can live a life of dignity and respect.

Principles of Human Rights Act 1998 – implementation of ECHR in UK

- Rights are enforceable in UK courts
- Where ever possible, there should be compatibility with the Convention Rights
- Convention Rights form a set of binding values for public authorities
- Public authorities must have human rights principles in mind when decisions are made about people's lives
- Human Rights must be part of all policy making

Balancing decisions in Care Proceedings

- Duty to act proportionately – least intervention appropriate
- Positive duty to promote convention rights
- **Absolute Rights** – so fundamental that are absolute (e.g. right to protection from torture, inhuman and degrading treatment, and prohibition of slavery)
- **Limited Rights** – limited under specific and finite circumstances (e.g. right to liberty)
- **Qualified Rights** – interference permissible if justified in law; done with a permissible aim set out in Convention; necessary in a democratic society (e.g. right to respect for private family life)

The European Convention on Human Rights (ECHR) and the Human Rights Act (HRA)

The ECHR and the Human Rights Act 1998 work together to protect human rights in the UK. The ECHR provides the foundational international framework of rights and freedoms, while the HRA incorporates these rights into domestic UK law, making them enforceable in UK courts. The HRA thus serves as a bridge between the international obligations under the ECHR and the practical enforcement of these rights within the UK legal system.

Key ECHR articles affecting Care Proceedings

2. The right to life
3. Not to be subjected to inhuman or degrading treatment
5. Liberty and security
6. Fair trial
8. Respect for family and private life
14. Not to be discriminated against in enjoyment of rights

Example of how Human Rights are balanced

If court is deciding whether to remove a child from their parents due to allegations of severe neglect.

Human Rights Involved:

- Child's Absolute Right: Protection from harm (Article 3, ECHR - freedom from torture and inhuman or degrading treatment)
- Parents' Qualified Right: Right to family life (Article 8, ECHR)

Balancing Example:

- Child's Absolute Right: The child's right to protection from harm is paramount and non-negotiable.
- Parents' Qualified Right: The parents' right to family life can be restricted if necessary to protect the child's absolute right.

Decision: If evidence shows the child is at severe risk, the court may decide to remove the child from the parents' care to ensure the child's absolute right to protection from harm is upheld, despite infringing on the parents' right to family life.

