

# birthrights

## Human rights in maternity care

### What are human rights?

Every human being has human rights.

Human rights require public bodies to treat you with dignity and respect, consult you about decisions and respect your choices.

Human rights law gives pregnant women the right to receive maternity care, to make their own choices about their care and to be given standards of care that respect their dignity and autonomy as human beings.

### Where do human rights come from?

Human rights are part of the law of the UK.

The Human Rights Act 1998 incorporates the rights protected by the [European Convention on Human Rights](#). The Convention sets out the minimum rights that all European countries have to respect.

This means that if a person believes that their Convention rights have been violated, they can bring a legal claim in the UK courts.

The Convention is not part of the European Union and human rights protected by under the Human Rights Act will not be affected when the UK leaves the EU.

The UK has also ratified the [Convention on the Elimination of Discrimination against Women](#), which prohibits pregnancy-related discrimination and requires the provision of healthcare for pregnant and breast-feeding women. The Convention influences the UK courts' interpretation of the law but it is not possible to bring a legal claim in the UK under the Convention.

### Why are human rights relevant to maternity care?

The fundamental human rights values of dignity, autonomy and equality are often relevant to the way a woman is treated during pregnancy and childbirth.

Failure to provide adequate maternity care, lack of respect for women's dignity, invasions of privacy, procedures carried out without consent, failure to provide adequate pain relief without medical contraindication, giving pain relief where it is not requested, unnecessary or unexplained medical interventions, and lack of respect for women's choices about where and how a birth takes place, may all violate human rights and can lead to women feeling degraded and dehumanised.

### How do human rights apply to maternity care?

Under the Human Rights Act, all UK public bodies must respect the rights set out in the European Convention. Public bodies include all NHS institutions, such as hospitals, GPs and Clinical Commissioning Groups.

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

Human rights are also protected by clinical negligence law, which is part of the common law throughout the UK. The right to autonomy and the requirement for health professionals to seek informed consent are a fundamental part of the law of negligence (*Montgomery v Lanarkshire Health Board* (2015)).

### Do I have a right to receive maternity care?

Yes. All pregnant women in the UK have a right to receive maternity care. See our factsheet, [Right to NHS Services](#). Although the European Convention does not explicitly guarantee a right



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to healthcare, Article 2 protects the right to life and requires the state to provide access to basic life-saving health services, including maternity care.

Overseas citizens may be charged for maternity care in some circumstances, but care must always be provided even if the patient cannot pay the charge.

## Do I have a right to make choices about my care?

Yes. Women have the right to make their own choices about how they manage their pregnancy and birth.

Article 8 of the European Convention guarantees the right to private life, which the courts have interpreted to include the right to physical autonomy and integrity.

The right to autonomy means that a woman's consent must always be sought before performing any medical procedure. Failure to obtain consent violates Article 8, and may also violate the prohibition on inhuman and degrading treatment under Article 3.

Failure to provide sufficient, objective and unbiased information for a woman to make an informed choice will also violate Article 8. See our factsheet, [Consenting to Treatment](#).

The European Court of Human Rights has held that the right to private life includes a right for women to make choices about the circumstances in which they give birth, including whether to give birth at home (*Ternovszky v Hungary* (2011); *Dubská v Czech Republic* (2016)). See our factsheet, [Choice of Place of Birth](#).

The right to make choices about childbirth includes the right to decline any medical care at all. See our factsheet, [Unassisted Birth](#).

## Do human rights guarantee standards of care?

Yes. All women are entitled to care which respects their basic dignity, privacy and autonomy.

Article 3 of the European Convention prohibits inhuman and degrading treatment. If caregivers fail to provide care which is needed to avoid preventable suffering – such as pain relief – then this could amount to inhuman or degrading treatment.

Article 8 of the European Convention requires public bodies to respect dignity and autonomy.

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

## Do I have a right to pain relief?

You have a right to make informed choices about the circumstances in which you give birth. If you have requested pain relief, it should be provided unless there are good reasons for refusing to provide it, such as a clinical contraindication (i.e. a medical reason for not providing the treatment).

Article 3 of the European Convention prohibits inhuman and degrading treatment. If caregivers fail to provide care which is needed to avoid preventable suffering – such as pain relief in a clinically appropriate form – then this could amount to inhuman or degrading treatment in some circumstances, such as undergoing procedures without appropriate anaesthetic.

## Do human rights protect an unborn child?

No. Unborn children do not have separate legal recognition under the European Convention or



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in the common law of England and Wales, or the law in Scotland.

Women are free to make choices against medical advice and cannot be forced to accept treatment whether or not it is said to be in the unborn child's interest. See our factsheet, [Consenting to Treatment](#).

If healthcare providers believe that a woman is putting her baby at risk they may make a referral to social services. However, the threat of referral to social services should never be used to intimidate, bully or coerce a woman into accepting a particular medical intervention for her or her child.

Consent that is given on the basis of such a threat is not given freely and the health professional may be legally liable for negligence and violation of Article 8 of the European Convention if they perform the intervention and they know, or should know, that consent has not been freely given.

## What if your rights have been violated?

Birthrights provides a free and confidential legal advice service for women and healthcare professionals seeking advice about human rights in pregnancy and childbirth. You can contact us by email: [info@birthrights.org.uk](mailto:info@birthrights.org.uk).

If you are unhappy with your care, you can make a complaint to the relevant healthcare provider. For advice on complaints, see our factsheet, [Making a Complaint](#).

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

*Disclaimer: Our factsheets provide information about the law in the UK. The information is correct at the time of writing (April 2017). The law in this area may be subject to change. Birthrights cannot be held responsible if changes to the law outdate this publication. Birthrights accepts no responsibility for loss which may arise from reliance on information contained in this factsheet.*