This chapter considers a variety of human rights issues that may arise in institutions for people with mental disabilities. Psychiatric hospitals are the most obvious of these institutions, but the issues in the chapter will also arise in other less obviously medical places where people with mental disabilities may be institutionalised, such as social care homes (institutions for people with intellectual disabilities) and homes for the elderly.

The issues that may arise in these facilities are almost infinitely varied. That said, the bulk of the issues fall into three broad categories. First, a number arise because of poor institutional standards. Obvious examples here include overcrowding in facilities, or failure of the facility to purchase sufficient heating oil to maintain the facility at a reasonable temperature over the winter. Often, these will flow from the use of poor or outdated facilities or a lack of resources, but they may also flow from insensitivity of institutional administration. The failure of a facility to make reasonable accommodation of the religious needs of an individual for example may have little to do with resource limitations. A second category of issue relevant in this chapter concerns institutional policies that are over-controlling. Any overuse of seclusion is perhaps the obvious example of this category, but other disciplinary or controlling practices may also be at issue. Finally, cases regarding the privacy of institutionalised persons raise particular issues. This category includes the rights regarding privacy of communications, and also the privacy of medical and other personal information.
These are obviously not exclusive categories. An individual may be placed in seclusion in an inappropriate environment, for example, providing a cross between the first two categories. The failure to provide partitions between toilets may raise issues regarding both poor institutional standards and a lack of privacy, the second and third categories. The inappropriate disclosure of personal information about the individual may raise issues crossing between the second and third categories, over-control and privacy. Notwithstanding the overlaps, the tri-partite division allows for some structural coherence to the subject matter.

There is a certain arbitrariness in separating this chapter from the discussion of treatment in chapter 4. The discussion in that chapter is essentially about ensuring the adequacy of treatment provision and the rights of those who offer competent refusal of that treatment to have that refusal respected. The treatment chapter thus contains specific examples of problems in the first and second categories in the current chapter. Further, the dividing line between ‘treatment’ and other forms of intervention is porous. The use of medication as a means of restraint for example could be seen as treatment or as institutional control, and, rather surprisingly, the Court in Herczegfalvy v. Austria viewed the use of handcuffs on a psychiatric patient as part of his therapeutic treatment.\footnote{Herczegfalvy v. Austria, Application No. 10533/83, judgment 24 September 1992, Series A no. 244, (1993) 15 EHRR 437 para. 79–81. The Committee for the Prevention of Torture has by comparison taken the view that such handcuffing is not therapeutic: see Report of visit to Bosnia and Herzegovina, April 2003, CPT/Inf (2004) 40 para. 154; and Report of visit to Germany, December 2000, CPT/Inf (2003) 20 para. 135.} Notwithstanding these overlaps, issues of psychiatric treatment are sufficiently discrete and sufficiently important to warrant their separate chapter.

The Legal Framework

Institutional standards may be established by a number of rights provided by the ECHR. Most obviously, if institutional care is such as would constitute inhuman or degrading treatment or punishment, Article 3 would potentially be infringed. If the rights to private and family life, home or correspondence are threatened, Article 8 may be relevant. Other articles may of course be relevant for specific situations. For example, if the conditions in which a detained patient is kept are positively anti-therapeutic, there may be a violation of Article 5: see chapter 2 above. If an institution refused to allow the detained person to practise his/her own faith, or prevented access to a minister of religion of the individual’s faith, or failed to provide culturally appropriate food, the right to freedom of religion in Article 9 might be relevant, or indeed the prohibition on discrimination in Article 14. Nonetheless, Articles 3 and 8 are most obviously and generally relevant to institutional standards, and it is on these two articles that the discussion that follows will primarily focus.