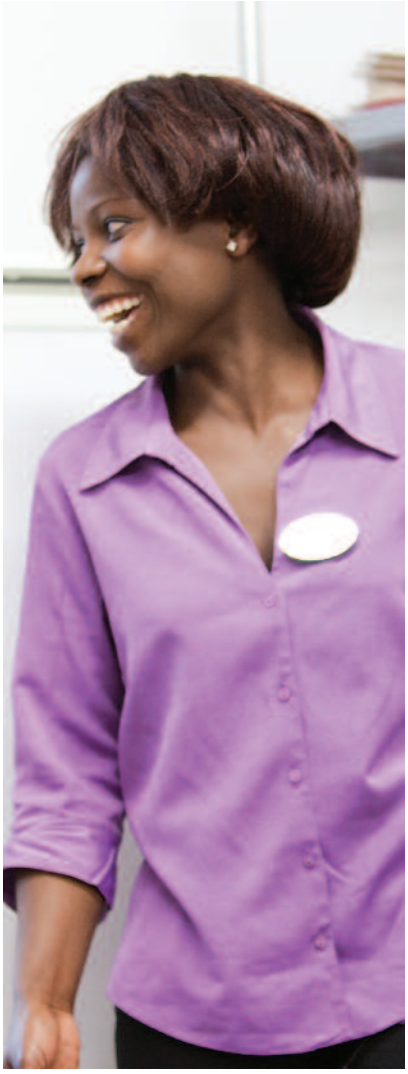
SHRC

Scottish Human Rights Commission

Care about Rights?



Human Rights and the Care of Older People Information Pack

Care about Rights?

Contents & Introduction

Introduction 01

Sections for everybody

SECTION 1
What are human rights? 07

SECTION 2
Thinking it through 41

Sections for different audiences

SECTION 3
Information for people who use services, their families and carers 57

SECTION 4
Information for care providers and care workers 65

SECTION 5
Information for others involved in the policy and practice issues of older people's care and support 81

Additional information for everybody

SECTION 6
Guidance on using the materials 89

- Introduction 89
- Discussion or training plans 91
- Facilitator guidance 95
- Activities 98
- Guidance on film scenarios and case study scenarios 107

SECTION 7
Appendices 133

Foreword, Professor Alan Miller

Chair, Scottish Human Rights Commission

The culture of the care sector is always evolving and responding to the new challenges of an ageing population and diminishing resources. At the same time, our attitudes towards older people and our understanding of the value of human rights is also changing.

Human rights are the shared responsibility of everybody. In the care sector this requires a common understanding among older people and their families and carers, care providers and those who commission and regulate care services.

The Scottish Human Rights Commission wants a commitment to human rights protection to become central in Scottish communities, and in particular to see a human rights based approach become embedded in everyday practices and thinking in the care and support of older people.

The Commission is launching these materials to raise awareness of the relevance of human rights in the care of older people. At its core the human rights based approach promoted in this project is about empowering people to understand their rights and increasing the accountability and ability of those who have duties to respect, protect and fulfil human rights. This is why Care about Rights? is aimed at everyone who comes into contact with and has responsibility for care services for older people.

The adoption of a human rights based approach brings many benefits for all of us. Human rights provide a baseline of protection for older people, securing entitlements to be treated with dignity and respect and to exercise choice through participation in decisions affecting their everyday life.

Respect for human rights can help to inform the decision making of care workers, families and people who use services, in balancing the rights of an individual with risks to that individual and the rights of others. An understanding of human rights can also help to ensure that care provision is personalised and that every person receiving care and support is treated as an individual.

We hope that you enjoy using these interactive learning resources to raise your own awareness of the value of a human rights based approach, and we would be grateful for your feedback over the coming months.

Introduction

How to use the materials

This pack is intended to allow everybody who is involved in care home and care at home/housing support services for older people to better understand human rights and how a human rights based approach to care and support can benefit you and the people around you.

The materials in this pack are about empowering people to understand their rights and increasing the accountability and ability of those who have duties to respect, protect and fulfil human rights.

We don't expect you to read this pack all at once. You can browse through at your leisure or you may be introduced to the materials through a more formal learning or discussion session with a facilitator. There is more information about this at Section 6 of the pack.

Who are the materials intended for?

The pack is directed at three main audiences:

- Individuals who use care and support services, their family members or others who care for them.

- Individuals who work within the care sector, for example in care homes or in care at home/housing support services. This may include owners, managers, care workers and other staff.

- Individuals whose job involves policy making for the care sector, commissioning or regulating care services.

Aims of the material

The materials have been developed to enable all participants:

- to better understand human rights and how human rights relate to the delivery of care

To enable care providers and care workers:

- to recognise where you already implement a human rights based approach in your everyday work and where you might further advance a human rights based approach in your work.

To enable care policy makers, commissioners and regulators:

- to better understand human rights and how they are relevant to your work.
- to recognise where a human rights based approach will assist in improving service delivery.

What you will find in the pack

The pack is divided into eight sections. Sections 1, 2, 6 and 7 are for everybody. Sections 3, 4 and 5 are tailored for specific audiences.

Introduction: This section provides an introduction to this material and what we aim to achieve.

Section 1 – What are human rights? This section explains what human rights are. It explains the legal framework and considers the importance of the key articles of the European Convention on Human Rights and international human rights laws relevant for a care setting. This section also explains what a human rights based approach is.

Section 2 – Thinking it through This section contains a flowchart with written and film case studies to explore real life and potential situations to help you work through the issues in practice, and apply what you have learnt from the previous sections of the pack.

Section 3 – Information for people who use services, families and carers This section is for older people using care services, their families and their carers. In this section we approach the issue from the perspective of people accessing care services, their families and carers.

Section 4 – Information for care providers and care workers This section is for care provider organisations and care workers. It addresses the potential challenges and human rights issues faced by people who work in the care sector and explains the importance of a human rights based approach.

Section 5 – Information for others involved in the policy and practice issues of older people's care services This section is written to highlight the importance of taking a human rights based approach in the formulation and implementation of policy relating to the care sector, in the commissioning of care services and in the regulation and inspection of care services.

Section 6 – Guidance on using the materials This section offers guidance for facilitators who may wish to use this pack to deliver awareness raising training sessions or a more informal discussion about human rights in a care setting. This section also gives participants a range of exercises which will help them explore some of the themes of the training. Finally, this section provides guidance to each of the film scenarios and written case study scenarios in Section 2 of the pack.

Section 7 – Appendices This section contains appendices with further information and contacts, links to the key legislation and further learning support.

Short Films

There are short films which accompany these materials. You can view these all at one time while following a lesson/discussion plan or, if you prefer, just view the films which interest you most.

There are four film sections for you to watch:

Care about Rights? Promotional Film - A short thought-provoking clip to prompt you to think about the rights of older people.

Human Rights: What do you think? - These are film clips of a range of people in a care setting talking about what human rights mean to them.

Interviews - These are film clips of the following people talking about why they think human rights are important in the delivery of care and support services for older people:

- Professor Alan Miller, Chair, Scottish Human Rights Commission
- Gloria McLoughlin, Deputy Chief Executive, Scottish Care
- Peter Griffin, member of Scottish Dementia Working Group and Rose Mary Bowes, Peter's wife and carer.
- Marcia Ramsay, Director of Adult Services Regulation, Care Commission
- Irene Oldfather, MSP and Convener of the Cross-Party Group on Alzheimer's

Scenarios - There are three short films to illustrate where a human rights based approach could be applied in practice:

- Sheila's story part 1
- Sheila's story part 2

- Irene's story part 1
- Irene's story part 2

- Jimmy's story part 1
- Jimmy's story part 2

In each of these film scenario clips you can use the "thinking it through" flowchart on page 41 to help you to identify the rights and responsibilities involved.

The films highlight that everyone has human rights and that everyone must share responsibility to ensure that those rights are fully realised.

You can view all these clips now if you wish or you may prefer to watch them when we prompt you in the written materials.

The films are available to watch on the DVD in this pack or online at www.scottishhumanrights.com/careaboutrights

Care about Rights?

Section One

What are human rights?

What are human rights?

Everyone, everywhere, has basic rights and freedoms, based on our common humanity which we need in order to live together with dignity. These human rights are secured in law.

The law applies to everyone equally and provides an important means of protection for the most vulnerable in our communities, including older people receiving care and support, by setting out the duties owed by those responsible for upholding human rights.

Human rights include civil and political rights, such as:

- The right to freedom of expression
- The right to freedom of religion or conscience
- The right to property
- The right to freedom of assembly
- The right to privacy
- The right to vote.

Human rights also cover economic and social rights, such as:

- The right to an adequate standard of living
- The right to adequate food, housing, water and sanitation
- The rights you have at work
- The right to health
- The right to education.

Some of the key rights which might be relevant to you are further examined later in this section of the materials.

Human rights create rights and duties. States (national governments) accept duties under international law to respect, to protect and to fulfil human rights. This can be remembered using the traffic lights below:

RESPECT

The duty to **respect** means that states must not act to interfere with the enjoyment of human rights.

PROTECT

The duty to **protect** requires states to ensure that others do not infringe or block access to human rights.

FULFIL

The duty to **fulfil** means that states must take positive action to facilitate the better enjoyment of human rights.

At the individual level, while we are each entitled to respect for our human rights, we should also respect the human rights of others. Human rights apply regardless of nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status, and they cannot be taken away except in specific, pre-determined situations and according to law.

Also, human rights relate to and depend on each other. For example, it would be hard to exercise your right to freedom of expression without the right to health being fulfilled, and where the right to information is denied this undermines the right to participate in decisions.

The international human rights framework

The founding statement of human rights law is the Universal Declaration of Human Rights. Its famous preamble states that:

> "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

The idea of human rights has been around for a very long time. Many of the regional and international systems for human rights, such as the United Nations, its treaty bodies and the Council of Europe, were created in the aftermath of the Second World War.

Some of the most historic dates in the human rights timeline, including the struggle for rights in the United States, the women's liberation movement, the independence of many African and Asian states from colonial rule and the campaign against apartheid in South Africa, are within living memory. Today's younger generation owe the recognition of a fundamental human rights framework to the older generation.

The 'story' of modern human rights is part of the living, human experience of older people in Scotland. This is shown in the timeline on page 10 illustrating some of the developments in human rights law and developments in Scotland over the past 100 years.

If you wish, you can plot your own personal timeline, or that of your family, alongside this human rights timeline.

KEY DATES IN THE HUMAN RIGHTS SYSTEM

1919

The International Labour Organisation established to advocate for workers' rights.

1948

The Universal Declaration of Human Rights adopted by the United Nations.

1949

The Council of Europe established in response to the atrocities of WWII.

1950

The European Convention on Human Rights adopted by the Council of Europe (in force 1953)

1966-(2010)

ICCPR and ICESCR, 'The International Bill of Rights,' adopted by the United Nations comes into force 1976. Several key international human rights treaties have been drafted and ratified by states since then.

1993

Office of the High Commissioner for Human Rights established.

1998

The Human Rights Act (in force 2000).

Scotland Act 1998 (in force 1999).

2007

The Equality and Human Rights Commission established for Great Britain.

2008

The Scottish Human Rights Commission established.

2010

The Scottish Human Rights Commission given recognition at the United Nations.

KEY DATES IN SCOTLAND

1914-18

Thousands of Scottish men fight in WWI – 140,000 are killed.

1939-1945

Over 57,000 Scots are killed in the global conflict of WWII. Many towns and cities are bombed at home.

1948

In its first year in Scotland the NHS provides 500,000 people with glasses and 500,000 with free dentures.

1950s

Increasing numbers of women in paid employment.

1960s

The number of births registered in Scotland peaks at over 100,000 per year in the early 1960s signalling the baby boom generation.

1970s

School leaving age is raised to 16.

1980s

There are mass protests against the poll tax. Heavy industry of mining and shipbuilding dwindle.

1997-1999

In 1997 a referendum secures a devolved Scottish Parliament. The first Holyrood elections take place in May '99.

2005

In Edinburgh 200,000 people march in support of the Make Poverty History campaign, as the G8 summit meets at Gleneagles.

2010

A series of public sector cuts are introduced in the face of a global economic downturn.

What is a human rights based approach?

A human rights based approach is about empowering people to know and claim their rights and increasing the ability and accountability of individuals and institutions who are responsible for respecting, protecting and fulfilling rights.

This means giving people greater opportunities to participate in shaping the decisions that impact on their human rights. It also means increasing the ability of those with responsibility for fulfilling rights to recognise and know how to respect those rights, and make sure they can be held to account.

A human rights based approach is about ensuring that both the standards and the principles of human rights are integrated into policymaking as well as the day to day running of organisations.

The PANEL principles

There are some underlying principles which are of fundamental importance in applying a human rights based approach in practice. These are:

- **P**articipation
- **A**ccountability
- **N**on-discrimination and equality
- **E**mpowerment and
- **L**egality.

These are known as the PANEL principles.

Participation

Everyone has the right to participate in decisions which affect their human rights. Participation must be active, free, meaningful and give attention to issues of accessibility, including access to information in a form and a language which can be understood.

What does this mean for us?

In relation to the care of older people this means that individuals should participate in all decisions about the care and support they are receiving. This could range from participation in the commissioning and procurement of social care services by local authorities to participating in daily decisions about the care and support being received.

There is lots of guidance about how care providers can involve people who use care services and their families and friends, such as the Care Commission's guidance for care service providers, 'Involving people who use care services and their families, friends and supporters' (2009). There is a link to this on page 134 at Section 7 of the materials.

Accountability

Accountability requires effective monitoring of human rights standards as well as effective remedies for human rights breaches.

For accountability to be effective there must be appropriate laws, policies, institutions, administrative procedures and mechanisms of redress in order to secure human rights.

What does this mean for us?

In the care sector in Scotland there are a range of bodies which promote accountability for respecting, protecting and fulfilling human rights. In different ways these bodies all have a responsibility to ensure that the standards of accountability for human rights are as high as possible. These include the commissioners of care services, care provider organisations and inspection and regulation bodies.

Non-discrimination and equality

A human rights based approach means that all forms of discrimination in the realisation of rights must be prohibited, prevented and eliminated. It also requires the prioritisation of those in the most marginalised situations who face the biggest barriers to realising their rights.

What does this mean for us?

There are times when older people receiving care and support services can be amongst some of the most vulnerable and marginalised people in our society - a human rights based approach means we must pay particular attention to the protection and realisation of their rights. Sometimes, because of their age, older people are discriminated against in access to services or in opportunities to express their views. Older people also have different identities based on their gender, ethnicity, religion and many other grounds. Each of these identities should be respected when receiving care and support services.

Empowerment of rights holders

A human rights based approach means that individuals and communities should know their rights. It also means that they should be fully supported to participate in the development of policy and practices which affect their lives and to claim rights where necessary.

What does this mean for us?

This means that everyone, including older people, should understand what their rights are and how they can claim these rights. Achieving this may require the provision of appropriate advocacy support.

Legality of rights

A human rights based approach requires the recognition of rights as legally enforceable entitlements and is linked in to national and international human rights law.

What does this mean for us?

Care providers and all other accountable bodies must be sure that their practices and procedures are grounded in human rights law. Under the law they must not breach the human rights of anyone.

Section 2 will explain further what the legal protections for human rights are in Scotland.

The FAIR approach - putting a human rights based approach into practice

These materials will help you apply a human rights based approach in practice.

The Scottish Human Rights Commission has developed what we call the 'FAIR' approach to help you do this. The basic steps of the FAIR approach are:

- **Facts:** What is the experience of the individuals involved and what are the important facts to understand?
- **Analyse rights:** Develop an analysis of the human rights at stake
- **Identify responsibilities:** Identify what needs to be done and who is responsible for doing it
- **Review actions:** Make recommendations for action and later recall and evaluate what has happened as a result.

The flow chart on page 41 outlines these steps in more detail and you can use the film scenarios and case studies in Section 3 to familiarise yourself with putting the steps into practice.

Not every unfair situation will be an abuse of human rights law. Often using the FAIR approach, however, can be a means of reaching a balanced and just solution in those situations.

The role of a human rights based approach is to ensure that the dignity of the individual is at the centre of policy and decision making. Where it is applied everyone affected will have an opportunity to help think through how human rights can best be realised in the delivery of care and support services

A human rights based approach and the Charter of Rights for People with Dementia and their Carers in Scotland

A human rights based approach has already been adopted in the development of care services for people with dementia in Scotland.

The Cross-Party Group on Alzheimer's at the Scottish Parliament brings together Members of the Scottish Parliament with organisations representing the interests of people with dementia. The group works towards ensuring that high quality support, services and treatment are available in order to assist people with dementia and their carers throughout Scotland.

As part of this work the group has considered how to ensure that the rights of people with dementia and their carers are fully recognised at all levels of government and by individuals and non-governmental organisations.

People with dementia and their carers (family members and friends) have the same human rights as everyone else. It is widely recognised, however, that in addition to the impact of the illness, people with dementia and their carers can face cultural, social and economic barriers to fulfilling these rights.

The group has produced a Charter of Rights which aims to empower people with dementia, those who support them and the community as a whole, to ensure their rights are recognised and respected.

The Charter is guided by a human rights based approach as described above (known as the **"PANEL"** approach, endorsed by the United Nations).

It emphasises the rights of everyone to:

- **P**articipation in decisions which affect their human rights
- **A**ccountability of those responsible for the respect, protection and fulfilment of human rights
- **N**on-discrimination and equality
- **E**mpowerment to know their rights and how to claim them
- **L**egality in all decisions through an explicit link with human rights legal standards in all processes and outcome measurements.

To see a copy of this Charter go to: www.dementiarights.org/charter-of-rights

How are my human rights protected in law?

In Scotland, your human rights are protected by the **European Convention on Human Rights** ('the Convention'), the UK **Human Rights Act** and the **Scotland Act**. Your rights are also protected by a range of international human rights laws which, although they can't be enforced directly in Scottish courts, are monitored internationally.

The European Convention on Human Rights

The Convention was drafted by all the states of the Council of Europe, including the UK, and came into force in 1953. The Council of Europe was formed in response to the atrocities and cruelties of the Second World War and is a regional membership organisation for countries in Europe.

The Convention is made up of a series of Articles. Each Article is a short statement defining a right or freedom, together with any permitted exceptions. The rights in the Convention apply to everyone in the UK.

The Human Rights Act

The Human Rights Act 1998 ('the Act') brings most of the fundamental rights and freedoms contained in the European Convention on Human Rights directly into UK law.

The rights included in the Act affect the rights you have in your everyday life: protecting what you can say and do, your right to a fair trial and other similar basic entitlements. Most rights have limits to ensure that they do not unfairly infringe upon other people's rights. Certain rights, however, such as the right not to be tortured, can never be limited by a court or anybody else.

Cases based on the rights and freedoms in the Act can be argued in a UK court or tribunal. The Act also requires all public authorities, such as hospitals, schools, local authorities and courts to comply with those human rights. According to the Act all other legislation should also be interpreted and applied in a way that is consistent with the rights included in the Act.

The Scotland Act

The Scotland Act 1998 established the Scottish Parliament and the Scottish Government. It ensures that the Scottish Parliament can only pass laws that are compatible with human rights. This means that human rights must be respected and realised at all levels of governance in Scotland.

A note on using the law to uphold human rights

Most human rights issues do not need specialist legal advice and can be resolved by communication, advocacy and non-judicial complaints mechanisms: talking to those involved, seeking advocacy support and using existing complaints processes where necessary. The FAIR approach will help you resolve issues.

Taking a human rights case to court can often be costly, time consuming and stressful. However, where other approaches do not provide satisfaction anyone who believes that their human rights have been breached should then seek legal advice. If you want to pursue your claim in the European Court of Human Rights you should first take every possible step to have the case resolved in the domestic courts. This might include the sheriff court, employment tribunal and eventually the highest courts in the country – the High Court of Justiciary for criminal cases and the Supreme Court for civil cases. All domestic courts in the UK are required by the Human Rights Act to uphold the human rights contained in the Convention.

Only if you are still dissatisfied and believe your human rights have not been properly upheld by the domestic courts, you may then consider exercising your right to apply to the European Court of Human Rights in Strasbourg to hear your case.

The United Nations system

The United Nations was established in the aftermath of the Second World War. One of its key purposes is the promotion and protection of human rights and one of its earliest actions was to adopt the Universal Declaration of Human Rights (UDHR) in 1948. The UDHR expresses the rights to which everyone is entitled by virtue of being human. It consists of 30 articles which have been elaborated in subsequent legally binding international treaties, regional human rights instruments, national constitutions and laws.

This quote from **Eleanor Roosevelt, Chairperson of the United Nations Human Rights Commission** that drafted the UDHR, shows that it was always envisaged that human rights should become important in everyday life such as in our homes and in care settings:

> "Where after all, do universal human rights begin? In small places, close to home – so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighborhood he lives in; the school or college he attends; the factory, farm or office where he works… unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world."
>
> **Eleanor Roosevelt**

International treaties and conventions are the agreements made between states. The agreements contain legal obligations for states and rights for individuals within that state.

The UK has signed up to, and ratified, many of these agreements (treaties) on international human rights law, including:

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

Each of these treaties is monitored by a committee of independent experts from around the world. The UK must report to each of these committees every four or five years on its compliance with the treaty. Others, such as civil society groups and national human rights institutions like the Scottish Human Rights Commission, can give the committees alternative reports on their assessment of the rights in the treaty.

The UK has also agreed to allow individuals or groups to submit petitions directly to the relevant treaty committees with regard to alleged human rights abuses under two of these treaties – the Convention on the Elimination of Discrimination Against Women and the Convention on the Rights of Persons with Disabilities. Anyone who wishes to submit a petition under either of these treaties would first have to have taken their complaint through all available channels in Scotland.

Nearly all of these treaties are relevant to older people. However, the full potential of these treaties to defend and uphold the rights of older persons has not been fully realised. One effort to bridge this gap is the United Nations Principles for Older Persons. These Principles, which are not themselves legally binding, are based on many of the treaties above. They contain 18 principles, grouped under five themes:

- Independence
- Participation
- Care
- Self-fulfilment
- Dignity

In the following section we describe some of the key human rights of older people and what they mean in practice in care home and care at home/housing support settings.

The UN Convention on the Rights of Persons with Disabilities

The UN Convention on the Rights of Persons with Disabilities is an example of one of the important international treaties that the UK, including Scotland, has signed up to which has relevance to the care and support of older people.

The Convention spells out what should be done to break down the barriers which people with long term physical, mental, intellectual or sensory impairments may face in realising their human rights. As such the Convention is relevant to people in care who, for example, have a visual or hearing impairment, or those who have dementia.

The Convention makes absolutely clear that people with disabilities have the same rights as everyone else and it sets out in some detail what is required to respect, protect and fulfil those rights in reality.

The Convention includes human rights across all areas of disabled people's lives, including all of the rights which are set out in the following pages.

For example, the Convention provides that:

- people with disabilities have the right to make their own decisions in all areas of life, on the same basis as other people and there are duties to provide the support people need to exercise that capacity. Decisions should only be made on behalf of people with disabilities where necessary, and with appropriate safeguards;

- people with disabilities should have real and effective access to justice (as participants in the justice system as victims of crime or human rights abuses, witnesses, on juries etc);

- people with disabilities have the right to live independently and be included in the community (for example the right to choose where they live and who they live with and not to be unlawfully forced into a particular living arrangement); and

- people with disabilities have the right to be as mobile as possible.

Although the Convention does not form part of domestic law, it can help us to understand and interpret the rights in the Human Rights Act with respect to people with disabilities.

In Scotland, the Equality and Human Rights Commission and the Scottish Human Rights Commission have been given a special role as independent bodies to promote, protect and monitor the Convention.

Key Rights Explained

There are many important human rights contained in the international treaties discussed in the previous section.

We are now going to look in more detail at some of the human rights contained in the European Convention on Human Rights. These rights are part of our law in Scotland through the Human Rights Act and the Scotland Act. We also explain some of the other human rights which are not contained in our national laws, but which are guaranteed internationally and are central to securing human dignity for older people.

It is important to understand that there are different types of rights in the Convention. In particular there are absolute rights and qualified rights (there are other categories too but we'll focus on these for now).

Absolute Rights

Some rights are known as absolute rights which means they can never be restricted under any circumstances. These rights are the "red lines" which must not be crossed. The threshold for a violation of these rights will only be met in the most serious of circumstances.

Absolute rights include:

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

Qualified Rights

Some human rights are qualified, which means they can be restricted in some circumstances and within limits.

These rights are written so that the first part of the Article sets out the right that is to be protected, while the second part establishes whether a public authority can legitimately restrict that right in order to protect the wider public interest.

Qualified rights include:

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

To consider whether a restriction of a qualified right is justified, you need to think through the following important questions:

- Legality - is there a legal basis for the restriction of the right?

- Is there a legitimate aim or justification for the restriction such as the protection of public health or the protection of other people's human rights?

- Is the action proportionate - is it the minimum necessary restriction of the right?

Proportionality explained

The principle of proportionality is at the heart of many human rights claims.

Proportionality can be most easily explained by the expression:

“Don’t use a sledgehammer to crack a nut.”

When thinking about decisions that affect any of the qualified rights, it is important that the right is restricted with as little as possible, only going as far as is necessary to achieve the legitimate aim.

The following questions might help you to determine whether a restrictive act is proportionate or not:

- What is the problem being addressed by the restriction upon someone’s rights?
- Will the restriction lead to a reduction in the problem?
- Does a less restrictive alternative exist and has it been tried?
- Does that restriction involve a blanket policy or does it allow for different individual cases to be treated differently?
- Has sufficient regard been paid to the rights and interests of those affected?
- Do safeguards exist against error or abuse?
- Does the restriction destroy the basic ideas behind the human rights at issue?

Right To life

Article 2 – Right to life

Everyone's right to life shall be protected by law...

What does this right mean?

The right to life is an absolute right which means that there is a duty on the state/public authorities not to take away anyone's life and a duty to take reasonable steps to protect life.

When could this right be relevant?

- Deaths through negligence
- Severe malnutrition
- Decisions about life saving healthcare treatment
- End of life issues
- Suicide.

Story example of Article 2 issue

Tom has been a long-term carer for his partner, Claire. Tom suffers from bipolar disorder and has admitted to suicidal thoughts when he feels very depressed. During a period of respite care at a care home Tom attempts to take Claire's life and then uses the window blind cord to take his own life. The couple's grown up children are angry that the staff in the home did not take better care to supervise 24 hours and minimise the risk of harm.

Right not be subjected to torture or to inhuman or degrading treatment or punishment

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

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

What does this right mean?

Inhuman treatment is prohibited under this article which means that treatment which causes severe mental or physical harm must never occur. Degrading treatment means treatment that is grossly humiliating and undignified. Whether treatment reaches this threshold depends on various factors including the age, physical and mental health of the person who experiences harm and the power relationship involved. Duties under this right not only include refraining from an action or an omission which results in inhuman or degrading treatment, but also taking reasonable positive steps to prevent ill-treatment, to protect those at immediate risk of ill-treatment and to provide effective remedies where ill-treatment occurs.

When could this right be relevant?

- Abuse or neglect
- Lack of respect for privacy
- Denial of essential medication or aids
- Inappropriate use of force or restraint
- Inadequate personal care

Story example of Article 3 issue

Priscilla is a strong willed character who has a habit of spitting when she gets angry or distressed. She has recently had a severe chest infection and with no family to support her at home she has been placed in a care home to recuperate fully with appropriate nursing support. One of the staff finds the spitting to be deeply offensive and tells Priscilla that she will not be changed or have her bathroom needs attended to until she stops getting distressed and spitting at staff. She refuses to allow her colleagues to intervene. As a result Priscilla has been left unwashed and bedridden. She has stopped eating her food and is losing weight fast.

Right to private and family life

Article 8 – Right to private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Right to private and family life

This right is very broad in scope and covers many different situations which relate to the rights of older people.

Article 8 relates to the following main interests:

- **Privacy** – this is defined broadly and relates to all aspects of privacy both in and outside of an individual's private home
- **Family life** – this covers all close and personal ties of a family kind - not only those of a blood or formalised nature
- **Physical, psychological and moral well-being** – this covers the right to well-being through retaining autonomy, choice and dignity. It requires that there is access to information and participation in decisions that affect an individual's life
- **Home** – this is not about a right to a house but rather a right to respect for the home life of an individual
- **Correspondence** – this covers all forms of communication with others such as phone calls, letters, emails etc

When could this right be relevant?

- Involving people in decisions made about their treatment and care
- Respecting people's right to privacy in their own home, in a care home, in a hospital setting or elsewhere in the community
- Remaining with a partner either at home or in a care setting
- Maintaining socialisation and recreational activities and / or support to access such activities
- Maintaining personal relationships with family members and others
- Use of personal information
- Poor quality of care not amounting to inhuman or degrading treatment
- Consent to medical treatment and forms of restraint
- Effects of care home closures.

Story example of Article 8 issue

Mairi is in her late eighties and has lived in a care home for 12 years. She loves it there, gets on well with the staff and has close links with friends in the local community where she lived and worked. Her son and daughter both live nearby. The home is no longer financially viable and residents are being moved elsewhere. Residents and their families are not involved in decision making. The risks involved to each individual have not been properly assessed.

Mairi is moved to a new establishment 15 miles away from her family meaning they can no longer visit her as there are few public transport links. She finds the whole process traumatic and very difficult and her mental and physical health deteriorates as she misses the company of her family and friends. Mairi is very angry that no one took into account that for her the care home was her home.

Right to liberty and security

Article 5 – Right to liberty and security

Everyone has the right to liberty and security of person.

No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law...

What does this right mean?

Unless identified in one of a range of narrow exceptions, such as preventing harm to yourself or others through lawful arrest or detention, no one should be unnecessarily detained against their will.

When could this be relevant?

- Restrictions on older people's movements in care homes such as locked doors or excessive restraint with bed guards for long periods
- Informal detention of patients who do not have the capacity to decide whether they would like to be admitted into hospital, for example those with learning disabilities or dementia
- Restricting access to independent living aids.

Story example of Article 5 issue

Frances has dementia and wanders around her care home in the evenings. She has never attempted to leave the grounds and her wandering has posed no significant problem to any other individuals in the home. Lately the home has been forced to make a quarter of staff redundant and as a result there are not enough staff to properly supervise all of the residents all of the time. As a result Frances has been locked in her room overnight so that she cannot wander around and potentially injure herself. She finds being locked in her room extremely distressing and does not understand why the new rule has been imposed.

Right to a fair trial

Article 6 – Right to a fair trial

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...

What does this right mean?

This right is about a fair and public hearing and due process. In certain situations, not only in criminal cases, but also in processes which determine civil rights (such as employment, property disputes and benefits claims etc) the right to a fair trial will apply. It is not always easy to determine whether Article 6 applies but applying the principles can demonstrate good practice in decision making in many of instances.

When could this be relevant?

- Ensuring a person subject to a decision making process is supported and given adequate time and facilities to present their case
- Ensuring a fair process in disciplinary proceedings, particularly where an individual may lose their job
- Having an opportunity to be heard or participate at some stage in the decision making or adversarial process
- Having a right of appeal to an independent body.

Story example of Article 6 issue

Daniel is a care worker working for a care at home provider. Recently the relatives of a man he cares for have accused him of administering non prescribed, and potentially dangerous, medicine to their father. Daniel is very distressed about this because believes the accusations to be entirely false and enjoys his job. His employers have an internal disciplinary procedure and while the allegation is being investigated he is suspended from his post and informed that he has been provisionally placed on the Protection of Vulnerable Adults List. Daniel waits several months but hears nothing about the investigation. He is upset as he has had no opportunity to give his side of the story and refute the allegations being made against him. Meanwhile he cannot work and knows his reputation with his colleagues has been ruined.

Right to freedom of thought, conscience and religion

Article 9 – Freedom of thought, conscience and religion

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others.

What does this right mean?

Everyone is free to hold a broad range of views, beliefs and thoughts and to follow a religious faith. The right to manifest - to practice through e.g. prayer or diet, or to show e.g. through dress or adornments - those beliefs may be limited only in special circumstances.

When could this be relevant?

- Respect for cultural and religious requirements
- Opportunities for prayer or to wear religious clothing
- Providing support to enable people to participate in their normal religious practices such as dietary requirements at meal times and in care and support plans.

Story example of Article 9 issue

Leena is working for a care at home service provider. She has worked there for a number of years and has good relationships with the people she cares for and their families. Leena is Muslim and as she has grown older she has become more religious in her beliefs. Recently she has started to wear a headscarf to work. Her manager advises her that she must remove the headscarf while she is working as it could confuse her longstanding service users who will not recognise her and may become alarmed. The service then introduces a uniform policy which states that only the company tunics and trousers can be worn and that any other form of dress is inappropriate for care workers.

Right to freedom of expression

Article 10 – Freedom of expression

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

What does this right mean?

Everyone has the right to hold opinions and express their views on their own or in a group. This applies even if these views are unpopular or disturbing. This right can be restricted only in specified circumstances.

When could this be relevant?

- Having appropriate whistle blowing policies for staff
- Supporting and allowing people to express their views and opinions
- Allowing access to information

Story example of Article 10 issue

A group of care home residents are active in the community and have weekly excursions to local places of interest. They often go to the local community centre where they are entertained by Scout group performances or have a monthly bingo session. Unfortunately, due to a lack of funding, the community centre is earmarked for closure. The residents decide to launch a protest, starting with writing to their local MSP. They also plan to send out protest letters to houses in the area and talk to the local newspaper about the effect the closure will have on the community. The care home manager tells the residents that the home will not facilitate their protest as it is bad for the reputation of the home to have residents making a fuss.

Right to freedom of assembly and association

Article 11 – Freedom of assembly and association

Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

What does this right mean?

Everyone has the right to assemble with other people in a peaceful way. They also have the right to associate with other people, which includes the right to form a trade union. These rights may be restricted only in specified circumstances.

When could this be relevant?

- Workers' right to join or not join a workers' union
- People receiving care services and their families may protest about the quality of care
- The right to form a voluntary group or association

Story example of Article 11 issue

David lives at home and is supported by care workers on a daily basis. David is in a wheelchair and is unable to leave his apartment without someone accompanying him. A friend takes David out on a disability rights march. Once they get to the march they find the route has been diverted so as to avoid clashing with a different demonstration in the city. The new route has lots of shallow steps, cobbles and steep hills and is inaccessible to David and so he has to go home and miss the protest. He writes an angry letter of protest to the local council about the route change.

Right not to be discriminated against

Article 14 – Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

What does this right mean?

A person cannot be discriminated against in respect of the other Convention rights.

When could this be relevant?

- Ensuring that people are not denied services, facilities or treatment solely on the basis of their age
- Commitment to improving mental health services for people from black and minority ethnic groups
- Non-English speakers being presented with health options without an interpreter.

Story example of Article 14 issue

Tracy is a transsexual. She works in a care home. Although she is much happier living life as a woman she is still self-conscious. Recently some of her colleagues have objected to Tracy using the staff toilet facilities. The manager has asked Tracy to use only the facilities in the reception area as he does not want to create a fuss. She feels this infringes not only her right to privacy but also that she is being discriminated against.

Right to property

Article 1, Protocol 1 - Protection of property (A 'protocol' is a later addition to the Convention.)

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

What does this right mean?

Everyone has the right to the peaceful enjoyment of their possessions. This means a person has the right to use, develop, sell, destroy or deal with property in any way they please. Public authorities cannot usually interfere with a person's property or possessions, or the way in which they use them, except in specified limited circumstances.

When could this be relevant?

- Protection against financial abuse
- Respect for personal belongings such as photographs, jewellery, or clothes in any home care or care home setting

Story example of Article 1 Protocol 1 issue

Isobel is in her 80s and has lived in the same house for 40 years. Over that time the surrounding green fields have gradually disappeared and in the last few weeks the foundations of a large office building have been laid right next door to the house. She is very unhappy about the noise and dust from building works. She has received a compulsory purchase order for the house so that a new access road can be built. The compensation she is offered is significantly less than she would have expected. The reason given for the low valuation of the house is that the property is now overlooked by the new office development. Isobel feels unable to cope with the situation.

Right to free elections

Article 3, Protocol 1 – Right to free elections

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

What does this right mean?

Everyone has the right to vote for representatives who then make up the legislature. The elections must be free, fair, take place by secret ballot, occur at regular intervals and properly express the views of the electorate.

When could this be relevant?

- Not restricting a persons right to vote on the basis of their age or physical or mental disability
- Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use for older people
- Respecting the right to vote in secret
- Providing support to people to use their right to vote when they wish to do so.

Story Example of Article 3, Protocol 1 issue

Jean always exercised her right to vote before becoming resident at a care home. The Scottish Parliamentary elections are coming up and she has been following the coverage on the television in her room every evening. She has repeatedly asked staff about how she will go and cast her vote on election day but nobody has reassured her. Election day goes by and she does not vote. The care home has assumed that because she has dementia that she does not have capacity to vote.

Other international human rights of importance

Economic Social and Cultural Rights

Economic, social and cultural rights cover a broad range of human rights. They are guaranteed in international human rights treaties to which the United Kingdom is legally bound, and include rights relating to the workplace, social security, adequate housing, food, water, health care and education.

Under its international commitments to economic, social and cultural rights, the UK, and Scotland, should show progress over time towards the full realisation of these rights by everyone. This means taking steps, according to the maximum of available resources, to progressively achieve their full realisation.

Even where resources are scarce there should still be every effort made to improve the enjoyment of these rights. For example, regardless of the resources available to it, a country should as a matter of priority seek to ensure that everyone has access to, at the very least, minimum essential levels of all of these rights. Targeted programmes should exist to protect the rights of people in poverty or otherwise marginalised and disadvantaged people.

While these rights can only be fully realised over time, they also contain immediate obligations to ensure (as a priority) minimum essential levels of these rights for everyone, non-discrimination and that any retrogression (roll-back) on rights can be justified for the full range of human rights. This does not mean that the government must provide all of these things, such as healthcare, water, education, food and other goods and services but that it must ensure that those services are adequate and equally accessible to all.

Some of the most relevant economic and social rights for older people and care services are outlined briefly below.

Right to the highest attainable standard of physical and mental health

What does this mean?

The right to health is not a right to be healthy – genetic traits and our varied lifestyles make this impossible. It is a right to a range of goods, services and information which are needed for health. It includes both a right to healthy conditions and a right to adequate health care. It covers a wide range including mental health, sexual and reproductive health, environmental health, workplace health and safety, prevention, treatment and control of diseases as well as broader public health strategies.

The right to healthy conditions includes:

- Safe drinking water and adequate sanitation
- Safe food
- Adequate nutrition and housing
- Healthy working and environmental conditions
- Health-related education and information
- Gender equality.

The right to health care includes:

- **Availability -** sufficient health care information, services, goods and facilities, including trained health and care workers.

- **Accessibility -** health care information, services, goods and facilities should be physically and economically accessible without discrimination.

- **Acceptability -** health care should be acceptable in terms of medical ethics as well as culturally acceptable to persons belonging to minorities.

- **Quality -** health facilities, goods and services must also be scientifically and medically appropriate and of good quality. This requires, among other things, skilled medical personnel, scientifically approved drugs and hospital equipment, safe water and adequate sanitation.

When could this be relevant?

- Access to essential medicines
- Access to information about health
- Non-discrimination against older people in accessing health services.

Right to adequate housing

What does this mean?

The right to adequate housing is relevant to the places where people actually live, whether owned or rented accommodation, or residential institutions such as care homes. It contains the following important elements:

- **Security of tenure –** this means people should have a degree of security and legal protection against forced eviction, harassment and other threats

- **Availability of facilities and infrastructure –** this means an adequate house must contain the things essential for health, security, comfort and nutrition such as safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services, etc.

- **Affordability –** this means that household or financial costs must not be so high that other basic needs like food are under threat. Tenants should be protected by appropriate means against unreasonable rent levels or rent increases

- **Habitability –** this means adequate housing must have adequate space and protect you from cold, damp, heat, rain, wind or other threats to health

- **Accessibility –** this means housing must be accessible to those entitled to it and disadvantaged groups such as the older people, children, people with disabilities etc should be ensured some degree of priority consideration

- **Location –** this means adequate housing must be in a location which allows access to employment options, health-care services, schools, child-care centres and other social facilities. Also, housing should not be built on polluted sites or nearby to pollution sources that threaten the right to health of the inhabitants

- **Cultural adequacy –** this means that the way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing.

When could this be relevant?

- Residents in care homes being threatened with eviction
- Damp in people's houses causing health problems
- Accessing doctors surgeries
- Housing requiring adaptation to met the needs of older people.

Right to adequate food

What does this mean?

The right to adequate food means the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances and acceptable within a given culture. It also means the accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.

- **Dietary needs -** means the diet as a whole should contain a mix of nutrients for physical and mental growth, development and maintenance, and physical activity according to human physiological needs at all stages throughout the life cycle

- **Free from adverse substances -** sets requirements for food safety and for a range of protective measures to prevent contamination of foodstuffs and poor environmental hygiene or inappropriate handling of food

- **Cultural or consumer acceptability -** means other cultural issues should be taken into account

- **Availability -** refers to the possibilities either for growing your own food or through accessing food by other means

- **Accessibility -** means food must be both affordable and physically accessible particularly for physically vulnerable individuals.

When could this be relevant?

- People living at home being able to access shops to buy food, or are given support to do so if required
- Quality of nutrition and hydration for older people
- Ensuring staff numbers in care homes are sufficient to encourage and help residents to eat well and drink regularly
- Ensuring menus are properly planned for older people who have diabetes, unplanned weight loss or difficulty swallowing and chewing etc.

Notes

Care about Rights?

Section Two

Thinking it through

Thinking it through FAIR flowchart

This flowchart will help you to apply a human rights based approach.

F

Facts

What is the experience of the individual? Is the individual being heard and if not, do they require support to do so?

What are the important facts to understand?

A

Analysis of right(s) at stake

What are the human rights or issues at stake? (refer to Section 1 for help)

Is the right to life or the right not to be subjected to inhuman or degrading treatment at stake? If so, these rights are absolute and cannot be restricted.

Can the right be restricted? What is the justification for restricting the right?

Is the restriction on the right 'proportionate'? i.e. is it the minimum necessary restriction to meet the aim or is a "sledgehammer being used to crack a nut"?

I

Identification of shared responsibilities

What changes are necessary?

Who has responsibilities for helping to make the necessary changes?

R

Review actions

Have the actions taken been recorded and reviewed and has the individual affected been involved?

Case Study Scenarios and Film Scenarios

For the case studies and short film scenarios we would recommend that you read or watch each in turn, discuss with others where you can, and follow the steps in the flowchart to think through a human rights based approach to the scenario.

You can find guidance for each scenario from page 107 onwards in Section 6 of the Pack.

Here is a worked example of how to do this:

Example Case Study - Michael

Michael spent most of his life working in the mines in Lanarkshire. Well into his 80s he is now in a care home on the edge of the mining village where he was brought up. As a result Michael is well known not just to the others in the home but by many of the staff whose parents and grandparents he knew. Michael is in poor health and as a result of his work suffers from emphysema and is breathless.

Michael has a daughter, Lisa, who moved away from home when she was 18, qualified to be a nurse but has now returned back to the village after her retirement. She is a strong character and frequently takes over the tasks of the care staff and constantly inspects their work and support.

One day Michael asks to be supported to go to the toilet which the duty staff begin to respond to. Lisa insists that she will take her dad to the toilet. Michael begins to get upset and to starts to breathe more heavily and to get agitated. The staff ask Lisa to leave but she refuses saying that as a professional nurse and as a daughter she has the right to stay and make sure that they are looking after her father properly.

Using the flowchart for example case study - Michael

Facts

What is the experience of the individuals? Is the individual being heard and if not, do they require support to do so?

What are the important facts to understand?

Michael has emphysema and is breathless.

He does not appear to want his daughter Lisa to be present when he is being supported to go to the bathroom.

Analysis of right(s) at stake

What are the human rights or issues at stake?

Can the right be restricted?

What is the justification for restricting the right?

Is the restriction on the right 'proportionate'?

Michael's right to privacy under Article 8 is at stake here. This right can be restricted.

The justification for the restriction is that Lisa wants to be involved in her father's care. This does not appear to be proportionate as it does not take Michael's wishes into account and is not necessary for his care.

Identification of shared responsibilities

What changes are necessary?

Who has responsibilities for helping to make the necessary changes?

The care workers have a responsibility to explain to Lisa that it is her father's wishes and right to have privacy for his personal care needs.

Lisa has a responsibility to take account of her father's right to privacy.

Review actions

Have the actions taken been recorded and reviewed and has the individual affected been involved?

Has Michael participated in decisions made about his care?

Have Michael's rights been explained to Lisa?

Are staff aware of the privacy rights of Michael?

Have the actions taken and Michael's preferences been recorded?

Film Scenarios

Overview of Film Scenario One - Sheila

Sheila is a lady in her mid 70s who has recently been diagnosed with the early onset of dementia. Sheila is fascinated with plants and loved her garden. She now lives in a care home. In this film we see Sheila looking outside at the sensory garden and struggling to try to open the door which leads out onto the garden.

Mary, the support worker, assists Sheila back to her seat and tells her that it is not possible for Sheila to go out into the garden on her own and that dinner is nearly ready. Mary reminds Sheila that her daughter was concerned that Sheila should not be allowed to go out unaided. Sheila gets increasingly frustrated and distressed at this.

In a later scene we see the care staff discussing the incident and the ways in which they can handle the situation.

Watch **Sheila's story part 1** on the DVD. Once you have watched the film you can use the flowchart at page 41 to think through the human rights issues the film raises.

After you have thought through the flowchart questions you can watch **Sheila's story part 2** to see how things worked out.

Overview of Film Scenario Two - Irene

Irene lives at home. She has recently spent a period of time in hospital as a result of a urinary tract infection, and although she is now back at home she is increasingly weak and frail. When the infection was bad, she was very confused. Irene is supported by her son, Alan. Alan has recently been made redundant and has not coped well with this additional pressure and we get the impression that he has been depressed, drinking a bit too much and smoking almost constantly. Irene gets on very well with her son, dotes on him.

Sadly, Irene's condition deteriorates over time and the rate of this decline has become faster to the extent that she is now unable to move from her bedroom and requires assistance for all aspects of her life. She never leaves her bedroom and very rarely sees anyone other than the staff who come to support and care for her.

The film clip shows two workers who know Irene well sitting in their car chatting about Irene. It becomes clear that this is to be the last day that they are going to be working with Irene. They are concerned that she doesn't know that this is the case and that she will be very upset when she learns this.

The workers also spend some time talking about Alan, and express their concerns that he has gone downhill fast since he lost his job and that his mood has changed.

Watch **Irene's story part 1** on the DVD. Once you have watched the film you can use the flowchart at page 41 to think through the human rights issues the film raises.

After you have thought through the flowchart questions you can watch **Irene's story part 2** to see how things worked out.

Overview of Film Scenario Three - Jimmy

Jimmy lives in his local care home. He is in his 70s and although increasingly frail has a positive outlook and is very well liked and respected by other residents as well as by the staff who have a good supportive relationship with him.

Anne is Jimmy's youngest daughter. She is a working mother in her mid 30s and cares a great deal about her father. She is often very stressed and agitated trying to balance seeing her father, her job, her partner and her children. She has a positive relationship with the staff.

In the film clip we see Anne having a conversation with the manager of the care home. Anne is concerned about her dad falling over when trying to get out of bed. Anne suggests that bed sides would help her father to be safe.

In the next scene Anne is seen chatting to Jimmy's care worker about her father's diet. She reminds the worker that she had suggested a particular diet. Jimmy has his own ideas.

Watch **Jimmy's story part 1** on the DVD. Once you have watched the film you can use the flowchart at page 41 to think through the human rights issues the film raises.

After you have thought through the flowchart questions you can watch **Jimmy's story part 2** to see how things worked out.

Scenario 1: Martha

Martha is a lady in her late 70s and has Alzheimer's. She used to be a very active individual and had a particular love of dancing. Nowadays she has difficulty walking and spends a lot of her time at home where she is supported by close friends and relatives as well as care workers. She used to be a dance teacher and many visitors who come to see her are her ex-pupils.

One of these visitors, Susan, notices that Martha is somewhat distressed. Susan asks her what is wrong and Martha is unable to tell her. It is then that Susan notices that there are some bruises on Martha's legs. She asks one of the care workers what had happened. The staff member tells Susan that normally when Martha is moved from her bed to a chair in the sitting room a wheelchair is used and that normally transit straps are used to stop Martha from falling. The worker says that Martha doesn't like the straps and earlier in the day she had refused to allow the straps to be used. Unfortunately, when being moved Martha had had a slight tumble and had bruised herself as a result.

Susan attempts to say to the care worker that it is in Martha's own best interest to have the straps there when she is being moved, even if she does not want them. But she gets the distinct impression that as she is not a relative she is not being listened to.

Scenario 2: Clive and Adrian

Clive and Adrian are now in their mid 70s but have been living together for over 30 years. They both have deteriorating health and as a result have arranged to have a care at home service provided to support them.

Ben is the carer allocated to them. Ben is in his early thirties and is a evangelical Christian. His religious faith is a major element of his life and is a key motivator in his care work. Ben is uncomfortable with Clive and Adrian's relationship. Because of his religious views, he believes homosexuality to be 'wrong' and 'unnatural.' He has only been working with Clive and Adrian for a few days when he gets into a heated exchange with them over their sexual orientation. Ben declares to the couple that he believes that they are destined for hell and damnation for engaging in depraved and immoral practices. Clive and Adrian are shocked, not least because these attitudes are being expressed in their own home from someone they feel should be there to support them. When challenged, Ben says that he is allowed to express his beliefs: "It's a free country after all," he retorts.

After a few more days Ben refuses to work with Clive and Adrian, arguing that he has human rights which need to be valued. For Ben it is a matter of conscience and principle even if it means he will lose his job.

Ben's manager knows that he is an excellent worker and, as she doesn't want to lose him from the organisation, she agrees to the request and allocates another member of staff to attend and care for the couple. On doing so, she informs the newly assigned member of staff that he should be aware that the couple are gay.

Scenario 3: Callum

Jackie has been a home care worker for a number of years and has always got on very well with those who use services. Callum is one of those with whom she has a good relationship. He is a retired merchant seaman who leads a healthy and positive life in his late 70s. He has challenges with mobility and uses a wheelchair to get around. He is supported by a care at home organisation who assist him to get up and dressed in the morning. Another agency provide support to help Callum stay connected in the community.

Callum has a daughter in Australia and a son, William, who visits on average about twice a year. William has recently been made redundant and has separated from his wife. As a result he comes to live with his dad in the family home.

Over the few weeks that William has been there Jackie has noticed a change in Callum. He has become much quieter, less positive and more passive in his behaviour. When she visits William always stays in the room, even when she is washing his father. In fact she is hardly on her own with Callum these days. She is increasingly aware that William is drinking and may even be using drugs. On occasions he can be aggressive and lewd to her especially when he has had a few drinks.

On one occasion when she is visiting, Callum says he doesn't want his son in the room to see him being changed. He says it is humiliating. William refuses to leave and says that it is his house after all. He then tells Jackie that he is looking at cancelling the home care service and that he can look after his dad. When Jackie challenges this he gets very abusive and begins to rant and rave. Jackie is more and more convinced that the best thing for Callum is that he should be admitted to a care home. She is aware that there is one nearby specifically for retired merchant seamen and she feels Callum would love it there. She is also, however, aware that William has let it slip that he wants dad at home in order for him to keep the house and not have the government use his inheritance.

Scenario 4: Malcolm

Suilven Care is a home care organisation which considers itself to be at the cutting edge of good care and the use of new innovative technology to support individuals to live independently at home.

Recently Suilven introduced a new system. They call it the Peace of Mind support. This involves the use of small electronic tags which those who experience mild dementia can have attached to their belts or sewn into their clothes. If the individual goes missing they can be tracked by means of a satellite system and supported to return home. The system has the support of the local authority.

Suilven's clients were asked to take part in the project. As part of this they had to agree to stay in their own home between 10.00pm and 9.00am.

Malcolm is a man in his 70s who frequently forgets to wear either the belt or the hat where the tags have been attached. His daughter, who has guardianship for Malcolm, is keen for the service to continue in order to allow Malcolm to live independently in his own home despite Malcolm's reluctance to be tagged. Over time the care provider organisation has became more and more frustrated with Malcolm as he is frequently found outside and apparently lost in the neighborhood during the day without his tag. On Christmas Eve Malcolm is wearing his tagged hat and the alarm is raised when he is found out late at night. Malcolm is furious to be escorted home, as he is wants to attend midnight mass at the local church.

Suilven have raised the possibility that Malcolm may need full-time residential care. Malcolm continually protests that he doesn't want to be made to feel as if he is a prisoner in his own home.

Scenario 5: Marian

Marian is supported to live independently at home. Although she is married, her husband is unable to support her as he has had a number of heart failures. Marian is a larger woman and spends a great deal of her time in bed. Indeed she very rarely leaves the house, not least because the local authority has been unable to provide a properly fitted wheelchair.

It has now been four weeks since Marian had a shower or a bath. The care at home organisation had a member of staff, Donna, who had been previously helping Marian to bathe in the shower, but a few weeks ago Donna pulled a muscle in her back trying to manoeuvre Marian out of the shower. After this the care at home organisation decided, in conjunction with the local authority which funded her care, that Marian should be provided with a strip wash so that staff do not have to lift her.

As time has gone by both Marian and her husband have grown very upset at this process, especially because warmer weather has been causing her to perspire a lot more than usual. They have both become increasingly depressed and withdrawn because, despite their pleas, the care at home organisation has said that it has a duty to support their staff and cannot require them to engage in a work practice which could damage their health.

Scenario 6: Phamie

James is visiting his mother, Phamie, in her care home one afternoon. Phamie has always been very happy there, albeit that over the months and years James has seen her become frail. This particular afternoon his mum seems quiet and withdrawn and when he asks her if there is anything wrong she begins to quietly sob. Very quickly he discovers that since his last visit the staff have begun a practice of closing the doors to residents' rooms. Phamie tells him that this has meant that she can no longer see her friends or staff walking up and down the corridor and have a gossip. She says that lots of people feel that they shouldn't knock on the door if it is closed. Phamie also tells her son that she feels the room gets very stuffy and that she liked the breeze which came into the room when the door was left open.

James is annoyed at this and immediately goes to speak to a staff member. The staff member tells James that they have had to make sure that all doors are closed in order to bring the home's practices in line with fire regulations. The worker stresses to James that it is their duty to make sure that all doors are closed to prevent fire spreading and therefore keep all residents safe, and that they cannot allow residents to leave the doors ajar or to put chairs or anything else in the way which would prevent the doors from closing.

James highlights that his mother is feeling hemmed in and is losing contact with her friends because she likes the peace of her own room and doesn't want to be in the sitting room all the time but equally she likes to see what is going on around her. The staff member apologises but says that her hands are tied as this is the policy of the home.

Scenario 7: Balbir

Balbir is a devout Hindu in his late 70s who has moved into a care home. Unfortunately, after a very brief period of time and before anyone has really had the chance to get to know him, Balbir's health deteriorates. His condition quickly becomes terminal and he is nearing the end of his life. He and his family have decided that they do not want him to move to the hospice but that they want him to be able to stay where he is. They feel he simply cannot cope with yet another move.

One evening his close family and relatives are at his bedside as his condition deteriorates and his breathing becomes more shallow. Just before death, his family remove him from his bed to lay him on the floor in keeping with their beliefs.

The care home support worker is shocked at what she sees and immediately raises the alarm with colleagues before returning to the room and trying to restrain the relatives and prevent them moving Balbir from his bed.

An unseemly argument follows and various other members of staff arrive and become involved. During the commotion, Balbir passes away. His family are extremely angry that he was unable to die in accordance with his beliefs.

Scenario 8: Grace

John and Marjorie are a middle-aged married couple who have recently supported Marjorie's mother, Grace, aged 82, as she moved into a care home. Marjorie's father died ten years ago and over that time Grace has slowly deteriorated both in health and in her ability to live independently. Grace has dementia.

One day, care staff in the home inform John and Marjorie that they believe Grace is having a sexual relationship with a male resident. Both Grace and the other resident have issues relating to their mental health.

On one occasion a member of staff notices Grace pushing the male resident away and saying "Who are you? Get away from me." However, when the staff member approaches Grace begins to hold hands with the male resident and they seem to be happy with one another again.

John and Marjorie are extremely distressed by this, and Marjorie in particular feels that it is her responsibility on behalf of her late father to make sure that her mother behaves in an appropriate manner. She feels that she simply cannot know what she is doing. She is particularly upset to have arrived one afternoon and to have witnessed her mother kissing the man.

They tell the staff that they would prefer it if Grace was moved to another unit within the care home and that if staff witness any contact with the male resident they should intervene as a matter of priority.

The staff appreciate the concerns of the family and agree to monitor the couple closely and restrict the amount of time the two residents spent alone together. As they are increasingly separated Grace and the male resident become irritated that they are not seeing each other and begin to blame one another.

After repeated requests from John and Marjorie, the staff agree to keep the two apart resulting in the male resident becoming aggressive and abusive towards the staff.

Scenario 9: Ayesha

Ayesha is a lady with mild learning disabilities who lives in a care home. She is the youngest resident by a considerable age and is certainly the fittest and most mobile. She has been placed there because there was no other provision for her support in what is a small and remote Scottish village.

Ayesha has a history of starting fires. She loves the bright colours of the flames. She calls fire the 'dancing lights.' Although this has not occurred for over three years, care home staff were instructed by her psychiatrist to routinely search her each time she returned from being out unsupervised, to ensure she did not have matches or a lighter.

Ayesha is increasingly annoyed at having to endure the intrusion of a personal search every time she comes back to the home and her family complain to the manager and staff on her behalf. Their justification is that they are not only following medical advice but that their actions are primarily for the protection of other residents to whom they have a duty of care to ensure that Ayesha does not increase the risk of a fire starting in the home. The manager also suggests that Ayesha might not be allowed out at all if she does not consent to the search upon her return.

Scenario 10: Catriona

Catriona is a lady in her early 70s. She is a quietly spoken individual whose first language is Gaelic. Over a period of time Catriona becomes increasingly unwell and most of her family moves away. She decides that she should live in a care home.

Catriona has now been a resident in the care home for a number of years and has seen many comings and goings, not least of staff. The care home was recently taken over by a new organisation which has brought with them their own way of doing things. There is a new manager who has introduced many 'improvements', including a reduction in the time which residents are allowed to spend in their own room, encouraging them to take meals together in the dining room, a restriction of access to food during non-meal times and a significant change in the menus at meal times. He argues that these are all undertaken to ensure proper diet, reduce obesity and to improve socialisation.

For someone like Catriona these changes are unwanted and strike her as an infringement of her own freedom to do what she wants to do within her own home. She much prefers eating in her room, having a chat with the care staff and watching her television. The staff leave Catriona with a tray of food in her room whilst they focus on the residents in the dining room. However, Catriona does not like the new food and often only nibbles at it, leaving most of it untouched. Over a few weeks Catriona begins to lose weight quite markedly.

One of the biggest changes brought about is that many of the new staff are not Gaelic speakers. Previously, Catriona loved being able to have a chat in her own tongue. One of the care workers in the home previously used to switch Catriona's television or radio over to the Gaelic channels when she was on shift, but she has now left. There is now no one who can speak to Catriona in her mother tongue and no-one who switches the radio or television over.

Care about Rights?

Section Three

Information for people who use services, their families and carers

Information for people who use services, families and carers

Introduction

Your human rights and those of your family are protected in both international law and in the laws that apply here in Scotland.

In Section 1 of these materials we explained that human rights are the basic rights and freedoms to which everyone is entitled. We all have human rights in order to live with dignity.

Human rights include things like the right to privacy, to a home and family life as well as the right to be free from inhuman and degrading treatment. They also include things like the right to an adequate standard of living, including adequate housing, the right to the highest attainable standard of health and the right to education.

The Scottish Human Rights Commission wants everybody to understand what human rights are and how we can work together to make sure that human rights are protected and respected in Scotland. That is why the Commission has produced these materials for you as well as for those who provide care services and those who organise and regulate care services.

Government officials and care providers are primarily accountable for ensuring that your human rights are respected. However, we all share some responsibility in helping to make sure that all of our rights are respected.

What do I do if I am worried about my human rights or the human rights of my family or friend?

There are a number of things you can do if you're worried about human rights not being respected or you require support for your care needs.

Please note that the Scottish Human Rights Commission cannot give any advice to individuals about their human rights, but we hope the guidance in this pack will help you to resolve any issues you may encounter.

Section 1 will give you a better understanding of human rights. You can use the flowchart on page 41 to think about whether there is a human rights issue and whether there might be ways of sensibly resolving the problem.

Help to access information and express your views

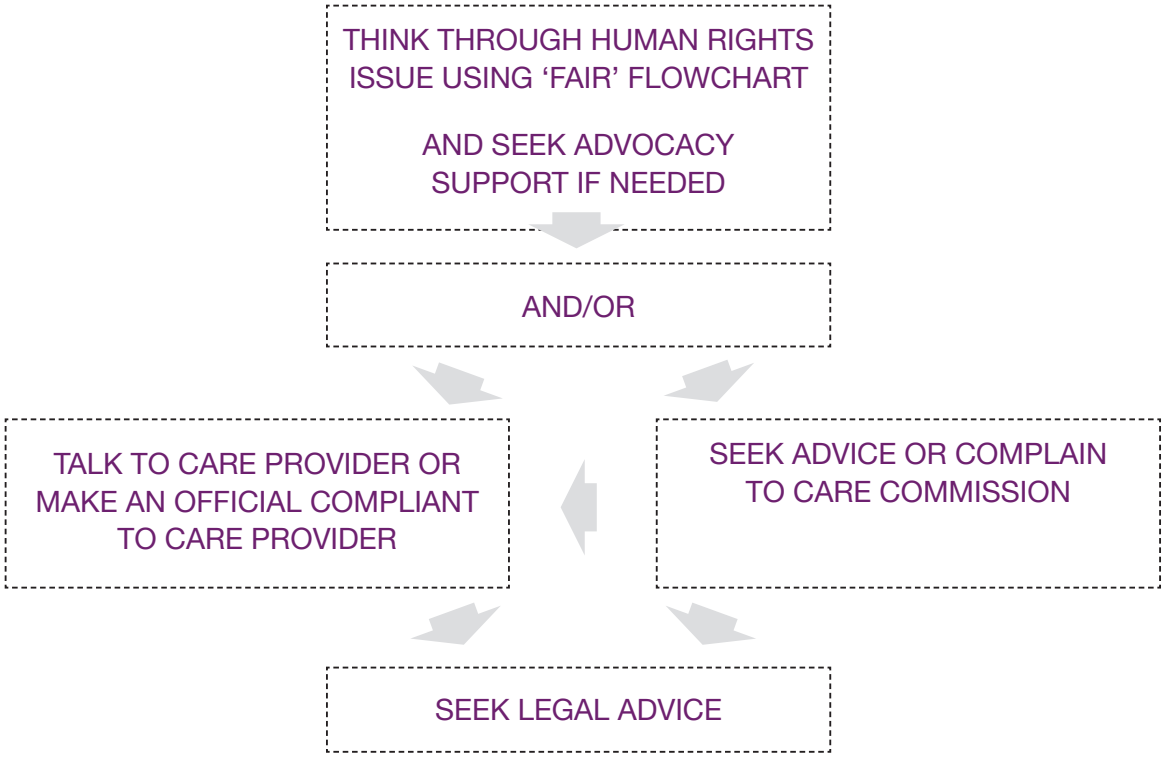
If you feel that your views are not being heard or you feel you cannot express what you want to say then you might want to consider getting independent advocacy support to help you through the whole process.

Using an advocate can help to give you a stronger voice by enabling you to express your own needs and make your own decisions. Advocates can also assist you to gain access to information, to explore and understand your options and to make your views and wishes known.

The Scottish Independent Advocacy Alliance can provide much more information about advocacy support and their website at www.siaa.org.uk can help you to find advocacy support in your area.

If you or someone you know is over 16 and at risk of physical, sexual, financial or psychological harm or neglect because of a disability, mental disorder, illness or physical or mental infirmity, you can contact the Adult Protection Unit or its equivalent in your local area. Contact details are available via the Act Against Harm website at www.infoscotland.com/actagainstharm.

If you are worried about a human rights issues affecting you or your friends or family you may wish to think about the following steps:



Thinking it through

First of all it will be helpful to think through the issues yourself or have somebody assist you to work through the issues. You can use the FAIR flowchart on page 41 to help you.

Following the steps of the flowchart you should consider:

- **Facts:** What is your experience? Are you able to express your views or would you like support? What are the important facts to understand?

- **Analyse Rights:** What are the human rights at stake? Is there any justification for restricting your rights and if so is it the minimum restriction?

- **Identify Responsibilities:** What changes do you think are required? Who do you think is responsible to make the necessary changes?

- **Review Actions:** Have you been involved in implementing the changes that have been made and have these been reviewed where appropriate?

If you are a family member of the person you are worried about, make sure that you talk to them too. They have a right to participate in decision making about their life and to have their rights respected and are likely to have their own ideas about their care.

Talking to the care provider or to the Care Commission

Once you have thought through the issues from a human rights perspective you are in a more informed position to talk to your care provider, local authority or the care regulator about your concerns. If the care provider, regulator or local authority understand human rights too then this will help and you might be able to resolve the issue by finding a different way of doing things.

If you have an issue with your service provider, you may want to talk to them directly about why you think your human rights are not being respected and what your suggestions might be to resolve the issue. If you don't feel comfortable raising the issue with the provider, you can raise the issue with your social work care manager or the Care Commission. The Scottish Commission for the Regulation of Care (the Care Commission) is currently responsible for regulating care services in Scotland and can help with complaints. It is important to remember you have the right to complain to the regulator at any time and you do not have to talk to the care provider first of all if you don't want to.

Both the National Care Standards (see page 61) and the Scottish Social Services Council Codes of Practice for social service workers and employees can help you to know what you can expect from your care provider and the staff who support you. There are links to these at Section 7 of the pack.

If you think you might require changes to your care support, then you can talk to your care manager or alternatively Care Information Scotland may be able to signpost you to help.

Care Information Scotland is a telephone and website service providing information about care services for older people living in Scotland. They can provide information about:

- Care needs assessment - why do you need one?
- Care at home - services to assist you while living at home
- Supported housing - services and adaptations to support independent living
- Care homes - places to live which offer full-time care. What are the options for finding and paying for a care home?
- Support for carers - services and support to help unpaid carers
- Your rights - what rights do you have?
- Advice and support - organisations that can offer information and assistance.

The telephone helpline number of Care Information Scotland is 08456 001 001 and the website address is www.careinfoscotland.co.uk/home.

Make a complaint to the care provider

If your initial contact with the care provider hasn't got you anywhere then you can consider using their complaints procedure to make it more official. All providers are required to have a clear and accessible complaints procedure.

It can be scary to make a complaint but in many cases you might find that things are easily resolved with a positive outcome for everybody involved.

Make a complaint to the Regulator

There are several places you can go to make an official complaint. Some are listed in Section 7 of these materials.

The Scottish Commission for the Regulation of Care regulates all adult, child and independent healthcare services in Scotland. They make sure that care service providers meet the Scottish Government's National Care Standards and work to improve the quality of care. Any person may choose to complain directly to the care provider or the Care Commission, or both.

The Care Commission will consider whether the care provider has complied with the National Care Standards. Human rights underpin the National Care Standards and the system of inspection and regulation in Scotland. The Standards themselves are informed by human rights principles. These are set out in the National Care Standards as follows:

" • **Dignity**

Your right to:

- be treated with dignity and respect at all times; and enjoy a full range of social relationships.

• **Privacy**

Your right to:

- have your privacy and property respected; and be free from unnecessary intrusion.

• **Choice**

Your right to:

- make informed choices, while recognising the rights of other people to do the same; and know about the range of choices.

- **Safety**

Your right to:

- feel safe and secure in all aspects of life, including health and wellbeing; enjoy safety but not be over-protected; and be free from exploitation and abuse.

- **Realising potential**

Your right to have the opportunity to:

- achieve all you can
- make full use of the resources that are available to you
- make the most of your life.

- **Equality and diversity**

Your right to:

- live an independent life, rich in purpose, meaning and personal fulfilment
- be valued for your ethnic background, language, culture and faith
- be treated equally and to be cared for in an environment which is free from bullying, harassment and discrimination
- be able to complain effectively without fear of victimisation."

To make a complaint to the Care Commission you can fill in the Care Commission's complaints form online; telephone or write to any of their regional offices or headquarters; go into any of the Care Commission's offices or fax them at 01382 207236.

The Care Commission also has a helpline on 0845 603 0890, and more information can be found on their website at www.carecommission.com.

Make a complaint to the local authority

You might also want to consider making a complaint to your local authority who may have assisted you in receiving care, or provide your care and who have responsibility to make sure your rights are respected.

A final resort – get legal help

If after all the above steps the issue remains unresolved and you feel that the violation of your rights has been serious then you may need to seek legal advice. The Law Society of Scotland has a list of lawyers in your area. For more information see the contact details in Section 7 of these materials.

Human rights belong to you and your family. Sometimes there are no easy answers to dilemmas that arise but using a human rights based approach can help you to make sure that the care you or your family receive respects human rights and is of a high standard.

Notes

Care about Rights?

Section Four

Information for care providers and care workers

Information for care providers and care workers

Introduction

Human rights sit at the core of the care services you provide. Many daily decisions that you make such as staffing levels, the use of medication, physical restraint, personal care and end of life decisions all carry human rights implications.

The drivers for embedding a culture of human rights in care provision present themselves on many levels - legal, reputational, operational and ethical.

All care providers are directly and/or indirectly subject to the Human Rights Act 1998, through the local authority contracted services you provide, or through the regulatory framework to which you must adhere.

Human rights should not be viewed in any way as a risk, threat or burden to care provision. Human rights are a means of resolving issues, improving service delivery and improving communication.

It should also be remembered that it is not only people using services that have human rights. You and everyone who provides care and support services (including owners, managers, care workers, ancillary staff) also have human rights which should be respected.

How human rights fit with what you already know and do

How human rights relate to other legislation

All legislation in Scotland must take into account human rights and must be read through the lens of human rights under sections 2 and 3 of the Human Rights Act 1998 and section 101 of the Scotland Act 1998.

Much of the legislation you already know and are familiar with has been consciously developed to advance human rights protection and is founded on human rights principles. Redrawing the connections with human rights will help ensure, and not assume, that human rights are fulfilled in the application of the law.

The table on the following pages shows how some key pieces of legislation fit with human rights. It illustrates how often the legislation strongly reflects the underlying principles and legal tests of the human rights framework.

Adult Support and Protection (Scotland) Act 2007

Key legislation - principles and provisions

The Adult Support and Protection (Scotland) Act 2007 provides measures to identify, support and protect adults who may be at risk of harm or neglect, whether this is physical or psychological harm, neglect, sexual abuse or financial exploitation.

The fundamental overarching principle of the Act is that: "any intervention in an individual's affairs should provide benefit to the individual and should be the least restrictive option of those that are available."

The following guiding principles must be taken into account when any parts of the Act are put into place. These are:

- The wishes and feelings (past and present) of the adult at risk;
- The views of other significant individuals, such as the adult's nearest relative; their primary carer, guardian, or attorney; or any other person with an interest in the adult's well-being or property;
- The importance of the adult taking an active part in the performance of the function under the Act;
- Providing the adult with the relevant information and support to enable them to participate as fully as possible; the importance of ensuring that the adult is not treated less favourably than another adult in a comparable situation; and

Connection to human rights

Which key Articles of the Convention?

Article 3 - prohibition of torture and inhuman or degrading treatment. This is understood to include a duty to act to prevent, prohibit and remedy ill treatment. Some of the types of "harm" covered by the Act correspond with types of ill treatment covered by Article 3.

Article 8 - right to respect for private and family life, home and correspondence. This includes the right to free and informed consent to any intervention in one's affairs and to physical and mental integrity – including forms of harm covered by the Act which do not reach the threshold of Article 3 - ill-treatment. Any interference with this right must be according to the law, in pursuit of a legitimate aim (such as the protection of the health of an adult at risk of harm) and be the least restrictive intervention necessary to achieve the aim, and must therefore be proportionate.

Article 1 Protocol 1- the right to peaceful enjoyment of possessions. Any interference in the financial affairs of an adult must pass the tests of legality, necessity and proportionality.

Which underlying principles?

The principle of participation in particular is reflected in that decisions being made under the Act require the adult to receive the relevant information and support to enable them to participate as fully as possible.

Adult Support and Protection (Scotland) Act 2007 (cont'd)

Key legislation - principles and provisions	Connection to human rights
• The adult's abilities, background and characteristics (including their age, sex, sexual orientation, religious persuasion, philosophical belief, racial origin, ethnic group and cultural and linguistic heritage).	The principle of proportionality outlined above in relation to Article 8 corresponds with the overarching principle of the Act which says that "any intervention in an individual's affairs should provide benefit to the individual and should be the least restrictive option of those that are available."

Adults with Incapacity (Scotland) Act 2000

Key legislation - principles and provisions

The Adults with Incapacity (Scotland) Act 2000 introduced a system for safeguarding the welfare and managing the finances and property of any person over 16 years who lacks the legal capacity to do so themselves because of mental disorder or inability to communicate. It explains what is meant by incapacity and sets out the circumstances and the safeguards whereby a local authority social worker or other party such as a relative, friend or carer may obtain powers to enable them to make decisions on behalf of these adults. The Act aims to ensure that solutions focus on the needs of the individual so that decisions are only made on their behalf to the extent that is necessary.

The law sets out the roles and responsibilities of anyone authorised to make decisions on behalf of someone with impaired capacity. According to the Act any decisions made by a guardian:

- must be of benefit to the person concerned
- will only be taken when really needed
- must take into account the past and present wishes of the person
- should restrict that person's freedom as little as possible
- should only be taken when the person could not make a decision themselves

Connection to human rights

Which key Articles of the Convention?

Article 5 - the right to liberty and security of person. This Act provides for the necessary "procedure prescribed by law" under which a person can be detained. Welfare guardians may decide where the adult shall live and/or consent to certain forms of restraint. These powers may only be granted by a court.

Article 8 – the right to respect for private and family life, home and correspondence. This Act provides for interferences with this right to privacy and autonomy. In doing so, it complies with the European Court of Human Rights' approach to legal capacity in decision making which is functional – "can this individual make this decision at this time?" rather than status based – which would find someone incapable if they have a certain disorder. As with the Convention, and the UN Convention on the Rights of Persons with Disabilities, the Act requires a presumption in favour of capacity, the provision of support to exercise capacity where needed. Any interference with this right must be justified by pursuing a legitimate aim, be based on the law and be the least intervention necessary to achieve the aim and therefore be proportionate.

Article 6 - the right to a fair hearing. The Act provides a process for the making and continuation of guardianship and intervention orders. Such orders impact on the ability of an individual to manage their own affairs.

Adults with Incapacity (Scotland) Act 2000 (cont'd)

Key legislation - principles and provisions	Connection to human rights
• should take into account the views of carers, relatives and people who work closely with the person.	As such they should comply with the right to a fair hearing, including the right to be heard. **Which underlying principles?** The principle of participation in particular is reflected in the Act's presumption of capacity as well as involvement of carers, relatives and people who work closely with the person. The principle of proportionality outlined above in relation to Article 8 corresponds with the principle that any decisions made by the guardian must only be taken when really needed and should restrict that person's freedom as little as possible.

Mental Health (Care and Treatment) (Scotland) Act 2003

Key legislation - principles and provisions

The Mental Health (Care and Treatment) (Scotland) Act 2003 places a range of duties upon and gives a range of powers to organisations involved in the provision of mental health services and defines clear procedures for compulsory treatment and/or the detention of persons with a mental disorder. It introduced new mechanisms such as the possibility of "advance statements" which enable people to set out how they wish to be treated for a mental disorder when they are unable to make decisions.

The Act sets out a series of principles which say that whenever a professional is involved in making a care and treatment decision he or she should:

- take the past and present wishes of the individual into account
- make sure the person gets the information and support he or she needs to take part in decisions
- take the views of the person's carer, named person, guardian or welfare attorney into account
- look at the full range of care and treatment options that a person may need
- give treatment that provides maximum benefit to the individual
- take account of the person's background, beliefs and abilities

Connection to human rights

Which key Articles of the Convention?

Article 5 - the right to liberty and security of person. This Act provides for the necessary "procedure prescribed by law" under which a person can be detained.

Article 8 – the right to respect for private and family life, home and correspondence. The compulsory treatment of an individual will automatically engage aspects of an individual's physical and psychological integrity and autonomy that are protected by Article 8.

Article 3 - prohibition of torture and inhuman or degrading treatment. Without the necessary safeguards afforded by the Act detention or treatment could amount to ill treatment.

Article 9 - the right to freedom of thought, conscience and religion. Any care and treatment decision must take account of the person's background, beliefs and abilities.

Article 14 - the right to non–discrimination. Any care and treatment decision must make sure that individuals receiving care and treatment under the Act are not treated less favourably than other people.

Mental Health (Care and Treatment) (Scotland) Act 2003 (cont'd)

Key legislation - principles and provisions	Connection to human rights
• make sure that any restrictions on an individual's freedom should be the minimum necessary in the circumstances • make sure that individuals receiving care and treatment under the Act are not treated less favourably than other people • take the needs of carers into account and ensure that carers get the information and support they need • take special care of the individual's welfare if the individual is under 18 years of age when receiving care and treatment • ensure safeguards are in place to protect that person's rights	The principle of proportionality which applies to Article 8 of the Convention corresponds with the principle of the Act that any restrictions on an individual's freedom should be the minimum necessary in the circumstances.

Regulation of Care Act (Scotland) 2001

Key legislation - principles and provisions

This Act established both the Scottish Commission for the Regulation of Care (Care Commission), which regulates and inspects care services in Scotland and the Scottish Social Services Council, which regulates the workforce.

In 2011, the regulatory system is set to change as the Public Services Reform (Scotland) Bill proposes to dissolve both the Care Commission and Social Work Inspection Agency (which regulates local authority social work services) and set up a new scrutiny body, the Social Care and Social Work Improvement Agency (SCSWIS), which will bring together the functions of both existing bodies.

The regulator registers and inspects services against a set of National Care Standards. The standards are written from the perspective of a person who uses services and set out what can be expected from a service.

The Standards are based on a set of principles. The principles are:

- Dignity
- Privacy
- Choice

Connection to human rights

Which key Articles of the Convention?

The National Care Standards reflect all the key Articles of the Convention, but in particular the following Articles are protected by the Standards and system of regulation and inspection:

Article 2 - the right to life

Article 3 - prohibition of torture and inhuman or degrading treatment

Article 8 - right to respect for private and family life, home and correspondence

Article 5 - the right to liberty and security of person

Article 14 - the right to non–discrimination.

Which underlying principles?

The PANEL principles of **P**articipation, **A**ccountability, **N**on-discrimination and equality, **E**mpowerment and **L**egality are broadly reflected in the Act.

In particular the Act is about strengthening accountability for respecting human rights and the empowerment of people using care service to know their rights as set out in the Standards.

Regulation of Care Act (Scotland) 2001 (cont'd)

Key legislation - principles and provisions	Connection to human rights
• Safety • Realising potential • Equality and diversity.	Dignity, privacy, choice, safety and realising potential are all core human rights principles which are reflected in particular in the protection of Article 8 and Article 3 of the Convention. The underlying principles of equality and diversity are reflected in Article 14 of the Convention.

Equality Act 2010

Key legislation - principles and provisions

This Act brings together a number of pieces of equality legislation into one single Act simplifying the law and strengthening it to help tackle discrimination and inequality.

The Act applies to all organisations that provide a service to the public, or a section of the public (service providers) and to organisations that provide public functions. It also applies to anyone who sells goods or provides facilities.

The Act protects people from discrimination on the basis of 'protected characteristics'. The relevant characteristics for services and public functions are:

- disability
- gender reassignment
- pregnancy and maternity
- race – this includes ethnic or national origins, colour and nationality
- religion or belief
- sex, and
- sexual orientation.

Most of the Act will start to apply in October 2010. Other parts of the law will be phased in over the next few years. For example, the parts about age discrimination in relation to goods, services and facilities is expected to come into force in 2012.

Connection to human rights

Which key Articles of the Convention?

The Equality Act supports the realisation of all the Convention rights for individuals with "protected characteristics."

The advancement of equality and the prohibition and elimination of discrimination, on any ground, are fundamental to human rights and a central element of human rights law.

Article 14 - In particular the Equality Act gives further effect to the principles of Article 14 of the Convention and the right not to be discriminated against in the enjoyment of Convention rights.

An important additional aspect to Article 14 however is that the protection from direct discrimination applies on the basis of a broad range of grounds beyond the "protected characteristic" in the Act.

Equality Act 2010 (cont'd)

Key legislation - principles and provisions

Under the Act direct discrimination in services and public functions happens when someone is treated less favourably than another person because of a protected characteristic.

Indirect discrimination happens when there is a rule, a policy or even a practice that applies to everyone but which particularly disadvantages people who share a particular protected characteristic. Indirect discrimination can be justified if it can be shown that the rule, policy or practice is intended to meet a legitimate objective in a fair, balanced and reasonable way. If this can be shown it will be lawful.

There are also two types of protection for disabled people in particular. Discrimination arising from disability happens when a disabled person is treated unfavourably for a reason connected with their disability – they don't have to compare themselves to anyone else for this to apply. Also, disabled people also have the right to have reasonable adjustments made for them when they receive functions or services.

Victimisation occurs when someone is treated badly because they have taken action in relation to the Act, such as making or supporting a complaint or raising a grievance about discrimination, or because it is suspected that they have done so.

The new positive action provisions in the Act enable public sector organisations to take proportionate steps to help people overcome their disadvantages or to meet their needs.

Connection to human rights

Which underlying principles?

The principle of non-discrimination and equality are core to the aims of the Act.

The principle of proportionality, which is key to the human rights framework, is reflected in the tests that apply to indirect discrimination, namely that indirect discrimination can be justified if it can be shown that the rule, policy or practice is intended to meet a legitimate objective in a fair, balanced and reasonable way. Furthermore any positive action under the Act must be proportionate.

How human rights fit with inspection and regulation

Human rights are a natural fit with the National Care Standards and the system of inspection and regulation in Scotland. The Standards themselves are underpinned by human rights principles (dignity, privacy, choice, safety, realising potential, equality and diversity).

The Inspection Focus Areas (IFA) of the Care Commission are clearly related to human rights. Using a human rights based approach can help you to improve your service in these areas. For example, in 2010 / 2011 the themed inspection area for the Care Commission is 'assuring quality in care at home services.' This IFA covers issues such as ensuring that services tell people who use services (and their relatives and carers) about any changes made to their service, ensuring that people using services know the staff and that the staff know the individual service user's needs. All of these issues are very much related to respect for a person's Article 8 rights and the right to a private, home and family life.

Taking a human rights based approach will help you to ensure a quality service, helping set ground rules (to respect rights) and a direction of travel (to fulfil rights). In addition, it helps set a framework in which to balance priorities to ensure that choices do not result in a disproportionate impact on one person's rights for the benefit of another.

How human rights fit with the health and social care National Occupational Standards and Codes of Practice

Human rights standards and principles also fit with and reinforce the National Occupational Standards (NOS) and the vocational qualifications for health and social care which arise from them, as well as the Scottish Social Services Council (SSSC) Codes of Practice for Social Service Workers and Employers of Social Service Workers.

The core SVQ units developed from the NOS support the realisation of a human rights based approach in their emphasis on communication, health and safety and ensuring that actions support the care, protection and well-being of individuals. In addition, nearly all of the optional units at all SVQ levels 2, 3 and 4 require that an individual's human rights are respected. For example, in order to ensure an individual is not subject to inhuman and degrading treatment (Article 3 of the European Convention) and leads a fulfilled private home and family life (Article 8), it will be essential that individuals are properly supported with their personal care needs (Unit HSC218); that they are suitably assisted to access services and facilities (HSC330); or that they are supported appropriately when experiencing significant life events and transitions (HSC412), and so on.

The SSSC Codes of Practice for both workers and employers are also underpinned by human rights principles and again an understanding of human rights can assist in implementing these in practice. The purpose of the Codes is to set out the conduct that is expected of social service workers and to inform people using services and the public about the standards of conduct they can expect from social service workers, as well as to set down the responsibilities of employers in regulating social service workers.

For example, the Code of Practice for social service workers states that:

> "Social service workers must:
>
> 1. Protect the rights and promote the interests of service users and carers
> 2. Strive to establish and maintain the trust and confidence of service users and carers
> 3. Promote the independence of service users while protecting them as far as possible from danger or harm.
> 4. Respect the rights of service users while seeking to ensure that their behaviour does not harm themselves or other people
> 5. Uphold public trust and confidence in social services
> 6. Be accountable for the quality of their work and take responsibility for maintaining and improving their knowledge and skills."

The Code of Practice for Employers of Social Service Workers reinforces these standards and the responsibility on employers to promote and assist workers in implementing the codes. Links to the NOS and the Codes of Practice can be found in Section 7 of the materials.

It is important to have an understanding of a human rights based approach when implementing the NOS and the Codes of Practice, particularly in the context of promoting independence and respecting the rights of individuals, whilst balancing these against any risk of harm.

A good understanding and application of human rights should therefore assist social services workers to be better practitioners.

How human rights can help you improve service delivery

Balancing risk and quality of life considerations

Sometimes as a service provider or care worker you might try and avoid risk by limiting the freedoms of people using services in order to preserve the safety of those individuals or others and to keep the families of individuals receiving care satisfied. Examples of this might be found in restrictions on bedsides, diets, movement or outdoor activities etc.

Human rights can assist in putting the individual's rights at the centre of these difficult decisions and balancing the rights of the individual to have their wishes and rights respected against the risks to the safety of the individual or the rights of others. To understand better how this works in practice you can use the flowchart on page 41 to assist you in this type of decision making.

Person-centred care

Human rights are about looking at all the circumstances affecting an individual on a case by case basis and considering their care needs and rights entitlements. Blanket policies applying to all people using services should generally be avoided. It could be that a culmination of factors could lead to a human rights violation if this person-centred approach is not adopted.

Detailed care and support plans may be an essential element of fulfilling this requirement. Recording life histories and likes / dislikes will also assist in ensuring care and support is suitably tailored to individual needs and wishes and therefore less likely to lead to a situation where a human rights violation may be possible.

The genuine participation and involvement of people using services in all decisions affecting their rights, with the involvement of their families and carers where necessary, is key to ensuring this person-centred approach is adopted as part of a human rights based approach.

Better communication - common framework of rights and responsibilities for everybody

A human rights based approach which is understood by everybody will provide a common framework of understanding which can make disputes or disagreements easier to resolve.

For example, where a family member of an individual using care and support services raises concerns about an aspect of an individual's care, a common understanding of human rights would mean that the views of the individual receiving care must be heard and their rights put at the centre of decision making. For many issues it may be about considering the proportionality of an intervention, ensuring that it is the minimum required to achieve the desired aim without unduly restricting someone's rights. In some circumstances, however, it might be that if people are fully supported and informed, they have the right to make (even irrational) decisions about their own care, which should be respected so long as they don't have a disproportionate impact on others' rights.

Foundation for other duties

Taking a human rights based approach can make delivering on other legal duties a less daunting process. It can lay strong foundations for equality, adult protection, mental health and other duties.

To make sure this happens it is important to maintain a clear link to human rights in practice – to ensure and not assume compliance when delivering on other duties.

Not a risk or a burden but a tool for improving care

Human rights should not be seen as a risk or a burden but rather as a tool for decision making, a means of resolving issues and improving service delivery.

You can use the flowchart on page 41 to help you think through issues and to talk about the issues with people who use your services and their families and others.

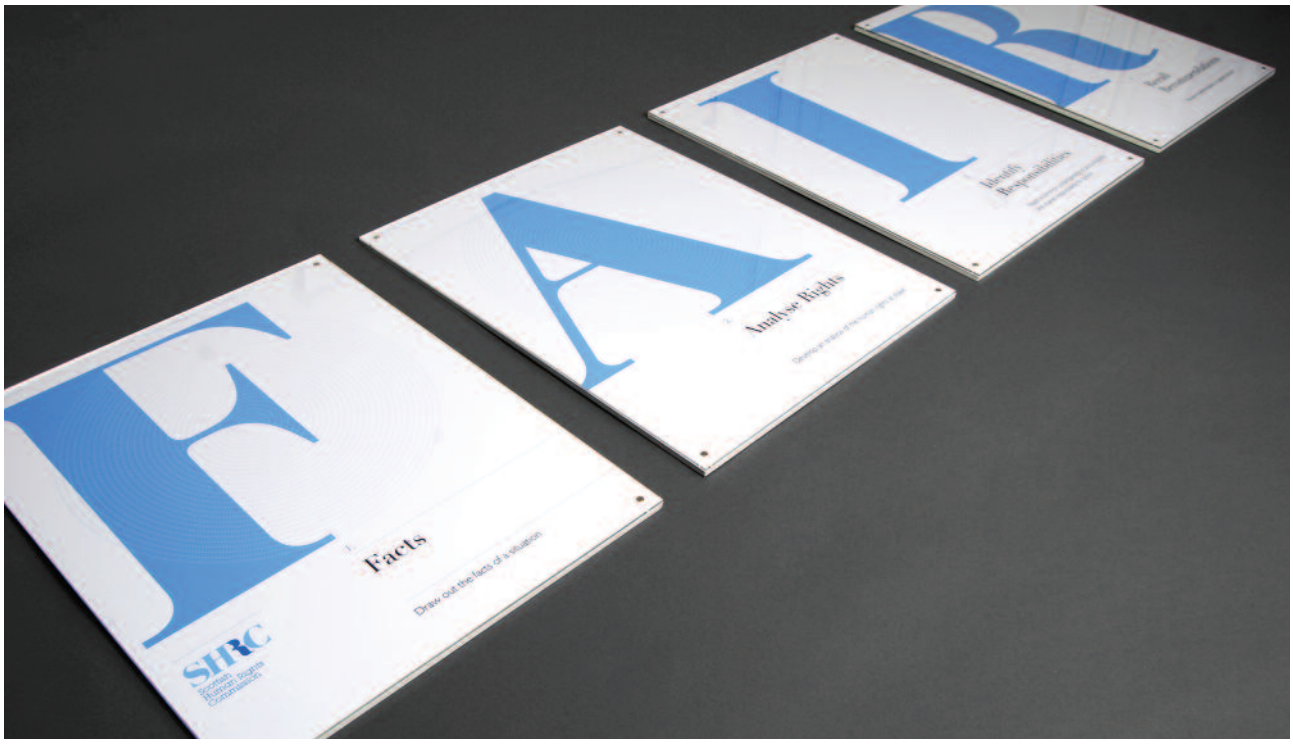
A human rights based approach will enable positive change in your care service and better relationships based on a shared understanding of the rights of your service users, staff and others.

Notes

Care about Rights?

Section Five

Information for others involved in policy and practice issues of older people's care and support



Information for others involved in policy and practice issues of older people's care and support

Introduction

This section of the materials is written primarily for care policy makers, commissioners of care, the regulators of care and care assessors, all of whom have a role in ensuring that the quality of care and support services is high and the rights of individuals are protected.

A human rights based approach can strengthen policy and decision making and, when properly understood, can assist in the practical implementation of many legislative provisions applying to care services.

As policy makers, commissioners of care and regulators of care you are "duty bearers" in the legal sense to respect, protect and fulfil the human rights obligations owed to "rights-holders."

Under section 6 of the Human Rights Act it is unlawful for a public authority, or those carrying out functions of a public nature, to act in a way which is incompatible with the European Convention on Human Rights (the Convention). Local authorities, acting as contracting authorities, must therefore take all necessary steps to ensure that the rights of those receiving either local authority or contracted out care services are respected. Statutory bodies, such as the Care Commission, must also comply with the Human Rights Act.

Scottish Parliament legislation must also comply with Convention rights under section 29 of the Scotland Act and be interpreted in a way that complies with Convention rights under section 101 of the Scotland Act. Furthermore, all legislation must be read and given effect to in a way which is compatible with Convention rights and so all legislation must be looked at through a human rights lens.

Much of the legislation you already know and are familiar with has been consciously developed to advance human rights protection and is founded on human rights principles. Redrawing the connections with human rights will help ensure, and not assume, that human rights are fulfilled in the application of the law.

The table on pages 66 to 75 of these materials shows how some key pieces of legislation connect with human rights. It illustrates how often the legislation strongly reflects the underlying principles and legal tests of the human rights framework.

Care policy makers

Policy decisions impacting upon care and support services must take into account both the Human Rights Act and Scotland Act obligations, both in their conception and drafting, as well as in their subsequent practical implementation and the possible human rights impacts they may have.

This means policy makers require an awareness of the human rights standards as set out in Section 1 of this pack. There is a need to bear in mind the thresholds, or floor, of protection put in place by human rights, in particular the absolute right not to be subject to inhuman or degrading treatment set out in Article 3, as well as the balance to be struck between the individual right (such as the qualified right to a private, home and family life under Article 8) and a recognised public interest or the rights of others.

Also, as explained in Section 1 a human rights based approach fundamentally requires the genuine participation of "rights holders" in decision making. This means a high degree of meaningful participation, including from communities, civil society, minorities, and other groups, particularly those who may be vulnerable or marginalised. The participation should be both meaningful and constructive and all information about proposals should be easily accessible to affected individuals who should be supported as necessary to participate.

Policy makers may wish to consider developing a Human Rights Impact Assessment methodology as a tool to assist integrating human rights into decision making. Human Rights Impact Assessments are one of the key ways in which human rights and a culture of human rights can be systematically embedded into the policies, practices, procedures and priorities of government, public and private bodies.

Policy makers may also wish to develop human rights based indicators for the regulation of care services as objective measures of the extent to which services adopt and ensure a human rights based approach.

Local Authorities

Commissioning authorities

Local authorities must take into account their legal obligations, in particular their duties under section 6 of the Human Rights Act. These duties will apply not only in the direct provision of services but also in ensuring human rights standards are respected, protected and fulfilled through the processes for the commissioning and procurement of care services through to the final delivery of care services.

The National Care Home Contract for contracted out care for older people specifies that care providers must be compatible with the Human Rights Act. As a commissioning authority, however, local authorities retain a responsibility to ensure these human rights obligations are fulfilled.

The implementation of a human rights based approach means an awareness of the PANEL principles discussed in Section 1 of these materials: **p**articipation, **a**ccountability, **n**on-discrimination and equality, **e**mpowerment of rights' holders and **l**egality of rights. Of particular relevance to the commissioning and procurement of care services is the principle of participation.

A human rights based approach to social care means that people who use the services and their families and carers participate in its design and delivery. The involvement of communities increases the likelihood that the needs of the community will be met more effectively and thus contribute to achieving better social care. Furthermore, participation helps ensure that the social care system is responsive to the particular needs of individuals using care services.

Contracting authorities should consider how they might achieve the meaningful participation and involvement of those receiving services at each step of the process, for example at the pre-tender commissioning stage, the development of tender specifications, and in the award and selection criteria.

Commissioning authorities may also want to consider how human rights standards can be linked to quality in the specifications, selection and award criteria of the procurement process.

By focussing on these particular considerations in the commissioning and procurement processes the human rights of people using services will be better respected, protected and fulfilled in line with duties under the Human Rights Act and international human rights legal obligations and standards.

Social work care managers

Care managers have an important role to play in the protection of human rights. When assessing and managing an individual's care needs, care managers must bear in mind the minimum standards of rights protection. In particular, where an individual is found to be in circumstances which could amount to an Article 3 situation of inhuman treatment or in a situation where their private, home and family live or physical integrity is being compromised, then the careful application of a human rights based approach to the situation should be considered.

Adult protection services

Adult protection services and the inter-agency Adult Protection Committees have an important role to play in upholding the human rights of adults at risk of harm. The table on pages 66 to 67 show the connections between the adult protection laws and human rights.

Care Regulators

As a statutory body the Care Commission and its successor must comply with the Human Rights Act in performing its regulation, inspection, and complaint handling functions.

The National Care Standards

Human rights are a natural fit with the National Care Standards and the system of inspection and regulation in Scotland. The Standards themselves are underpinned by human rights principles (dignity, privacy, choice, safety, realising potential, equality and diversity).

It can easily be shown where the National Care Standards directly relate to human rights standards. To take one example, protection under Article 8 of the Convention regarding the right to respect for private and family life, home and correspondence relates to the following extracts from the National Care Standards for Care Homes for Older People:

> "• Standard 6 Support arrangements
> Development of a personal plan detailing needs and preferences"

> "• Standard 8 Making choices
> You can make choices in all aspects of your life"

> "• Standard 10 Exercising your rights
> You keep your rights as an individual"

"• Standard 12 Lifestyle – social, cultural and religious belief or faith
Your social, cultural and religious belief or faith are known and respected. You are able to live your life in keeping with these beliefs"

"• Standard 16 Private life
You have the right to a private life"

"• Standard 17 Daily life
You make choices and decisions about day-to-day aspects of your life and about how you spend your time"

Regulation of Care Award

The underpinning values of the Regulation of Care Award (ROCA) qualification for Care Commission Officers also reflects the human rights based approach promoted by these materials.

The values explored in ROCA specifically advise that

"in working with providers, inspectors will ensure respect for users' basic human rights, especially the following:

a. the right of freedom of movement, free expression and to follow personal cultural, religious and spiritual beliefs

b. the right to express their views and to be heard

c. the right to rely on staff caring for them who are competent, suitable and fit to undertake the duties for which they are employed

d. the right to be safe and protected

e. the right to seek independent advice, help or treatment when required; and

f. The right to live their life independently whilst being treated with care and dignity."

These materials are designed to assist you in the practical implementation of these values by applying a human rights based approach to the standards with which you are already familiar. The materials also build on this by showing how other rights which are not explicitly mentioned in ROCA – such as freedom from degrading treatment and the right to respect for private and family life – are relevant in care settings.

Human rights sit at the core of the care services you regulate. Daily decisions that care providers make such as staffing levels, medication, physical restraint, personal care and end of life decisions will all carry human rights implications, and applying a human rights based approach will assist in this decision making process.

Best practice human rights principles should also be kept in mind when undertaking a complaint handling role.

In particular the principles behind of Article 6 of the Convention and the right to a fair hearing are informative here. These include:

- Right to an independent and impartial tribunal
- Right to no unreasonable delay
- Right to a reasoned judgment
- Right to disclosure
- Right to representation
- Right to a hearing in one's presence
- Right to participate effectively at the hearing
- Equality of arms

Promotion of human rights to improve performance

In its role to help improve performance the Care Commission can assist in promoting the adoption of a human rights based approach to care providers.

The drivers for embedding a culture of human rights in care provision present themselves on many levels: legal, reputational and operational, not to mention ethical.

Human rights should not be viewed in any way as a risk, threat or burden to care provision but instead as a means of resolving issues and improving service delivery.

Human rights can help care providers to provide quality care in the following ways:

- **Balancing risk and quality of life considerations**

Sometimes service providers may try to avoid risk by limiting the rights and freedoms of service users in order to preserve the safety of individuals and to keep the families of individuals receiving care happy. Examples of this might be found in restrictions on bedsides, diets, movement or outdoor activities etc.

Human rights can assist in putting the individual service user's rights at the centre of this and balancing these difficult decisions against the risk to the safety of the individual or the rights of others.

To understand better how this works in practice you can use the flowchart on page 41 to assist you in this type of decision making.

- **Person-centred care**

Human rights are about looking at all the circumstances affecting an individual on a case by case basis and considering their care needs and rights entitlements. Blanket policies applying to all people using services should generally be avoided. It could be that a culmination of factors could lead to a human rights violation if this person-centred approach is not adopted.

Detailed care and support plans may be an essential element of fulfilling this requirement. Recording life histories and likes / dislikes will also assist in ensuring care and support is suitably tailored to individual needs and wishes and therefore less likely to lead to a situation where a human rights violation may be possible.

The genuine participation and involvement of people using services in all decisions affecting their rights, with the involvement of their families and carers where necessary, is key to ensuring this person-centred approach is adopted as part of a human rights based approach.

- **Better communication - common framework of rights and responsibilities for everybody**

A human rights based approach which is understood by everybody will provide a common framework of understanding which can make disputes or disagreements easier to resolve.

For example, where a family member of an individual using care and support services raises concerns about an aspect of an individual's care, a common understanding of human rights would mean that the views of the individual receiving care must be heard and their rights put at the centre of decision making. For many issues it may be about considering the proportionality of an intervention, ensuring that it is the minimum required to achieve the desired aim without unduly restricting someone's rights. In some circumstances, however, it might be that if people are fully supported and informed, they have the right to make (even irrational) decisions about their own care which should be respected so long as they don't have a disproportionate impact on others' rights.

- **Foundation for other duties**

Taking a human rights based approach can make delivering on other duties a less daunting process. It can lay strong foundations for equality, adult protection, mental health and other duties.

To make sure this happens it is important to maintain a clear link to human rights in practice – to ensure and not assume compliance when delivering on other duties.

- **Not a risk or a burden but a tool for improving care**

Human rights should not be seen as a risk or a burden but rather as a tool for decision making and a means of resolving issues and improving service delivery.

Human rights intersect and support the role of the regulators to improve service delivery. We hope that an understanding of a human rights based approach, as promoted in these materials and worked through in the flowchart on page 41, will assist you in your role and help bring a coherent underpinning to the National Care Standards and legislation that applies to care services.

Care about Rights?

Section Six

Guidance on using the materials

Guidance on using the materials

Introduction

These materials are designed to be used by a range of audiences involved in care home and care at home / housing support services for older people.

The materials may be delivered as part of a facilitated training or discussion session or alternatively they may be worked through by individuals with an interest in human rights and the care and support of older people.

Here is a breakdown of how to use the materials (continues on the next page):

What to read / watch in the pack	What to do
Watch the Care about Rights? Promotional film on the DVD	Think about which rights are important in your everyday life and what life would be like if they were stripped away.
Watch the What do you think? film on the DVD. Turn to Activity 1 on page 98 of the pack. Choose some of the statements in the exercise that you have heard in the film	Think about whether you agree or disagree with the statements in the film and why.
Read Section 1 of the pack - What are human rights?	Think about which of the key rights explained here are of particular relevance to you.
Watch part 1 of one of the Scenario films on the DVD. You can choose from the stories of Sheila, Irene or Jimmy.	After you have watched part 1 of the Scenario film use the flowchart on page 41 to think through the issues the film has raised.

What to read / watch in the pack	What to do
Watch part 2 of the Scenario film you have chosen.	Consider whether your own thoughts about the film have been reflected in the part 2 film. You can find guidance to the film scenarios from page 107 onwards in the pack.
Read either Sections 3, 4 or 5 of the pack depending on whether you are an older person, family or carer, care worker, care provider, Care Commission Officer or other.	Think about what you could do to further embed a human rights based approach into your daily life and/or work.
You can now either work through the other film scenarios using the flowchart on page 41 or you can work through the written case study scenarios in Section 2 of the pack.	Think about how the human rights based approach you are applying in the case studies could help you in your daily life. There is guidance to each of the case studies from page 107 onwards in the pack.
Turn to Activity 4 on page 106 of the pack.	Use one of the notes pages in the pack to write down the most important thing you have learned from working through the materials. You can come back to these notes at any time to remind yourself of the importance of human rights.

Discussion or training plans

We envisage that you can use these materials to facilitate discussion and/or training with groups of care providers, care staff, people using services and their families and Care Commission staff. These materials can be discussed, or delivered in a variety of ways and below are some suggested ways of using the material.

You need to become familiar with the contents of this pack and the DVD material and then pick what suits you and your audience. The guide to the pack on pages 89 to 90 will help you to become familiar with the materials.

It is worth bearing in mind that experience teaches us that many individuals 'turn off' from subjects such as human rights if they feel it is solely about the 'law.' It is usually better to ground the theme in an individual's experience by highlighting case studies and an application to real lived experience.

Facilitators should remember that, especially with this sort of training, programmes or timetables should not become a barrier to learning. It is more important that each issue is dealt with appropriately than a programme is regimentally adhered to.

The following are potential outline programmes for a course which last one hour; two hours; half a day and a full day.

A possible one hour programme:

Time	Subject	Resources
09.30	Welcome, introductions, course aims and ground rules	Presentation Promotional film or What do you think? film
09.45	What are human rights and how did they develop?	Presentation
10.00	DVD film scenario exercise	DVD film scenario exercise
10.20	Human rights in the care sector: the issues and questions	Presentation/Plenary
10.30	Close	Round up - Activity 4

A possible two hour programme:

Time	Subject	Resources
09.30	Welcome, introductions and course aims	Presentation Promotional film
09.40	Ground rules and Activity	Section 6 Activity 1- What do you think?
10.00	What are human rights and how did they develop?	Presentation
10.20	DVD film scenario exercise	Section 2, DVD film scenario
10.40	Human rights in the care sector: the issues	Presentation
11.00	Case studies	Section 2
11.25	Questions and issues	Section 6 Activity 4- Round up
11.30	Close	

A possible half day programme:

Time	Subject	Resources
09.30	Welcome, introductions and course aims	Presentation
09.35	Ground rules and Activity	Section 6 Activity 1- What do you think?
09.50	Interviews	Interview films
10.00	What are human rights and how did they develop?	Presentation
10.25	BREAK	
10.40	DVD scenario exercise	Section 2, DVD film scenario
11.00	Human rights in the care sector: the issues	Presentation/Plenary
11.20	Case studies	Section 2
11.40	DVD film scenario 2	Section 2, DVD film scenario
12.00	Case Studies	Section 2
12.20	Questions	Section 6 Round up Activity 4
12.30	Close	

A possible one day programme:

Time	Subject	Resources
09.30	Welcome, introductions and course aims	Presentation Promotional film
09.40	Ground rules and Activity	Section 6 Activity 1- What do you think?
10.00	Participative exercise Activity 2- Human rights statements or Activity 3- Graffiti Board	Section 6 Activity 2 or 3
10.15	What are human rights and how did they develop?	Presentation and discussion
11.15	BREAK	
11.30	DVD film scenario	Section 2, DVD film scenario
11.50	Human rights in the care sector: the issues	Presentation and discussion
12.20	Case studies	Section 2, Case studies
12.45	LUNCH	
13.30	Recap of morning	Presentation and discussion
13.40	DVD film scenario	Section 2, DVD film scenario
14.00	Case studies	Section 2
14.30	DVD film scenario	Section 2, DVD film scenario
15.00	Dealing with questions and issues	Presentation/ Activity 4 - Round up
15.30	Case studies	Section 2
16.00	Evaluation and Close	

Facilitator guidance

While human rights are very important principles and legal instruments, for some people they can create a negative or even hostile reaction. This is in no small part as a result of high profile cases and the way in which these have been reflected by the media. Whenever a facilitator seeks to help a group of individuals explore human rights, he or she may be on sensitive ground.

It is important that we spend time reflecting on what can help an individual or a group explore some of the issues involved in this pack in a manner which is unthreatening and as supportive as possible.

Within any group of people there is a likelihood that people will hold a diverse range of views and opinions. Some people may not have thought much about the issue. Others may feel strongly on the subjects being discussed but have never used the language of 'human rights.' Yet others may find that the awareness raising arouses strong feelings, and the discussions may challenge values, morals and beliefs.

Opinions mainly differ around how we should uphold human rights, who they should affect, whether we should restrict them and in what circumstances and how we can balance what appear to be the conflicting rights of individuals in any given situation. This lies at the heart of any human rights discussions within a care setting. What are the rights of the individual person being cared for? What are the rights of the worker or care provider? What are the rights of families and carers? Are all of these rights which conflict or is there a possibility to create a human rights environment in which all rights support and relate to one another in a positive and enabling manner?

The activities in this pack are designed to create opportunities for participants to explore and understand human rights in a safe environment, offering the chance to challenge bias and stereotypes and to address myths and misconceptions.

The facilitator as a person

It is essential that anyone who seeks to help others to explore the issues raised in these materials, is committed to the principles of human rights and to the idea that the dignity and rights of people receiving care services are the responsibility of all of us.

Good facilitators will accept that everyone has prejudices and everyone starts from a different level of awareness and experience in dealing with these issues.

A good facilitator will recognise the contributions that both they and participants can make to challenging unfair and poor practice.

Facilitators must believe in a participant's ability to change and be prepared to examine their own values and prejudices and change their behaviour if needed. In the short term change is not always obvious and it may take time to see real change and a commitment to human rights within an organisation. Therefore a good facilitator also has patience and determination.

Facilitators must be able to cope with having their views and values challenged - this can be difficult and may sometimes be upsetting, for example relating personal experiences in a session can be painful if participants question or disregard your experiences. There are a number of ways that you can protect yourself when facilitating:

- It is a good idea to deliver a session with another person. You can support one another where necessary
- A second facilitator can create more space and broaden the discussion
- Debriefing afterwards.

Delivering human rights awareness raising is also challenging for participants - the process requires that participants engage in a process that questions their values and beliefs. This can be highly emotive. Discomfort can be reduced by:

- Challenging discriminatory views held by participants in a respectful manner, rather than judging, blaming or condemning them
- Respecting the confidentiality of the session and encouraging participants to do so
- Making sure that the session is participative, flexible and informal.

It is important that you present to participants a balanced indication of opposing views. Often, facilitators seek to avoid bias by using a balanced input based on one of the following:

- Neutral facilitator – expressing no personal view at all
- Stated commitment – making the facilitator's own views known during the discussion
- Balanced approach – presenting a range of views, including ones the facilitator may personally disagree with
- Challenging consensus ('devil's advocate') – opposing the position widely expressed in the group to challenge consensus and provoke response.

Think about which activities and case studies will work best

The best facilitator knows his/her audience and what will work well with the group. Don't be tempted to play safe, however. These are challenging issues and some issues need to be confronted head on rather than avoided. That is not the same as saying that participants should be left in a situation or state which makes them feel vulnerable or exposed.

In particular, read the case studies and the guidance which comes with them and consider whether they are the most appropriate and applicable in your context.

Creating a good learning environment

Discussion of controversial issues will inevitably arouse strong views and differences of opinion. Setting ground rules at the start of a discussion can be a useful way to ensure that discussion of controversial issues remains manageable.

Whilst there are many ways of getting ground rules established, the principles of human rights can be used as a framework for the ground rules. They include the right to freedom of expression, balanced with the right of all participants to be free from discrimination and disrespect.

Activities

The following exercises are designed to increase the participation of participants during training sessions. We know that individuals learn best if the training session has a mixture of different types of input, whether these be presentations, DVD exercises, group exercises etc. The following exercises explore different elements of our theme. Some can be used at the start, others when the group has got to know one another and some at the end of the session as a concluding exercise.

Have a read through these, think about your group and the different learning styles within it and pick the one(s) that fit best.

Activity 1: What do you think? Film clip exercise

Purpose:

To help individual participants explore their preconceptions and ideas on what human rights are all about. To enable open, transparent honesty at the start of any session.

When
This exercise is best done at the start of a session as it helps people to open up and can act as an icebreaker both within a group who do not know each other well and as a means of getting in to the subject in a less threatening manner.

Who
This exercise can be undertaken in pairs, by a small group, in a large group, or could potentially be undertaken by an individual on their own.

How to do it
The facilitator should show the film clip on the Care about Rights? DVD titled “What do you think?”. The facilitator can then choose some of the quotations from the film, such as those below, and ask the participants, in pairs or in small groups, to discuss want they think about what has been said.

What Do You Think Statements

'They have more rights than us…'
The person in the clip feels that older people do not have a voice and that their rights are important. Discuss whether you agree that older people have more rights than the rest of us.

'I feel that everyone has human rights… apart from prisoners.'
This person believes that human rights should be withdrawn from those who have committed crimes. Do you agree?

'Everyone's rights need to be respected.'
This is a strong statement. Do you agree with it and why?

'It doesn't mean that because you can't do things for yourself that your rights are taken away from you.'
Should you still have rights when you can't look after yourself? How can we make sure you still have rights when you may be unable to make decisions any more?

'If I see something wrong I make a noise!'
Have you ever stood up against someone infringing or failing to acknowledge the rights of another? What would you do if you felt a colleague was breaching someone's human rights?

'I think I fought for them.'
This statement recognises the origins of the modern human rights framework and the importance of the experience of the war which brought about many changes. Do you think human rights are still important all these years later? Are we good at recognising human rights or is there room for improvement?

`Would you not want to keep your dignity?'
What do you think dignity means?

'Everybody's got the freedom to say what they want.'
Is this true? Are there circumstances where we can't always say exactly what we want?

'People have got the right to their opinions… and not treated as if they have no voice"
How important is it to listen to people? What happens if we don't? Are there instances where you have to be 'the voice of another person' to advocate for them in order to assist them to get their wishes met? How can this be done effectively?

'They've had dignity their whole lives.. so coming into a care home shouldn't change that.'
Do you think that the loss of dignity and privacy when entering a care establishment is a real fear? If yes, what can be done to remove this fear?

'I'm not entirely sure about human rights in the work sense or about human rights outside.'
People often don't think about human rights being relevant to them. What do you feel are the human rights that you have as a worker? Are they protected and acknowledged where you work? What could be done to promote a better understanding of these rights?

'I think everyone, especially celebrities… have the right to privacy in their own personal lives.'
What are the privacy issues that relate to care? Do you think that privacy is sufficiently respected? Give examples of good practice, if possible.

'We all have our own ideas about things'
This resident wasn't sure what human rights were and suggested that we all had our own ideas about things. Do you think there are some values and rights shared by everybody and agreed by all? What are they?

"Equality , being treated with dignity, having your right to health care, food, shelter, being treated fairly… "
This care worker lists what is important to her. What are the human rights which are central to your life?

"You only get the negative side in the news."
Is it true that the newspapers only recount negative stories about human rights? What stories have you read recently which reference human rights?

"Everyone is entitled to what they want when they want it"
Do you agree with this? What do human rights entitle you to?

Activity 2: Human rights statement cards

Purpose:

To help individual participants explore their preconceptions and ideas on what human rights are all about. To enable open, transparent honesty at the start of any session.

When

This exercise is best done at the start of a session as it helps people to open up and can act as an icebreaker both within a group who do not know each other well and as a means of getting in to the subject in a less threatening manner.

Who

This exercise can be undertaken by a small group, in a large group, or could potentially be undertaken by an individual on their own.

How to do it

The facilitator should place a number of cards on the floor or on the table (dependent upon mobility) and ask each participant to select a statement card.

Each participant is asked to speak to one other person in the group and ask that person to share:

- Whether they agree with the statements and explain their answer
- What issues it raises for them.

After four minutes each participant is invited to find one another person and repeat the process.

At the end the facilitator should bring the group together and explore the issues in a plenary session, or use this session as a means of reflecting upon the common misconceptions, especially media based, of human rights.

Some potential statements:

The following are suggested statements but facilitators may want to make up their own. They are personal and designed to create discussion. They are not definitive.

- **Human rights**
  are about making sure that we treat everyone fairly

- **Human rights**
  are about helping celebrities like Catherine Zeta Jones sue the papers for invading her privacy

- **Human rights**
  are about helping prisoners have an easier time in prison

- **Human rights**
  are important values like justice, freedom and peace

- **Human rights**
  have concentrated on the criminal and not the victim

- **Human rights**
  are the latest bit of political correctness

- **Human rights**
  were important in helping us never to forget the horrors of the last World War but aren't so important now

- **Human rights**
  are about respecting people because they are human

- **Human rights**
  are about making sure that those we love are properly cared for

- **Human rights**
  are the obsession of liberal do-gooders

- **Human rights**
  are about making sure that people aren't mistreated and are looked after

- **Human rights**
  are about making sure everyone is free to live their life the way they want as long as they don't harm others.

- **Human rights**
  are about keeping a check on how the government is treating the population

- **Human rights**
  are about holding those who torture responsible for their actions

- **Human rights**
  are there to protect the most vulnerable

- **Human rights**
  are there to protect us all

- **Human rights**
  are about recognising we are responsible for one another as human beings

- **Human rights**
  are what every human being needs to be happy, healthy and involved in society

Activity 3: Graffiti board or definition tree

Purpose:

To help individual participants explore what they think the words dignity, human rights and responsibility mean in the work that they do or the lives they live.

When
This exercise is best done at the start of a session as it helps people to relax into the subject but at the same time explores the issues by highlighting that there are no absolute definitions for certain words but that there are shared commonalities.

Who
This exercise can be undertaken by a small group, in a large group, or could potentially be undertaken by an individual on their own.

How to do it
The facilitator should write up the words:

- Dignity
- Rights
- Responsibility

Then ask each participant to write down what they consider the meaning of the word is for them in their work or personal context. They should write this on a card/sticky.

This should be repeated for each word.

The facilitator should then invite participants to put their cards / stickies on a flipchart poster. This creates a graffiti board or the facilitator could create a tree shape (out of a couple of coathangers). The poster or tree now contains lots of different definitions of what the words mean. This presents the group as a whole with a starting point. It shows that people think about the concepts.

The facilitator can either choose to comment upon the words and definitions or choose not to do so at this stage.

The facilitator can then either present the group with some definitions which they have prepared beforehand or move on to another activity without adding addition comment.

If time allows, and dependent upon the length of the session, the facilitator may want to return to these posters or the tree at the end of the session and ask people to come and remove their definitions if they have altered their understanding during the meeting and/or to invite them to put any new definitions up.

Activity 4: Rounding up

Purpose:

To help close the session in a manner which validates contribution and acknowledges learning and progression.

When
This exercise is obviously best done at the end of the session but should be done when there is sufficient time to deal with any issues which might arise. Quite often people who might have been more reticent at the start will have found their voice and might want to say more. So give it time!

Who
This exercise can be undertaken by a small group or in a large group. If done individually it might be an idea to write down or record your learning in the format of a learning log or journal.

How to do it
The facilitator invites every participant to share the most important thing they have learned from the session. In a large group, it might be easier to ask people to discuss for a couple of minutes in small groups and to come up with one thing from each group.

Guidance on film scenarios and case study scenarios

Facilitator guidance on case study scenarios

The following guidance will assist facilitators in ensuring that the group discussions focus on the main learning points within each scenario. They are not meant to be either exhaustive or prescriptive and it may be that there are many more issues you wish to discuss or alternative answers to explore.

Another important point to remember is that many of the issues raised in both the film scenarios and written case studies are unlikely to reach a threshold of being classified as a human rights violation in the legal sense. Nevertheless, the human rights based approach in the flowchart on page 41 can help to resolve the issues in a way in which respects the dignity, autonomy and rights of the individuals involved.

Film scenario guidance

Guidance on Sheila's story

Facts

Sheila lives in a care home. She has mild dementia and also uses a walking stick. She loves gardening and wants to get outside to move a flower which is in the wrong place. The door is locked however, and she can't get out.

The support worker discourages her from going outside on the basis that it is not safe for her, it is nearly dinner time and is about to rain. Sheila gets quite distressed about this. It seems that she is not being listened to. She might require support to help her express her views.

Later, we learn from a conversation between care workers that it is recorded in Sheila's care plan that she loves the outdoors and that in the past when she has spent time outdoors her behaviour has shown less signs of distress and her medication had been reduced.

Analysis of rights at stake

The potential human rights at stake here are:

- Article 8 (right to a private and family life) - for a meaningful home life Sheila would require access to activities and be able to participate in decisions about her care.
- Article 5 (the right to liberty and security) - Sheila is essentially locked into the home and unable to leave.

These rights can be restricted for the safety of Sheila or the safety of others. The justification in this instance is that the restriction is for Sheila's own safety.

It would appear however that not allowing Sheila outside is a disproportionate restriction and there may be other ways to deal with the issue which are a lesser restriction on Sheila's rights. For example, she can be accompanied outside and plants can be put inside for her for times when she can't go out.

Identification of shared responsibilities

The care home has a responsibility to provide for a meaningful private home and family life which includes meaningful activities for the residents. The care home also has a responsibility to ensure that Sheila's preferences, likes and dislikes are listened to and she can participate in decisions about her care. If Sheila is unable to provide this information herself then her family members should also be involved and, if necessary, advocacy support could be sought.

Review actions

For example:

- Has Sheila got the support she needs to express her views?
- Have Sheila's likes/dislikes and preferences about her care been recorded in her care and support plan?
- Are the care workers aware of Sheila's likes/ dislikes and preferences?
- Have changes been made to allow her access to the garden?
- Have there been changes in Sheila's mood or behaviour as a result? Have there been changes to her medication?
- Is Sheila happier?

Guidance on Irene's story

Facts

Irene lives at home. She has a close relationship with her son Alan.

The conversation between the care workers suggests that Alan is not coping very well with Irene's high support needs. This raises the issue of the support required by unpaid carers and whether Irene has the care she needs.

The film shows uneaten food and drawn curtains, and the care workers' conversation suggests that Irene may even be neglected at times. Irene appears not to be getting much social contact, is isolated and may have been left soiled overnight. This has an obvious impact on her health and dignity.

We also learn that the care provider is about to change and Irene does not yet know about the change. We know she will be distressed as she has a good relationship with the care workers.

Alan is reluctant to refrain from smoking around the care workers which raises the issue of the workers' rights to a healthy working environment.

Analysis of rights at stake

The potential human rights at stake here are:

- Article 2 (the right to life) - if Irene is not being properly nourished and fed (for whatever reason) her life could be at risk
- Article 3 (the right not to be subject to torture or to inhuman or degrading treatment or punishment) - it appears that she is sometimes left soiled overnight, limited social interaction; no access to food and constrained to her bedroom
- Article 8 (right to a private and family life) - she is restricted to her bedroom and increasingly isolated. The Article 8 rights of Alan as a carer and for the care workers should also be considered.

Articles 2 and 3 are absolute rights so there can be no restriction on these and no justification for leaving Irene in inhuman or degrading conditions or compromising her right to life. If the care workers feel this threshold is being met they must take action.

The justification for restricting Alan's smoking is that it has an impact on the rights of the workers to a healthy working environment. A proportionate response to the situation might be to permit Alan to continue smoking within some rooms of the house or prior to the carers' arrival but to refrain from smoking in the kitchen or Irene's bedroom where the care workers are present.

Identification of shared responsibilities

The care workers have a responsibility to raise the issues around Irene's care with their managers. The care provider must raise the issue with the local authority. This is particularly the case where there is a potential Article 3 issue.

The local authority has a responsibility to ensure that Irene's care package meets her needs so as not to breach an Article 3 threshold.

Alan has a responsibility to recognise the rights of his mother. This might mean initiating changes to her care package. Alan may also need to seek support for his own needs.

Review actions

For example:

- Has Irene got the support she needs to express her views?
- Have the care workers raised the issue with their manager?
- Has the local authority been informed of the situation?
- What changes have been made to Irene's care?
- Has Alan stopped smoking around the care workers?
- Has Alan received any additional support in his role as a carer?
- How does Irene feel about any change to the arrangements being made?

Guidance on Jimmy's story

Facts

Jimmy has good relationships within his care home. He is able to express his views but has physical restrictions following a hip replacement.

Jimmy does not want to have sides put on his bed and nor does he want a liquid or meat diet.

Jimmy's daughter Anne has strong views about Jimmy's care and wants bedsides put up as well as a liquid diet.

As Anne and the care home manager talk, it appears that they are not involving Jimmy in the decisions being made about his care.

Analysis of rights at stake

The potential human rights at stake here are:

- Article 8 (right to private and family life) - the right to well-being through retaining autonomy, choice and dignity. Jimmy has the right to participate in decisions about his care that directly affect him.
- Article 5 (the right to liberty and security of person) - The bedsides proposed will necessarily restrict Jimmy's freedom of movement when in bed and although they may not reach Article 5 thresholds the principles may still apply.
- Article 9 (the right to freedom of thought, conscience and religion) - may also apply if there is a religious or ethical reason for Jimmy not wanting to eat meat. This should be explored.

All of these rights can be restricted where necessary. The justification for restricting Jimmy's rights might be that the bedsides and special diet are to protect him from harm should he fall out of bed or choke. It would appear, however, that these restrictions are not strictly necessary and proportionate as they are against Jimmy's will and furthermore there is no indication Jimmy has fallen out of bed before, or choked.

Identification of shared responsibilities

It is Anne's responsibility to recognise Jimmy's rights and his right to participate in all the decisions about his care.

The care provider has a responsibility to involve Jimmy in decision making, understand and take account of his wishes and to find a more proportionate response to the situation.

Jimmy's suggestion of using a sensory mat might be more proportionate to the threat of harm from falling.

Review actions

For example:

- Has Jimmy been involved in decisions about his care?
- Have different options for keeping Jimmy from falling during the night been considered which are less intrusive to Jimmy?
- Have there been open lines of communication with Jimmy's daughter Anne?
- Is there transparency about the complaints and grievances procedure within the home?
- Have Jimmy's views and the course of action taken been recorded in Jimmy's care and support plan?
- Is Jimmy happy with the care he is receiving?

Case study scenario guidance

Guidance on scenario 1: Martha

Facts

Martha does not like the straps that her carer uses to move her but she has suffered an injury because she has insisted on not wearing them. It appears she is being listened to as the staff complied with her request not to use the straps. It is not clear whether the staff have fully explained the reasons for the restraints to protect her from injury and the risk posed in not using them.

Analysis of rights at stake

The potential human rights at stake here are:

- Article 3 - Martha may feel that the straps are degrading. However not using the straps and causing injury could also be ill treatment if sufficiently serious. It is unlikely that these measures will meet the threshold of seriousness required for Article 3
- Article 8 may also be engaged as it covers the right to well-being through retaining autonomy, choice and dignity.

Article 8 can, in some circumstances, be restricted. The justification in this instance seems to be to protect Martha from sustaining any injury when she is moved.

It is clear that the straps do prevent Martha from tumbling and receiving injuries. But are they the only available means of protecting her from injury? It could be that, despite the bruising, not using the straps is a proportionate response which takes account of Martha's wishes. The care provider could consider whether alternative methods of moving Martha might be available that minimise the risk of injury.

Identification of shared responsibilities

The care service provider is responsible for ensuring that Martha's rights are not interfered with any more than strictly necessary. Martha should be involved in these decisions to see if she can suggest a method which she would not feel to be an intrusion on her dignity and privacy, but which would also ensure that she would not receive any more injuries. It may be that after hearing Martha's views and discussing the risks of different ways of doing things, it is decided that the current way of doing things is the best option. In this instance the care staff should take time to explain to family and friends the reason why the course of action is being taken, which is in accordance with Martha's wishes and balances up the risks involved. Family and friends also have a responsibility to recognise Martha's right to make decisions about her care.

Review actions

For example:

- Have Martha's views been listened to and recorded? Is she fully aware of the risks involved and the alternatives available?
- Has there been a discussion with friends, relatives and carers such as Susan who are concerned to explain the decision that has been taken?
- Are staff aware of Martha's views and acting in accordance with them where this has been discussed and agreed?
- Is the complaints procedure fully accessible and transparent?

Guidance on scenario 2: Clive and Adrian

Facts

Clive and Adrian are a couple being supported in their own home. Ben, their care worker, has openly voiced his disapproval of their relationship based on his religious views.

The couple are likely to feel offended by Ben's views and that their right to live as they choose in their own home is being challenged.

Ben, on the other hand, feels that he has the right to express his views and have them respected.

Analysis of rights at stake

The potential human rights at stake here are:

- Article 9 - Ben's religious views condemn homosexuality
- Article 10 - Ben feels that he is unable to express his views, and that his personal beliefs have not been taken into account by the care provider in placing him with Clive and Adrian
- Article 14 - Clive and Adrian may feel that they are being discriminated against because of their sexuality, in that the care provided to them is likely to be negatively affected by the care worker's religious belief.
- Article 8 - Clive and Adrian have a right to respect for their private, home and family life.

None of these rights are absolute and so the rights of one person are not necessarily upheld over another's. Ben's right to hold and express his religious beliefs can be restricted by balancing against Clive and Adrian's right to respect for their private life and their right to be free from discrimination (under Articles 8 and 14).

The facts in this situation do not appear to take into account Clive and Adrian's right to have their privacy and home life respected. It should be considered whether Ben has breached the care provider policies. It should also be made clear to Ben and all staff that all people using care services should be treated with dignity and respect at all times.

Identification of shared responsibilities

Ben has a responsibility to exercise his freedom of religion in a way which does not interfere with the rights of others.

Review actions

For example:

- Has a new carer been allocated to Clive and Adrian?
- Are Clive and Adrian happy with the new carer they have been allocated?
- Are there guidelines for workers as to how they should interact with people using care services?
- Is the complaints procedure fully accessible and transparent?

The care provider has a responsibility to respect Ben's views but nevertheless ensure that the dignity of those using services is also respected. It should be made clear that workers should respect the rights of others at all times.

Guidance on scenario 3: Callum

Facts

There is some concern over whether Callum is being mistreated by his son, William. It is clear that he does not like his son's constant presence, particularly when he is being washed.

Jackie, the care worker, has had to endure aggressive and lewd behaviour from William, which has made her feel uncomfortable in her workplace. William may also feel that Jackie's belief that his father would be better off in a care home is interfering in his relationship with his father.

It seems that Callum has not had the opportunity to express his views freely, and he may feel that he is unable to do so because of the presence and influence of his son. Callum may require support to help him express his views.

Analysis of rights at stake

The potential human rights at stake here are:

- Article 3 - there is a possibility that Callum may be experiencing abusive behaviour from his son. Callum may feel that being washed while his son is in the room is degrading
- Article 8 - Callum has a right to privacy with regard to his washing arrangements and a right to respect for his home and family life, including his relationship with his son. William's right to a relationship with his father and respect for his own home life is also engaged.

If William is indeed abusing Callum, then the question whether Article 3 has been violated will be dependent on how serious the abuse is. If Article 3 is engaged then this is absolute and there are no factors which can restrict the right. Immediate action to protect Callum from harm must be taken.

The justification for allowing William to be present while Callum is being changed appears to be based only on Wiliam's wishes. This is probably not the minimum necessary interference in Callum's right to privacy. Jackie's attempt to protect Callum's dignity by asking William to leave is therefore proportionate.

Identification of shared responsibilities

For example:

- William has a responsibility to recognise the rights of his father and Jackie
- Jackie has a responsibility to take action if Callum is being harmed. She also has a responsibility to protect and respect Callum's dignity and privacy
- The care provider is also responsible for ensuring William's carer respects his rights. It must also ensure the welfare of its employees and that Jackie does not experience ill treatment at work.

Review actions

For example:

- Does Callum have the support he requires to express himself? How does he feel about William and how does he feel about the care he is receiving?
- Are procedures in place so that Jackie can report the verbal abuse she receives from William? Have these been followed?
- Is the complaints procedure fully accessible and transparent?

Guidance on scenario 4: Malcolm

Facts

Malcolm has dementia. It is suggested that Malcolm does not want to use the tagging system being used by the care at home provider. He was greatly distressed by being escorted home at night when he wanted to attend midnight mass. Malcolm's daughter wishes to continue with the tagging so that her father can live an independent life at home as she believes that is best for him. It seems that Malcolm is not being heard or being given the opportunity to participate in decisions which affect him. He may require support to express his views.

Analysis of rights at stake

The potential human rights at stake here are:

- Article 3 - Malcolm may feel that the tagging device is degrading. However, the situation is unlikely to meet the necessary threshold of seriousness
- Article 5 - Malcolm is potentially being deprived of his liberty and freedom of movement
- Article 8 - Malcolm is not being involved in decisions about his own care and his right to privacy and autonomy are arguably being infringed
- Article 9 - could potentially be engaged as Malcolm was ultimately prevented from attending midnight mass in accordance with his religion.

The justification for restricting Malcolm's rights seems to be Malcolm's own safety and well-being. Is the tagging device the minimum necessary interference or is there an alternative method of ensuring Malcolm's safety? It would seem that the tags are being used against Malcolm's wishes and there are likely to be alternatives available which are a lesser interference with Malcolm's rights. Other options could be considered. In particular can a solution be found which still respects Malcolm's right to practise his religion and retain his autonomy and privacy?

Identification of shared responsibilities

Malcolm's daughter has a responsibility to respect the rights of Malcolm and to listen to his views.

The care provider also has a responsibility to involve Malcolm in decisions about how the tag is to be used and ensure he has independent support to express his views and represent his interests where necessary.

Review actions

For example:

- Is there guidance in place about when the use of the tagging system is appropriate and are the rights of those using the services appropriately taken into account in the guidance?
- Has Malcolm now had the opportunity to express his views about the tagging system and his care needs?
- Are there alternatives to either tagging or full-time residential care?

Guidance on scenario 5: Marian

Facts

Marian's quality of life has been affected by the failure of the local authority and care provider to supply her with an appropriate wheelchair so that she can leave the house and to make arrangements for her to be properly washed.

Donna has been negatively affected as she has suffered an injury through trying to perform her care activities.

Marian and her husband have expressed their concerns many times to the organisation, but there has been a failure to look into proper alternatives.

ANALYSIS OF RIGHTS AT STAKE

The potential human rights at stake here are:

- Article 3 - the strip wash arrangement may amount to inhuman or degrading treatment when there may be alternatives and the situation is compounded because Marian is immobile as she has no wheelchair.
- Article 8 - Marian can not lead a proper home life while she is restricted to her bed because of her lack of wheelchair. Her personal care needs not being met compound this.
- Article 5 may also be engaged as the lack of a wheelchair means that Marian is, effectively, confined in her own home.

The absolute right under Article 3 could be engaged here if the treatment or harm is deemed sufficiently serious. A long period of not being properly washed would be very distressing for an individual and impacts their dignity and autonomy. Articles 5 and 8 may be restricted in certain circumstances.

The justifications considered in this scenario are the need to protect the health and safety of the care organisation's employees. Also, the organisation and local authority may not have the resources to provide Marian with the standard of care and mobility aids that she would like.

It must be explored whether there are alternatives available to Marian which allow her to be properly washed. For example can more than one worker be allocated, or can a hoist or specially designed wheelchair be used? The lack of wheelchair would also appear to be a disproportionate interference with Marian's rights and again this should be addressed.

Identification of shared responsibilities

The care organisation is responsible for the well-being of Marian and her husband and for the health and safety of its staff. They should suggest alternatives to the care Marian is currently receiving. Financial considerations should not be an automatic reason not to implement such changes.

Review actions

For example:

- Have alternative options been explored that better meet Marian's needs and are less of an interference with her rights?
- Have staff been properly trained in moving and handling?
- Has the local authority been contacted?
- Has anyone talked to Marian about her needs?
- Is the complaints procedure fully accessible and transparent?

Guidance on scenario 6: Phamie

Facts

The new policy of keeping doors closed is having an effect on Phamie's happiness in her home, as she now has less contact with her friends and feels isolated in her room. It is not clear whether anyone has spoken to Phamie about the reasoning behind the policy, or the effect it is having on her or any possible alternatives.

Analysis of rights at stake

The potential human rights at stake here are:

- Article 2 - the purpose of the new policy is to protect residents from the potentially fatal consequences of a fire in the building.
- Article 8 - Phamie's home life in the care home, including her ability to interact with her friends, is being restricted.

The right to life is an absolute right, which cannot be restricted. It requires positive action to protect life. The right to respect for home life can be lawfully restricted in some circumstances.

The justification for placing restrictions on Phamie's right to respect for her home life is to protect her (and other residents) from the risk of fire, which would threaten the right to life. It may be that there are measures which would interfere less with residents' right to respect for their home life, while still complying with the fire regulations and protecting residents' right to life. These options should be explored.

Identification of shared responsibilities

The care home is responsible for ensuring that the right to respect for home life is protected as far as possible, as well as the right to life. The care home should talk to the residents and their families about this, to ensure that they understand the purpose and benefits of it, and to give them the opportunity to express their views.

The care home also has a responsibility to involve the residents in the policies that apply to the home. Where residents, like Phamie, are being negatively affected it should be considered whether there are alternatives, such as sensor doors or moving Phamie out of her room at certain times, opening the window or assisting other residents to visit Phamie.

Review actions

For example:

- Has the policy been explained sufficiently to residents and families?
- Does Phamie know the reason for the door being shut and has she been given the opportunity to discuss other options?
- Have the alternatives identified been carried out?

Guidance on scenario 7: Balbir

Facts

Balbir has not been resident in the care home long and it can be assumed there has been no opportunity to follow usual procedures and draw up an end of life plan for him. Balbir's family is upset that their religious views, and those of Balbir, have not been respected. At a very difficult and upsetting time for the family, they feel that their beliefs have simply been ignored.

Analysis of rights at stake

The potential human rights at stake here are:

- Article 9 - the care home staff prevented Balbir's family carrying out practices related to his and his family's religious beliefs.
- Article 8- it could be the perception of the care home that by moving Balbir this is an interference with his right to physical and pychological integrity under Article 8.

The right to respect for family life and freedom of religion can be lawfully restricted in certain circumstances. The care home's justification for preventing the family moving him to the floor might be that it is not in accordance with their perceptions of a dignified death, or their current policies, which are designed to protect residents from maltreatment. In the circumstances, however, the interference with the religious rights of Balbir and his family is probably not proportionate as it is not strictly necessary and the importance of respecting the family's religious beliefs outweigh the reasoning for preventing the activity.

A more proportionate response to the situation may have been, for example, to speak to a family member outside of Balbir's room in a calm, respectful manner, to understand the reasoning for the action. The core staff could then have considered the particular circumstances of the situation and taken the family's religious beliefs into account in responding to the situation.

Identification of shared responsibilities

The care home is responsible for ensuring that the religious beliefs of residents and their families are respected and taken into account as far as possible.

Review actions

For example:

- In the future will all residents and their families be spoken to immediately upon moving into the care home about their end of life care needs as well as their religious beliefs?
- Do staff have training on end of life care?
- Is the complaints procedure fully accessible and transparent?

Guidance on scenario 8: Grace

Facts

Grace is forming a close realtionship with a male resident in her care home. Grace's family are concerned she may not the have capacity to consent to the relationship and that the relationship may not be the best thing for her. It appears that decisions affecting Grace have been made by John and Marjorie in discussions with care staff, without obtaining Grace's views. Grace may require support to express her views.

Analysis of rights at stake

The potential human rights at stake here are:

- Article 8 - covers autonomy and dignity as well as relationships with other people.

This right can lawfully be restricted in certain circumstances.

The justification for the restriction on Grace's right to respect for family life is presumably to protect her from physical and mental distress, as her family believe she is not capable of consenting to form a new physical and emotional relationship. There is also perhaps a further element to the pressure put on care staff by John and Marjorie, in that Marjorie appears to be upset that the new relationship insults her father's memory.

It would appear, based on the facts, that the interference with Grace's right to respect for her private and family life is probably not proportionate as they are being increasingly kept apart and it is unclear whether this is strictly necessary to protect Grace from harm.

A more proportionate response to the situation might be to continue to respect Grace's wishes to see the male resident, monitor Grace's response to the situation to ensure she is not subjected to emotional or physical harm by ensuring she is not left in a situation where she is vulnerable.

Identification of shared responsibilities

The care home has a responsibility to ensure Grace's rights are respected as far as possible, and that other factors such as her family's personal feelings do not take precedence over her autonomy and right to respect for her family life.

Staff should take time to talk through the matter with Grace and listen to her views, taking into account her current level of capacity and seeking support where necessary.

John and Marjorie should also respect Grace's rights and listen to her views.

Review actions

For example:

- Have Grace's views been sought? If she requires support, has this been put in place?
- Are staff aware of the situation and appropriately monitoring the couple to protect against harm, while respecting their right to privacy as far as possible?
- Do John and Marjorie appreciate that Grace also has the right to form relationships?
- Is the situation being reviewed on a regular basis?

Guidance on scenario 9: Ayesha

FACTS

Ayesha has a mild learning disability and it seems she is capable of being involved in decisions about her. However, decisions have been made without involving her and without her views being taken into account.

Ayesha is being searched every time she enters the care home which she finds to be an invasion of her privacy rights.

Analysis of rights at stake

The potential human rights at stake here are:

- Article 8 - the searches undermine Ayesha's privacy
- Article 2 - the purpose of the searches is to protect the right to life of the care home residents.

The right to respect for private and home life can be restricted in some circumstances.

The aim of restricting Ayesha's privacy is to protect the lives of the other residents, as well as her own life, from the risk of fire. However, the imposition of routine searches after every outing, when there has been no incident of fire-raising for three years and the risk seems low, may not be a proportionate interference with Ayesha's right to privacy.

Less intrusive means of managing the situation should be considered in cooperation with a medical practitioner. This may, for example, include occasional and unobtrusive searches of Ayesha's room if it is suspected she poses a risk.

Identification of shared responsibilities

The care home is responsible for ensuring, in discussion with Ayesha's medical practitioner and psychiatrist, that the measures in place are only such as are strictly necessary to deal with the risk of Ayesha trying to start a fire.

The matter should be discussed with Ayesha in a manner she understands, and if possible, staff should obtain her views on how they could deal with the problem. Ayesha's family should also be involved in discussions so that they understand the necessity of any restrictions on Ayesha's privacy. The care home should ensure that any search practices are strictly necessary to deal with the risk, and they should consider alternative practices that might constitute less of an infringement of Ayesha's privacy.

Review actions

For example:

- Have alternatives been found and implemented?
- Has Ayesha been involved in decisions made about alternatives to the searches?
- Are staff aware of the situation?
- Has it been recorded in her care plan?
- Are Ayesha's doctors satisfied with the new measures?
- Is the situation being reviewed on a regular basis?

Guidance on scenario 10: Catriona

Facts

Catriona is in a care home where few members of staff speak her first language, and where inflexible policies prevent her from eating the food she chooses, where she chooses. It appears that there has been no, or little, involvement of the residents regarding the new policies.

Analysis of rights at stake

The potential human rights at stake here are:

- Article 8 - Catriona is unable to live in the manner she chooses in her home.
- Article 14 - Catriona's right to a home life is been diminished because of being a Gaelic speaker.

The right to a private, home and family life can be restricted in some circumstances.

The justification for placing restrictions on where and what Catriona can eat may be to ensure that all residents are getting healthy, nutritious meals, and so that by eating together it is easier for staff to check that the residents are eating properly.

It would appear however that there is a disproportionate interference with Catriona's rights as she is now not eating at all and is losing weight. She has also lost elements of socialisation within the home. It may be possible to improve residents' diets but with a more flexible policy that would allow residents to eat in their rooms if they choose, with staff assisting where necessary.

Identification of shared responsibilities

The care home is responsible for ensuring that its policies do not constitute too much of an interference with residents' rights to respect for home, private and family life.

For policies which affect the lives of residents, their formulation should involve all residents and their families. The care home should consider whether a more flexible policy can be put in place that would ensure that residents are eating healthily, and getting sufficient opportunity to socialise, while still giving them some autonomy and choice in how they live in the home.

The care home should also be aware of Catriona's linguistic preferences and make suitable provision for this, such as, at a minimum, ensuring her television or radio are switched over to Gaelic channels.

Review actions

For example:

- Has the care home's policy review involved a consultation with residents and their families and have the policies been formulated so as to provide as much flexibility as possible?
- Has Catriona been able to express her views? If not, has she been supported to do so?
- Does Catriona's care and support plan reflect her needs?
- Are staff aware of Catriona's circumstances and her views?
- Has the situation been regularly reviewed?

Care about Rights?

Section Seven

Appendices

Appendices

1. Key Human Rights Legislation

Universal Declaration of Human Rights
www.ohchr.org/EN/UDHR/Pages/Language.aspx?LangID=eng

International Covenant on Civil and Political Rights
www2.ohchr.org/english/law/ccpr.htm

International Covenant on Economic, Social and Cultural Rights
www2.ohchr.org/english/law/cescr.htm

Optional Protocol to the International Covenant on Civil and Political Rights
www2.ohchr.org/english/law/ccpr-one.htm

Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty
www2.ohchr.org/english/law/ccpr-death.htm

UN Convention on Persons with Disabilities
www.un.org/disabilities/default.asp?id=259

UN Principles for Older People
www.unescap.org/ageing/res/principl.htm

Links to other Core International Treaties
www2.ohchr.org/english/law/index.htm#core

European Convention on Human Rights
www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG_CONV.pdf

European Social Charter (revised) 1996
www.coe.int/t/dghl/monitoring/socialcharter/Presentation/ESCRBooklet/English.pdf

Human Rights Act
www.opsi.gov.uk/acts/acts1998/ukpga_19980042_en_1

Scotland Act
www.opsi.gov.uk/acts/acts1998/ukpga_19980046_en_1

2. Other Key Legislation

Adult Support and Protection (Scotland) Act 2007
www.opsi.gov.uk/legislation/scotland/acts2007/asp_20070010_en_1

Adults with Incapacity (Scotland) Act 2000
www.opsi.gov.uk/legislation/scotland/acts2000/asp_20000004_en_1

Mental Health (Care and Treatment) (Scotland) Act 2003
www.opsi.gov.uk/legislation/scotland/acts2003/asp_20030013_en_1

Regulation of Care (Scotland) Act 2001
www.opsi.gov.uk/legislation/scotland/acts2001/asp_20010008_en_1

Equality Act 2010
www.opsi.gov.uk/acts/acts2010/ukpga_20100015_en_1

3. Standards, Guidance and Publications

National Care Standards (Scottish Government)
www.scotland.gov.uk/Topics/Health/care/17652/National-Care-Standards-1-1

Scottish Social Services Council Codes of Practice
www.sssc.uk.com/sssc/homepage/codes-of-practice.html

Charter of Rights for People with Dementia and their Carers in Scotland
www.scottishhumanrights.com/content/resources/documents/FINALCharterofRights.pdf

Scottish Commission for the Regulation of Care Publication: Guidance for Care Service Providers
www.carecommission.com/index.php?option=com_content&task=view&id=6696&Itemid=166

Scottish Commission for the Regulation of Care Publication: Involving People
www.carecommission.com/index.php?option=com_content&task=view&id=7083&Itemid=152

Scottish Human Rights Commission Publication: Human Rights in a Healthcare Setting: Making it Work for Everyone
www.scottishhumanrights.com/research/ourpublications/article/healthcareresearch

Scottish Government Publication: Right first time: A practical guide for public authorities in Scotland to decision-making and the law
www.scotland.gov.uk/Publications/2010/02/23134246/0

Mental Welfare Commission (MWC) Publication: Rights, Risks and Limits to Freedom
www.mwcscot.org.uk/web/FILES/Publications/Rights_Risks_web.pdf

MWC Publication: Covert Medication
www.mwcscot.org.uk/web/FILES/Publications/covertmedication.pdf

MWC Publication: Consent to Treatment
http://www.mwcscot.org.uk/web/FILES/Publications/Consent_to_Treatment.pdf

MWC Publication: Nutrition by Artificial Means
www.mwcscot.org.uk/web/FILES/Publications/Nutrition_by_Artificial_Means.pdf

MWC Publication: Hospital Treatment for a Physical Illness in the Absence of Consent
www.mwcscot.org.uk/web/FILES/Publications/Physicalhealthcareandconsent.doc

MWC Publication: The Use of Seclusion
www.mwcscot.org.uk/nmsruntime/saveasdialog.asp?lID=923&sID=742

MWC Publication: Safe to Wander?
www.mwcscot.org.uk/nmsruntime/saveasdialog.asp?lID=1371&sID=742

MWC Publication: Autonomy, Benefit and Protection
www.mwcscot.org.uk/nmsruntime/saveasdialog.asp?lID=1433&sID=742

MWC Publication: Care of Older People with Mental Health Problems
www.mwcscot.org.uk/nmsruntime/saveasdialog.asp?lID=249&sID=742

MWC Publication: Suspension of Detention
www.mwcscot.org.uk/nmsruntime/saveasdialog.asp?lID=1293&sID=742

General Medical Council (GMC) Guidelines: Treatment and Care towards the End of Life
www.gmc-uk.org/guidance/ethical_guidance/6858.asp

GMC Guidelines: Consent: Patients and Doctors Making Decisions Together
www.gmc-uk.org/guidance/ethical_guidance/consent_guidance_index.asp

British Institute for Human Rights (BIHR) Publication: A Guide for Older People
www.bihr.org.uk/documents/guides/a-guide-for-older-people

BIHR Publication: The Human Rights Act – Changing Lives
www.bihr.org.uk/policy/the-human-rights-act-%E2%80%93-changing-lives

DCA/Ministry of Justice Publication: Making Sense of Human Rights – A Short Introduction
www.justice.gov.uk/guidance/docs/human-rights-making-sense-human-rights.pdf

Ministry of Justice Publication: Human Rights, Human Lives – A Handbook for Public Authorities
www.justice.gov.uk/guidance/docs/human-rights-handbook-for-public-authorities.pdf

Department of Health Publication: Human Rights Training Materials
www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_115174

Equality and Human Rights Commission Guidance: The United Nations Convention on the Rights of People with Disabilities- What does it mean for you?
www.equalityhumanrights.com/uploaded_files/publications/uncrpdguide.pdf

Equality Human Rights Commission Publication: The Public Sector Equality Duties and Financial Decisions
www.equalityhumanrights.com/uploaded_files/PSD/psdandfinancialdecisions.pdf

Scottish Independent Advocacy Alliance Publication: Elder Abuse Advocacy Guidelines
www.siaa.org.uk/content/view/125/92/

Social Care Institute for Excellence - With Respect: Dignity in Homecare & Residential Care
www.dignityincare.org.uk/Topics/Type/resource/?cid=6612&

Workforce Initiative - Tell Someone Training Program
www.workforceinitiative.co.uk/tellsomeone/

Royal College of Nurses - Dignity Campaign
www.rcn.org.uk/newsevents/campaigns/dignity

4. More Human Rights Information

British Institute of Human Rights
www.bihr.org.uk

Council of Europe
www.coe.int

European Court of Human Rights
www.echr.coe.int

Office of the High Commissioner for Human Rights
www.ohchr.org/EN/Pages/WelcomePage.aspx

Joint Committee on Human Rights
www.parliament.uk/business/committees/committees-archive/joint-committee-on-human-rights

5. Contact Information

Act Against Harm:
If you or someone you know is over 16 and at risk of physical, sexual, financial or psychological harm or neglect because of a disability, mental disorder, illness or physical or mental infirmity you can contact the Adult Protection Unit or its equivalent in your local area. The Act Against Harm website can assist you to find out where to get help in your local area.

Web address: infoscotland.com/actagainstharm/contacts/index.html

Age Scotland:
Age Scotland strives to represent all of Scotland's older people and provide a united voice.

Telephone: 0845 833 0200
Address: Causewayside House, 160 Causewayside, Edinburgh EH9 1PR

Alzheimer Scotland:
Alzheimer Scotland is the leading dementia organisation in Scotland. It campaigns for the rights of people with dementia and their families and provides an extensive range of innovative and personalised support services.

Telephone: 0808 808 3000
Email: helpline@alzcot.org
Address: 22 Drumsheugh Gardens, Edinburgh EH3 7RN

Care Information Scotland:
Care Information Scotland is a telephone and website service providing information about care services for older people living in Scotland.

Telephone: 08456 001 001
Web address: www.careinfoscotland.co.uk/useful-resources/contact-us.aspx

The Equality and Human Rights Commission:
The Equality and Human Rights Commission champions equality and human rights for all, working to eliminate discrimination, reduce inequality, protect human rights and to build good relations, ensuring that everyone has a fair chance to participate in society. The EHRC Scotland helpline provides information and guidance on discrimination and human rights issues.

Telephone: 0845 604 5510
Email: scotlandhelpline@equalityhumanrights.com
Address: Equality and Human Rights Commission Helpline Scotland, Freepost RRLL-GYLB-UJTA, The Optima Building, 58 Robertson Street, Glasgow G2 9DU

The Law Society:
The Law Society of Scotland is the governing body for Scottish solicitors. They hold a list of all solicitors registered in Scotland.

Telephone: 0131 226 7411
Address: 26 Drumsheugh Gardens, Edinburgh EH3 7YR

Mental Welfare Commission:
An independent organisation working to safeguard the rights and welfare of everyone with a mental illness, learning disability or other mental disorder.

Telephone: 0800 389 6809
Email: enquiries@mwcscot.org.uk
Address: Thistle House, 91 Haymarket Terrace, Edinburgh EH12 5HE

Scottish Association for Mental Health:
SAMH is Scotland's leading mental health charity. It provides help, information and support and campaigns on behalf of people with mental health problems.

Telephone: 0800 917 3466
Email: info@samh.org.uk
Address: Cumbrae House, 15 Carlton Court, Glasgow G5 9JP

Scottish Citizens Advice Bureaux:
In over 200 locations across Scotland there is a network of independent local charities which provide advice and information to people in need. The CAB provide free and confidential advice on a wide range of issues including: debt and money advice, family breakup, employment, benefits, tax and legal issues. Your local bureau is listed in the phone book.

Telephone: 0844 848 9600 (national helpline, Citizens Advice Direct)

Scottish Commission for the Regulation of Care:
The Care Commission works to improve the quality of care in Scotland and ensures that care service providers meet the Scottish Government's standards of care as set out in the National Care Standards.

Telephone: 0845 603 0890
Email: enquiries@carecommission.com
Address: Compass House, 11 Riverside Drive, Dundee DD1 4NY

The Scottish Helpline for Older People:
The Scottish Helpline for Older People helps older people and those who care for or work with older people to find answers to questions about lots of issues such as community care, tax, pensions, benefits etc.

The helpline provides free, confidential information or can point you in the direction of other experts who can help.

Telephone: 0845 125 9732
Textphone: 0845 226 5851
e-mail: shopenquiries@agescotland.org.uk

Scottish Human Rights Commission:
The Commission is an independent body set up to promote and protect the human rights of everyone in Scotland. The Commission works to increase awareness, recognition and respect for human rights in Scotland by bringing human rights into everyday life. Please note, the Commission is unable to give advice to individuals.

Telephone: 0141 243 2721
Email: hello@scottishhumanrights.com
Address: Optima Building, 58 Robertson St, Glasgow G2 8DU

The Scottish Independent Advocacy Alliance:
The Alliance promotes, supports and defends the principles and practice of independent advocacy across Scotland.

Telephone: 0131 260 5380
Address: Melrose House, 69a George Street, Edinburgh EH2 2JG

Scottish Legal Aid Board:
Legal aid allows people who would not otherwise be able to afford it to get help for their legal problems. The Scottish Legal Aid Board is responsible for managing legal aid in Scotland.

Telephone: 0845 122 8686
Address: 44 Drumsheugh Gardens, Edinburgh EH3 7SW

Scottish Public Services Ombudsman:
The Ombudsman is the final stage for handling complaints about public bodies in Scotland. It runs a free, independent and impartial service for dealing with complaints about councils, the National Health Service, housing associations, the Scottish Government and its agencies and departments, colleges and universities and most Scottish public bodies.

Telephone: 0800 377 7330
Email: www.spso.org.uk/contact-us
Address: 4 Melville Street, Edinburgh EH3 7NS

Scottish Social Services Council:
The Scottish Social Services Council is responsible for raising standards in the Scottish social service workforce. It registers and regulates the social service workforce to meet agreed standards of conduct, practice, education and training.

Telephone: 0845 60 30 891
Email: enquiries@sssc.uk.com
Address: Compass House, 11 Riverside Drive, Dundee DD1 4NY

Acknowledgements

The Scottish Human Rights Commission sincerely thank all those who have helped to develop this Care about Rights? resource pack.

We would especially like to thank David Rennie at the Private Care Sector Workforce Initiative team at Scottish Care for partnering us in coordinating this project. We would also like to thank Dr Donald Macaskill for assisting in the writing of the learning material; Dale Corlett and the whole team at GMAC who produced the film material; and Simon Heath and Amanda Farnese at Onespace Creative for the design and production of the materials.

Thank you also to Greenock Medical Aid Society, Balmanno House Care Home and Greenfield Park Care Home for allowing us access to their homes to meet the residents and staff, take pictures and film.

We are particularly grateful to all those who contributed to our care sector reference group meetings and consultation focus groups which assisted us greatly in gaining a better understanding of the both the daily and systemic issues facing the care sector and people who access services.

Finally, we would like to express our gratitude to the Scottish Government, COSLA, the Care Commission, the Mental Welfare Commission, Age Scotland, Alzheimer Scotland, the Scottish Dementia Working Group, the Stroke Association, Carers Scotland, East Renfrewshire Carers Centre, Royal College of Nurses, Dementia Services Development Centre, Care Information Scotland, Scottish Social Services Council and the many participating care provider organisations for their support and input into the Care about Rights? project. We hope that your invaluable participation in the development of these materials is reflected in the overall quality and impact of the project.

Photo Credits:
Michael Hughes, Mark Seager, Amanda Heath, Bashir Kahn, Jennifer Smith and Edinburgh The Brand

Evaluation Form

Now you have read the materials and/or completed the training session we would like to hear your views on the training, the materials, and how you think you might use them.

Your feedback is important to us and it will form part of the evaluation of this programme. Please take 5 minutes to complete this short survey and return to your session facilitator or to: David Eiser, GEN, 4/1, 137 Sauchiehall Street, Glasgow, G2 3EW

Introduction

1. Date of training (dd/mm/yy):

_____

2. What is your current role:

- ☐ Care Commission staff
- ☐ Care worker
- ☐ Care provider (residential setting)
- ☐ Care provider (community setting)
- ☐ Individual using care services
- ☐ Carer or family of person using care services
- ☐ Other

3. Which local authority(ies) do you live and/or work in:

- ☐ Aberdeen City
- ☐ Aberdeenshire
- ☐ Angus
- ☐ Argyll & Bute
- ☐ Clackmannanshire
- ☐ Comhairle nan Eilean Siar
- ☐ Dumfries & Galloway
- ☐ Dundee
- ☐ East Ayrshire
- ☐ East Dunbartonshire
- ☐ East Lothian
- ☐ East Renfrewshire
- ☐ Edinburgh
- ☐ Falkirk
- ☐ Fife
- ☐ Glasgow
- ☐ Highland
- ☐ Inverclyde
- ☐ Midlothian
- ☐ Moray
- ☐ North Ayrshire
- ☐ North Lanarkshire
- ☐ Orkney
- ☐ Perth & Kinross
- ☐ Renfrewshire
- ☐ Scottish Borders
- ☐ Shetland
- ☐ South Ayrshire
- ☐ South Lanarkshire
- ☐ Stirling
- ☐ West Dunbartonshire
- ☐ West Lothian

About the training session

(Note: If you did not attend a training session please go to Q8)

4. Please rate extent to which you agree with the following statements

1 = Strongly disagree 5 = Strongly agree 1-5

- The objectives of the training were clear ☐
- The session covered key points I needed to know ☐
- The format and structure of the training was right ☐
- The training was interesting and engaging ☐
- Training facilitators were knowledgeable and helpful ☐
- I would recommend this training to others ☐

5. Do you think the training was…

☐ too long ☐ too short ☐ about right

6. If you could change one thing to make the format organisation of the training session better what would it be?

7. Please add any additional comments on the organisation or format of the training session in the box below

About the training materials

8. Please rate the extent to which you agree with the following statements:

1 = Strongly disagree 5 = Strongly agree 1-5

- Film materials are engaging and convey a clear and powerful message ☐
- Written materials are engaging, clear and concise ☐
- It is easy to find the information that I need ☐
- The scenarios helped my understanding of a human rights based approach to care ☐
- The flow chart helped my understanding of how to deal with issues using a human rights based approach ☐
- The participatory exercises helped me engage with the topic of human rights ☐
- Overall the materials have increased my knowledge of human rights in the context of care ☐

9. If you could change one thing to make the training materials better what would it be?

10. Please add any additional comments on the content and format of the training materials in the box below

Using the training materials

If you ARE….

☐ a care service provider or care worker please answer Q11 then go to Q14

☐ member of staff for the Care Commission please answer Q12 then go to Q14

☐ an older person using care services, a family member, a carer or a member of a carers or older persons interest group please answer Q13 then go to Q14

Questions for care service providers and care workers

11.To what extent do you agree or disagree with the following statements about what difference the training and materials will make to the way that care is delivered on the ground?

The materials and training I have received will…

1 = Strongly disagree 5 = Strongly agree 1-5

- help me better understand what issues are human rights issues ☐
- increase my confidence in managing human rights issues ☐
- improve the way we balance risk in decision making ☐
- help our awareness of the need for person centred care ☐
- improve the way we involve service users, their families and carers in decision making ☐
- help us to develop positive relationships with service users and their families and carers ☐
- give me the confidence to train my colleagues about human rights in a care context ☐
- help us to inform staff training and Continuous Professional Development ☐

Questions for Care Commission staff

12. To what extent do you agree or disagree with the following statements about the difference this training and materials will make to the way that you work with care providers and care workers

The materials and training I have received will…
1 = Strongly disagree 5 = Strongly agree 1-5

- help me better understand what issues are human rights issues ☐
- help me better understand the relationship between human rights and other legislation ☐
- help me better understand the relationship between human rights and the National Care Standards ☐
- help me better recognise where using a human rights based approach will assist to improve service delivery ☐

Questions for older people using care services, family members, carers and members of carers or older persons interest groups

13. To what extent do you agree or disagree with the following statements about the difference this training and materials will make to the way that you work with care providers and care workers

The materials and training I have received will…
1 = Strongly disagree 5 = Strongly agree 1-5

- help me better understand what issues are human rights issues ☐
- give me the confidence to reference human rights in complaints, letters or reports ☐
- help me better understand that there is a national and international human rights system ☐
- help me be more involved in decision making that affects me ☐

Do you need more information?

14. Do you require further information/ support about a human rights based approach to care to assist you in your work? What information/ support do you require?

Further research

We would be very interested to hear your views on the effectiveness and impact of these training materials at a later date. This will help us to understand the ways in which you will use the materials in practice, help us to develop and improve the materials that are available and the ways in which information is distributed.

Your assistance with this is greatly appreciated.

15. Would you be willing to be contacted for the purpose of further research about human rights in the context of care for older people in the future? This may include participation in a short consultation meeting or telephone survey.

☐ yes ☐ no

16. (If YES) Please provide your contact details below:

Name:

Contact number (work):

Contact number (mobile):

Contact email:

NB: Providing your contact details does NOT place you under any obligation to participate in further research.

Thank you for your time