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