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?