

# Guidance on human rights for commissioners of home care



**Equality and  
Human Rights**  
Commission

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# Chapter 1:

## Introduction

### **Purpose of this guidance**

This guide aims to help local authority elected members and staff who are involved in the commissioning and procurement of home care better understand their obligations under the Human Rights Act 1998 (the HRA). It is also relevant to others who have an interest in home care, including care providers, regulators, service users, their friends and families. A separate guide entitled ‘Your home care and human rights’ has been produced specifically for home care service users.<sup>1</sup>

Both guides have been written in response to the findings of the Equality and Human Rights Commission’s (the Commission’s) Inquiry into older people and human rights in home care.<sup>2</sup> The Inquiry looked at the situation in England and therefore this guidance relates to England only. Around half of the older people, friends and family members who gave evidence to the Inquiry, expressed real satisfaction with their home care. They most valued having a small number of familiar and reliable staff who took the time to talk to them and complied with their requests to do specific tasks. But the Inquiry also revealed many

examples of older people’s human rights being breached, including physical or financial abuse, disregarding their privacy and dignity, failing to support them with eating or drinking, treating them as if they were invisible, and paying little attention to what they want.

The Inquiry took evidence from people in local authorities involved in commissioning home care and concluded that some local authorities adopted a quality driven approach, incorporating human rights principles throughout the commissioning process. However, for a variety of reasons, those commissioning home care may not be making the most of the scope they have for promoting and protecting human rights. Many people from local authorities told us they would welcome practical written guidance on their obligations under the HRA, including positive human rights obligations, which set out a human rights based approach to home care services.

This guide has been written in collaboration with the Association of Directors of Adult Social Services (ADASS), the United Kingdom Homecare Association (UKHCA) and the British Institute of Human Rights (BIHR).

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**1** See [http://www.equalityhumanrights.com/uploaded\\_files/your\\_rights\\_to\\_home\\_care\\_web\\_low\\_res.pdf](http://www.equalityhumanrights.com/uploaded_files/your_rights_to_home_care_web_low_res.pdf)

**2** See [http://www.equalityhumanrights.com/uploaded\\_files/homecareFI/home\\_care\\_report.pdf](http://www.equalityhumanrights.com/uploaded_files/homecareFI/home_care_report.pdf)

## Key messages

Five key messages lie at the heart of this guidance and explain why it makes sense for local authorities to commission home care compatibly with the Human Rights Act.

- 1. It's the law:** all local authorities are obliged to comply with the HRA and non-compliance can result in serious risks to individuals along with legal, financial and reputational risks.
- 2. It's practical and ensures accountability:** the HRA can provide a useful management and decision-making framework which can assist resource allocation, prioritisation and balancing competing needs.
- 3. It's about quality and efficiency:** pro-actively promoting human rights can help drive up quality, improve outcomes for service users, service providers and home care staff and reduce cost pressures. Inadequate care is never cheap in the long run.
- 4. It supports other duties and initiatives:** human rights underpin and add value to a range of legal duties and policy initiatives which are at the heart of local authority business, including non-discrimination, safeguarding and personalisation.

- 5. It's about familiar shared values:** human rights are not new to the work of local authorities. The core values which underpin human rights – dignity, respect, choice, fairness and equality – are shared common public services values; using human rights can ensure these values are translated into practice within public authorities generally, and within commissioning specifically.

Chapter 2 explains the human rights obligations of all public bodies – including local authorities – and then goes on to explain why human rights are relevant to the provision and commissioning of home care. Chapter 3 is about building a human rights culture and its value in driving up quality, with examples of where this has worked in practice. Building on good practice, Chapter 4 looks at the different elements of the commissioning cycle, offering practical advice about ways to mainstream human rights into home care services. Finally, Chapter 5 explains where to find more information about human rights and home care.

# Chapter 2:

## About human rights

Human rights are universal – they belong to everyone. They guarantee the fundamental rights of each individual, representing moral and ethical principles that are central to a democratic society. They are often described as being underpinned by a simple framework of commonly recognised values – the so-called ‘FREDA’ principles:

**F**airness

**R**espect

**E**quality

**D**ignity

**A**utonomy

Keeping the FREDA principles at the heart of commissioning will help local authorities to build a human rights based approach.

The European Convention on Human Rights (ECHR) is a treaty which is over 60 years old. It was a product of the Council of Europe, set up after the Second World War. The UK was a driving force behind this treaty and, in 1951, was one of the first states to ratify it. The Council of Europe went on to set up the European Court of Human Rights in Strasbourg as a mechanism for safeguarding the rights in

the treaty. Before the Human Rights Act 1998 (HRA) came into effect, an individual claiming that the UK had breached their ECHR rights could bring a case to the Strasbourg court, but could not ask our own courts to adjudicate the human rights question.

The HRA marked the beginning of a new era for human rights in the UK. Because of the HRA, all public authorities must ensure they act compatibly with the civil and political rights guaranteed by the ECHR – as far as their powers and duties allow. A person claiming that their human rights have been breached by a public authority can now use the UK courts to bring a case. The courts themselves must also act compatibly with the ECHR – and this includes the way they interpret the law in their decision-making.

### **Human rights and the HRA**

The HRA has brought into UK law the majority of ECHR rights, or ‘Articles’ – listed as a schedule to the Act. These Articles are underpinned by the ‘FREDA’ principles, although they do not necessarily use the same language.

Certain ECHR Articles protected by the HRA are more likely to be relevant to people using home care:

- The right to life (ECHR Article 2).
- Prohibition on inhuman or degrading treatment (Article 3).
- Right to liberty and security (Article 5) which includes freedom from unlawful detention.
- Right to respect for private and family life, home and correspondence (Article 8). This is a wide-ranging qualified right (see below) that also protects the right to respect for an individual's personal dignity, autonomy and social relationships.
- Right to peaceful enjoyment of possessions (Article 1 of Protocol 1).

There are other ECHR Articles protected by the HRA which could also be relevant to home care services in some situations:

- Freedom of thought, conscience and religion (Article 9).
- Freedom from discrimination on any ground in the enjoyment of other ECHR rights (Article 14). This is not a free-standing right – it must be used alongside another right under the ECHR.

## Absolute rights and qualified rights

The ECHR rights protected by the HRA fall into different categories. Some rights are 'absolute': that is, they cannot be restricted in any circumstances, even in a national emergency, nor can they be balanced against the general public interest or the rights of others. Absolute rights include the right to life (Article 2) and freedom from torture and inhuman and degrading treatment (Article 3).

But many other ECHR rights are 'qualified'. This means that they can be restricted – provided this is justified by the wider public interest (such as national security or public safety) or the need to protect the rights or freedoms of others. The restriction must be a **proportionate** response to a genuine social need and must have a basis in legal rules that are accessible and reasonably clear. Article 8, the right to respect for private and family life, is an example of a qualified right.

The requirement for proportionality is important. A proportionate response is one that is appropriate and not excessive in the circumstances. A straightforward way of thinking about this is that, when restricting human rights, public authorities must not use a sledgehammer to crack a nut.

**Example:** For the past five years, a local authority has provided home care services for an older woman with dementia, allowing her to continue living independently. Her dementia worsens and her family believe she is unsafe living alone. After conducting a review of her case using the framework of community care legislation and deciding on her best interests in line with the Mental Capacity Act, the local authority decides that her care needs can no longer be met at home and offers her a place in residential care. Although this decision restricts the right to respect for her home under Article 8, the restriction is likely to be justified as a proportionate response to the need to protect her safety and her health.

**Example:** In a case involving East Sussex County Council,<sup>3</sup> the local authority had a policy requiring home care staff to use hoist equipment in certain situations, in order to protect staff from health and safety risks. However, for two disabled sisters who lived in a specially adapted house, the policy restricted their ability to move about their home or go outside it. The judgment found the manual lifting policy to be disproportionate, as it did not provide appropriate care which respects the dignity of service users or consider individual circumstances. The local authority was ordered to find a better balance between the Article 8 rights of the service users and the rights of the care workers to a safe working environment.

The Appendix to this guidance explains more about what the ECHR Articles mean in practice for local authorities and gives examples of how Articles might be relevant to older people using home care services.

## Positive human rights obligations

All local authorities will be aware that the HRA applies to them and that they should take into account human rights when carrying out their functions. What is perhaps less widely understood is that public authorities have a duty to do more than just the minimum needed to avoid falling foul of the requirements of the HRA. They must also take into account their 'positive obligations' to actively promote and protect the rights in the Convention.

Positive human rights obligations are not set out in the ECHR itself, but their importance has been emphasised by decisions of the European Court of Human Rights which have been followed by the UK courts. Positive obligations include:

- A duty to prevent breaches of human rights, which may sometimes mean protecting individuals from the actions of others.
- A duty to take effective steps to deter conduct that would breach human rights.
- A duty to respond to any human rights breaches that occur, which may include carrying out an effective investigation.

<sup>3</sup> *R (A and B, X and Y) (No 2) v East Sussex CC and the Disability Rights Commission* (No 2) [2003] EWHC 167, (2003) 6 CCLR 194.

- A duty to provide information and advice to individuals who may be at risk of their human rights being breached.

These positive obligations can be particularly important when public services are commissioned. For example, a local authority might have to take positive steps to protect the human rights of people who receive outsourced home care services.

**Example:** A local authority receives credible reports that a number of older people have had abusive treatment from a particular home care agency contracted to provide services on behalf of the authority. In this situation, the local authority would have a positive obligation to take steps to prevent the human rights abuses from happening and to investigate the abuse that had already taken place.

## The ‘public function’ test

The HRA applies not only to public authorities, but also to other organisations when they are carrying out ‘public functions’. A series of court decisions has made the definition of this term unclear. In 2007, the House of Lords ruled in the YL case<sup>4</sup> that residential care commissioned by a local authority from a private care home was outside the scope

of the HRA. The following year, the law was changed to reverse the effect of this decision – but only for residential care services.

There is no case law clarifying the HRA status of home care services commissioned by public authorities. However, it is widely thought that the YL decision does not apply to home care services – only to residential care. The government disagrees, maintaining that all providers of publicly funded home care should consider themselves bound by the HRA. To resolve this legal uncertainty, many believe that Parliament should clarify the law, unless the courts have the opportunity to do so through a suitable test case.

There is no guarantee that the law will be clarified by a test case in the near future. Meanwhile – and regardless of the outcome of any case – local authorities must remember that their own HRA responsibilities cannot be contracted out to another organisation. In using their powers and duties to provide services, authorities must always act compatibly with the ECHR rights protected by the HRA regardless of whether or not they have outsourced any of their ‘public functions’ to an external provider. Doing so will also ensure that the human rights and public service values of dignity, respect, choice, fairness and equality underpin practice.

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<sup>4</sup> *YL v Birmingham City Council and others* [2007] UKHL 27.



## Other human rights

The ECHR is the only human rights treaty that has been made part of UK law. But other treaties ratified by the UK can still make an impact; for example, they can be used as a tool for interpreting national legislation in the courts or as a guide for policy-making. The UN Convention on the Rights of Persons with Disabilities (CRPD) is very relevant for home care service users who are disabled.

The CRPD sets out standards that government and public bodies should meet in delivering genuine equality and inclusion for disabled people. It covers civil and political rights similar to those in the ECHR, but also extends to social and economic rights such as an adequate standard of living and social protection.

There is no treaty dedicated to protecting older people's human rights. However, in 1991, the UN adopted principles for the protection of the rights of older persons, designed to support the development of national programmes. The principles are grouped under five broad headings: independence, participation, care, self-fulfillment and dignity.<sup>5</sup>

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<sup>5</sup> See <http://www.ohchr.org/Documents/ProfessionalInterest/olderpersons.pdf>



# Chapter 3:

## Building a human rights culture

In some situations, individuals may use the Human Rights Act (HRA) to bring a legal challenge if they have experienced ill treatment that breaches their human rights. But the HRA is much more than a tool for litigation. It was intended to provide a floor, rather than a ceiling, for human rights protection. Parliament wanted the legislation to contribute to the creation of ‘a culture of respect for human rights’ so that public services would be ‘habitually and automatically responsive to human rights considerations in all their procedures and practices’<sup>6</sup>. This is the theme that underpins a ‘human rights based approach’ to the design and delivery of services.

A human rights based approach to public services has several dimensions. It provides an ethical framework, making sure rights are only restricted where this is proportionate and necessary (and with an understanding that certain rights are absolute, e.g. freedom from inhuman and degrading treatment). This approach recognises that engaging and empowering service users and encouraging person-centred decisions helps to drive up the quality of services. For frontline staff, it provides a set of common values,

equipping them better to deal with difficult decisions – especially where competing rights or interests are involved.

So, in practical terms, what does it mean to take a human rights approach to commissioning home care?

- At all levels of the local authority, including among elected members, there is a shared understanding of human rights and a commitment to putting them at the centre of home care commissioning.
- Human rights are considered not only throughout the planning and commissioning stages, but also built into monitoring of home care service delivery.
- Service users are empowered to use the language and framework of human rights, have a voice in the planning, commissioning and monitoring of home care services and know that they can complain about services they receive without fear of retribution.
- Individual needs assessments are person-centred, supporting independence and autonomy as far as possible.

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<sup>6</sup> Irvine, Lord, oral evidence in response to Question 38, Evidence to Joint Committee on Human Rights: implementation of the Human Rights Act 1998, 19 March 2001

- Service providers are under a contractual obligation to promote and protect human rights, with a zero tolerance of neglect and abuse – recognising that some human rights are non-negotiable.
- Service users understand that, while other human rights may be restricted, this can only happen when the restriction is proportionate and necessary.
- Human rights are used by the local authority and by providers to guide difficult decisions, for example when there are competing interests between staff and service users.
- Special attention is given to groups who may be at particular risk of human rights abuses, especially those already at risk of discrimination.

## **Human rights standards in home care**

The Commission's Inquiry into older people and human rights in home care collected evidence using a human rights framework, drawn from the European Convention on Human Rights, the UN Convention on the Rights of Persons with Disabilities and the UN Principles for Older Persons. This framework also reflects the 'FREDA' principles (see page 5). It provides a useful checklist for understanding the risks to human rights in a home care

setting. More positively, it can also serve as a starting point for adopting a human rights based approach to home care, including outcomes expected when services are commissioned.

The Commission's framework for human rights in home care is grouped under four broad headings. It is set out on the opposite page

## Framework for human rights in home care

### Dignity and security

- **Physical wellbeing** – including freedom from intentional or unintended physical abuse or neglect, protection from pharmaceutical, medical abuse or sexual abuse.
- **Psychological and emotional wellbeing** – including freedom from bullying and threats and disrespectful treatment (including being talked over or ignored); respect for cultural heritage/religion.
- **Financial security/security of possessions** – including protection from financial abuse and, for those without mental capacity, decisions taken in one's best interests; freedom to control one's personal possessions.

### Autonomy and choice

- **Self-determination** – including the right to live as independently as possible, to make routine decisions (for example, what to eat/wear), to be consulted about ongoing professional decisions and to have a say about the timetable of one's day.
- **Support for decision-making** – including a right to information and advice about care options, to be given meaningful choices and time to decide, and to be offered support for personalisation of care.

### Privacy

- **Respect for personal privacy** – including modesty when dressing/bathing and privacy when one's personal circumstances are discussed by others.
- **Respect for personal space** – including respect for a wish to be alone and for a wish to be intimate with others.
- **Respect for private correspondence** – including private letters, phone calls and private documents.

### Social and civic participation

- **Friends and family** – the right to maintain relationships with family and friends.
- **Community participation** – the right to participate in community events, to join community groups/associations and to participate in religious or non-religious activities.
- **Civic participation** – including the right to participate in elections.



# Chapter 4:

## Mainstreaming human rights into commissioning home care

In this chapter, we set out how to ensure human rights are respected at key stages of the commissioning and procurement cycle. As well as driving up standards, mainstreaming a human rights based approach into commissioning home care complements and builds on local authority practices designed to comply with the public sector equality duty,<sup>7</sup> and fulfil the safeguarding, personalisation and dignity agendas. However, authorities will see from this guide that adopting a comprehensive human rights based approach requires more than addressing principles like autonomy and privacy through these routes.

Adopting a comprehensive human rights based approach will mean reviewing commissioning practices holistically through a human rights lens, building on other policy and legislative drivers. Some local authorities have done this: others are part way there. **Authorities should not assume that putting in place measures to promote Dignity in Care, personalisation and safeguarding means that their human rights obligations are fully met.** While such initiatives are a step in the right direction, full compliance with the HRA is likely to need a more comprehensive and focused approach.

**Authorities should also avoid conflating equality and human rights obligations inappropriately.**

When planning and commissioning home care services, it **may** be possible to assess the impact on equality at the same time as assessing compliance with HRA obligations. **However, it is important to make sure that the method of assessment recognises the differences between public sector equality duty (PSED) obligations and legal duties under the HRA.** For example, the PSED is a duty to have due regard to the need to advance equality and eliminate discrimination,<sup>8</sup> whereas the HRA imposes clearer legal obligations extending to a wide range of rights and freedoms.

Using practical examples, this chapter explains how mainstreaming can be achieved. A human rights based approach will also ensure authorities use their purchasing power to discharge human rights obligations, drive up quality and help ensure home care service users get the care they want.

Although there is now a single assessment process which encourages local social care, health and housing bodies to work together, local authorities retain

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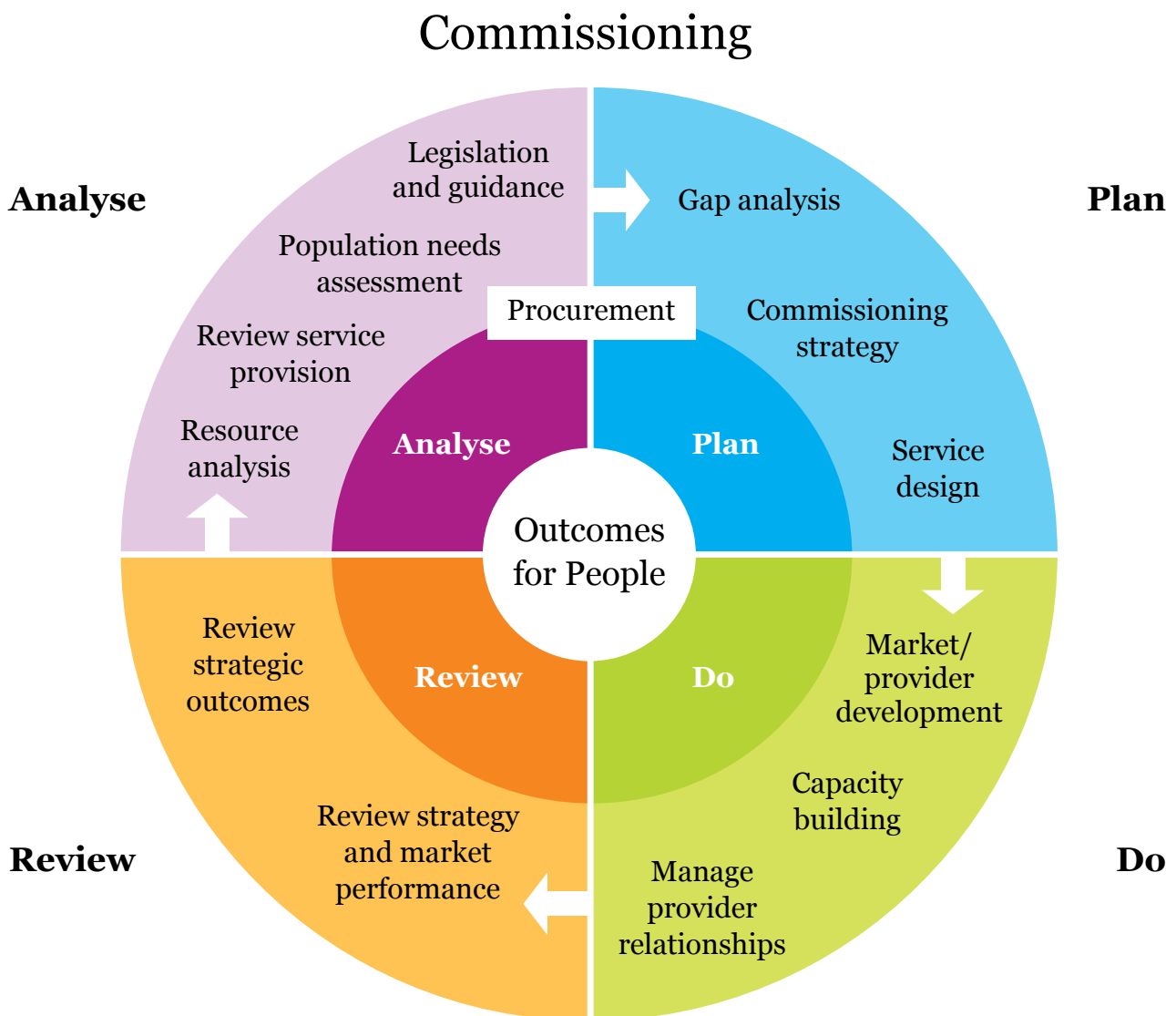
<sup>7</sup> Equality Act 2010, s149.

<sup>8</sup> For more information about the PSED see [www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty](http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty)

the central statutory responsibility for commissioning home care. At key stages in the commissioning process, there are valuable opportunities to ensure that the human rights of home care service users are protected.

Most local authorities will be familiar with the Commissioning Cycle model developed by the Institute of Public Care (IPC) which situates outcomes for people at its centre.

It envisages a commissioning process that is transparent, fair and open to influence from all stakeholders. Involvement with service users, the public, advocacy groups, providers and others is not shown as a separate element in the process but instead permeates commissioning and purchasing at every opportunity. This is very much in line with a human rights approach to commissioning home care.





In this guide opportunities to promote and protect human rights in the home care commissioning process are set out under four broad interlinked headings:

- Consultation and involvement
- Assessing need
- Documents used for commissioning home care
- Contracts

## Consultation and involvement

Involving, consulting and engaging service users, their families and local voluntary sector organisations representing them, together with providers and relevant local authority staff, will come as second nature to many local authorities.

### Service users

Service user involvement links directly to the right to respect for autonomy protected by Article 8 of the ECHR and by Article 19 of the Convention on the Rights of Persons with Disabilities. Even if an authority already builds user involvement into its home care commissioning processes, a human rights based approach would mean acknowledging that involvement mechanisms are helping to meet human rights obligations, connected to service users' rights to autonomy and self-determination. It may be helpful to make explicit reference to the relevant human rights. This is likely to empower

service users as well as help local authority staff to understand the extent of human rights obligations and procure the type of home care services that people really want.

**Example:** A local authority facilitates an older people's involvement forum which includes representatives from the local Age UK group and other voluntary sector organisations. The forum takes feedback about all Council services affecting older people. Once a year the forum focuses specifically on home care, seeking views on the quality and suitability of contracted home care providers. The invitation letter to forum members acknowledges this meeting as one of the steps the Council takes to comply with its human rights obligations and to ensure home care service users' autonomy and choice are respected.

Many local authorities already incorporate involvement and engagement of service users in service commissioning and design as one of the measures linked to fulfilling their public sector equality duty.<sup>9</sup> Some may do so as part of their personalisation agenda to ensure their policies to support community based independent living are shaped by service users.<sup>10</sup> The Localism Act 2011 provides another driver for local authorities to engage with and involve local organisations and user groups through the 'community right to challenge'. Meaningful consultation driven by these agendas will also help foster a human rights based approach to commissioning.

<sup>9</sup> Equality Act 2010, s149.

<sup>10</sup> This approach is recommended by the Social Care Institute for Excellence in 'Sustainable social care and personalisation: a guide for community engagement'. Available at: [www.scie.org.uk/adults/sustainablesocialcare/files/sustainablesocialcareandpersonalisation.pdf](http://www.scie.org.uk/adults/sustainablesocialcare/files/sustainablesocialcareandpersonalisation.pdf)

There are some impressive and imaginative examples of ways to capture service users' views. The Commission knows of at least one local authority that trains older people from the local community as 'citizen assessors'. Their role is to talk to other older people receiving home care in their own homes about their experiences, and uses their feedback as a key source of intelligence to inform commissioning activity. Another uses LINK volunteers for a similar purpose to capture views direct from service users. We know of others who facilitate a culture that welcomes feedback, creating regular opportunities for service users and their families to express their views through public meetings, feedback forms and drop in sessions at supermarkets and day centres. Sharing information about local providers through internet forums seems to be a growing trend – although consideration should also be given to accessing the views of service users without internet access or computer skills. For example, 42 per cent of people aged between 65 and 74 and 76 per cent of those above 75 have never used the internet.<sup>11</sup>

Our Inquiry found that older people are particularly reluctant to raise issues of concern or complain even when things have gone seriously wrong and we are aware that some local authorities acknowledge this and develop ways to encourage and make people feel safe about giving feedback.

**Example:** A local authority told us recently about a number of things they do including holding a 'tell us what you think' day, recruiting volunteer quality assessors, producing a 'making a complaint' film and widely distributing complaints leaflets. The same authority invited complainants to be involved directly in engagement processes for service improvement.

We know another authority takes specific steps to address a need they identified for facilitating feedback from some older people and people with learning disabilities by producing complaints leaflets in Easy Read.

The agenda to personalise care services is now a securely embedded Government policy.<sup>12</sup> It directly impacts on how local authorities commission home care and has the potential to engender a human rights based approach. It requires a radically different mind-set to the traditional service-led approach to social care – where users' needs had to fit around whatever services were available – by placing the service user with their unique needs, preferences and goals at the centre of processes to identify need and choose how care is delivered.

<sup>11</sup> Office for National Statistics (2011) Internet Access Quarterly Update Q2, Internet users Q2 2011. UK data. Table 1. Available at: [www.ons.gov.uk/ons/publications/reference-tables.html?edition=tcm%3A77-226794](http://www.ons.gov.uk/ons/publications/reference-tables.html?edition=tcm%3A77-226794)

<sup>12</sup> 'Caring for our future: reforming care and support', Department of Health White Paper, July 2012.

However, in order that all groups of people can benefit from the autonomy and control inherent in personalised care – whether through personal budgets, direct payments or having real choices in a managed account care package – local authorities should be sensitive to differing needs. For example, the Commission’s Inquiry revealed that the numbers of older people wanting to use direct payments was minimal, most preferring managed accounts (and quite a few not even realising there was a choice). However, there was a clear message that older people still valued being able to determine things like when care visits took place and care workers arriving on time. Another Inquiry finding was that direct payment brokerage and support organisations tended to focus on the needs of younger disabled people. This may be one reason why older people are less likely to use direct payments.

## Providers

Using home care providers to find out what works and doesn’t work in shaping home care services also comes as second nature to many local authorities. The Commission’s Inquiry identified some local authorities with clear leadership on human rights who adopt a partnership approach with providers, encouraging them to share a human rights based approach. Providers in these authorities appreciated having their views valued and being asked to propose innovative ways of driving up the quality of home care.

‘We have steering groups at [local authority] where they ask for our feedback ... which I think is good ... Rather than just saying, ‘There you go, go and do that’, they ask us first, ‘Do you think this will work? What are the best ways to do it?’  
(Small private sector provider)

Local authorities were sometimes able to put on free or low cost training on human rights when delivering home care. A reported positive outcome was that home care providers understood and accepted why commissioning managers set strict targets on practices with a direct impact on service users’ human rights, such as late care visits and high turnovers of care workers.

Information from provider organisations can also help to build an understanding of the preferences of home care service users. However, local authorities should avoid using provider consultation and feedback in place of direct consultation with service users; this would undermine service users’ right to respect for autonomy and self-determination, as well as giving a less accurate picture of users’ preferences.

Ideally, consultation and involvement should be integrated into commissioning and procurement processes at every opportunity because doing so will help ensure the human rights of service users are respected, assist in strategic needs assessments and provide important intelligence about the performance of individual home care providers.

## Key tips for meaningful involvement with service users and providers

- Use human rights language and encourage service users to voice their views about how service delivery impacts on their own human rights.
- Use existing involvement structures as much as possible so that you don't have to re-invent the wheel. For example, many local authorities have consultative forums for older and disabled people or have established links to consultation mechanisms through local LINK/<sup>13</sup> Healthwatch or Age UK groups.
- However, don't automatically rely solely on existing forums; a 'one size fits all' approach is unlikely to capture the views of all service users or potential users – for example, older people with dementia or sensory impairments, older LGBT people and some people from ethnic minorities.
- Consulting providers will help build a shared understanding of the significance of human rights.
- Avoid consulting service users solely by questionnaires or web-based surveys, because these are of limited value for older people. The Commission's Inquiry found that most older people receiving home care were extremely reluctant to complain or feed back in writing what might appear to be a complaint and that many of their homes had no internet access.

- Acknowledge to service users and potential users that this engagement is one of the steps you are taking to comply with human rights obligations and make reference to their human rights.
- Reflect back to people you engaged with, preferably in writing, to show you have listened to what they said.

## Assessing the needs of your area

Assessing the home care needs of the catchment population through joint (health and social care) strategic needs analysis will typically involve clarifying legal requirements and policy priorities and mapping them against local needs, combined with a review of existing services. Resource constraints will inevitably have an impact on the extent to which local identified needs can be met. Using a human rights based approach can potentially help with prioritising and balancing competing needs.

At a strategic level, commissioners are in a position to identify the needs of the local population and plan how these should be met, in a way that complies with their equality and human rights obligations. This is most likely to be achieved when there is clear leadership on the benefits of a human rights based approach, starting with councillors and running through senior management.

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<sup>13</sup> From April 2013 Local Healthwatch organisations will carry forward the functions of LINKs.

The Commission's Inquiry findings showed that people interviewed from human rights focused authorities made it clear that their decision-making was guided by messages from the top of the organisation about the central importance of quality and dignity. These authorities also adopted a partnership approach with local independent sector care providers. Local authority officers described the steps they had taken to engage positively and build a shared understanding of the importance of a human rights based approach and how providers could incorporate this into service delivery.

As previously noted, this means that when commissioning managers set strict targets on quality issues which affect older people's human rights, providers understood the reasons and did not see the targets as burdensome.

The Commission's Inquiry found other reasons why it was beneficial to incorporate dialogue with providers into local needs assessments. One local authority described how, in a bid to develop local services, it had talked to providers about how the local care market was not meeting the needs of ethnic minority older people by providing culturally sensitive services. That authority reported the uptake of direct payments from ethnic minority communities increased as a direct result of this engagement with providers.

## **Documents used for commissioning home care**

Local authorities have considerable scope to ensure promotion and protection of human rights through the various documents used when commissioning home care such as service specifications, invitations to tender (ITTs), pre-qualification questionnaires (PQQs) and contracts. Deciding exactly how to do this in ways that are effective and proportionate will best be determined by authorities themselves.

Being upfront about your HRA obligations and priorities in service specifications and related documents will send a powerful message to potential contractors and will build on related statements that may have been incorporated into area needs assessments. We would also recommend using the Commission's human rights and home care framework (see page 13) as part of – or as an appendix to – tender documents to build a shared understanding of how human rights are relevant (service specifications and contracts) and as an assessment tool (PQQs, ITTs and contract monitoring documents).

## Service specifications

At the start of the services specification documentation, we recommend incorporating an opening statement about the relevance of human rights to home care to set the right standard. This is an **example**:

Meeting Human Rights Act obligations is a priority for Borssetshire Council. This service specification/PQQ/ITT/contract has been designed to help promote and protect the human rights of home care users. For example, people who need home care often have to accept others into their homes to assist them with very intimate tasks so it is of paramount importance that contracted providers deliver home care in ways that protect service users' rights to respect for dignity, privacy and autonomy. Providers will also fully appreciate the need to guarantee freedom from abuse and neglect.

Service specifications will typically refer to the relevant care standards contained in health and social care legislation, but should also specify outcomes which are focused on the protection of service users' human rights and are recognised as a core requirement of the service. Home care service specifications which focus only on the tasks to be delivered (such as bathing, toileting or food preparation) are unlikely to result in services which achieve high quality outcomes for service users, however well those individual tasks are delivered. It is unlikely that 'time and task' based specifications will give the service provider sufficient flexibility to respond to immediate or changing needs, or provide any incentive to do so.

**Example:** An example of a primary human rights outcome for a service specification could be:

### Primary outcome

Service users are able to live in their own homes confident that their human rights will be protected. They are safe from inhuman or degrading treatment, their autonomy and independence is maintained as far as possible, and their dignity and privacy is respected (Articles 3 and 8 of the European Convention on Human Rights, protected by the HRA).

Most local authorities already specify their expectations concerning service users' rights, but typically do so in language which does not explicitly use a human rights framework or make reference to the authority's legal obligations under the Human Rights Act. Identifying the human rights most relevant to the provision of home care can help the local authority be more rigorous in developing the service specification and can assist the provider in understanding what is expected of them.

**Example:** Good practice terms to include in service specifications to embed the right to respect for privacy.

To support their right to respect for private life protected by the HRA (Article 8 of the European Convention on Human Rights), all service users should be supported by providers to have the same opportunities as others in relation to their own sexuality and personal relationships. This will include giving service users space and time to be alone with partners and friends when they choose.

and/or

To support service users' right to respect for private and family life, dignity and autonomy protected by the HRA (Article 8 of the European Convention on Human Rights), service providers will ensure that the privacy of service users is respected at all times, in particular, during bathing, toileting and dressing. Service providers will make all reasonable efforts to respect service users' preferences as to the gender of their care workers.

and/or

To promote and protect home care users' right to respect for private and family life, dignity and autonomy under the HRA (Article 8 of the European Convention on Human Rights), services must be provided in a manner that takes full account of the personality, interests, taste, lifestyle, culture, physical and mental capacity and health of each service user. Within the overall constraints of the support setting, and the requirements of a service user's care plan, each service user's emotional, cultural, political and sexual needs will be acknowledged and respected.

## Pre-Qualification Questionnaires and Invitations to Tender

Mainstreaming a robust human rights based approach to commissioning home care will also mean tailoring your PQQ and ITT documents to include explicit human rights assessment targets. As previously recommended, the Commission's human rights and home care framework can act as a golden thread through commissioning documents. In a PQQ you could use the following question to elicit a detailed response about how providers support human rights in practice.

**Example:** Using the Commission's home care and human rights framework as a guide to the relevance of human rights to home care services, explain how your organisation ensures it promotes and protects human rights when delivering home care to individuals.

In this instance, the Commission's framework could double up as the criteria to evaluate provider responses to this question.

Simple yes/no answers in PQQs are also useful as baseline measurements. So, the following questions could be used – potentially as pass/fail indicators:

Has anyone in your organisation attended training on human rights? (Yes/No – if yes give details)

Do your care workers receive specific advice or training about human rights and home care? (Yes/No – if yes give details)

Taking a similar approach when drafting ITTs will build on other steps to incorporate a human rights based approach and act as a guide to procurement staff. Local authorities should consider including ITT criteria that measure provider understanding of how human rights relate to home care and their commitment to protecting the human rights of service users.

**Example:** What policies, procedures and training would you put in place to ensure the human rights of service users are at the forefront of your delivery of home care services?

## Contracts

At a minimum we would recommend local authorities place service providers under a contractual obligation to promote and protect the human rights of service users. This should include specific reference to a zero tolerance of abuse (reflecting the fact that Article 3 ECHR gives absolute protection from inhuman and degrading treatment). It should also prohibit providers from restricting service users' right to respect to private and family life (under Article 8) except when this is lawful, proportionate and necessary.

Some service specifications include a requirement for the provider to act 'as though they were a public body under the HRA'. This is a welcome approach, and could allow the local authority to seek redress from the provider for any breach of human rights obligations. However, these clauses alone would not provide any

direct right of redress for service users against care providers who breach their human rights. This would require an express contract term giving the service user 'third party' rights to sue the care provider for any breach of the contract between the authority and the care provider.

Contract clauses can also be used to assist you in promoting a human rights culture amongst the provider market and care workers.

**Example:** 'Staff employed by the provider are required to use all the care, skill and diligence to be expected of a suitable, skilled and experienced supplier, respecting at all times the human rights of service users whilst providing services of the type to be performed under contract.'

The traditional delivery of home care services through short visits spread out over the course of the day can put at risk rights under Article 8 which protects dignity, privacy and autonomy. Lack of choice and control over daily routines can be a significant factor in increasing a service user's dissatisfaction with home care services, as well as potentially breaching their human rights. Care should be taken to specify that providers must promote service users' choice and control over their daily routine such as the times they wish to eat, go to bed and get up. This is an example of a contract term requiring respect for service users' personal autonomy and choice:



**Example:** General contract term to respect autonomy.

Service providers will respect the preferences of service users regarding their daily routines (for example, when to get up and go to bed, where, when and what type of meals are served, and how tasks are undertaken) and will ensure that all staff are aware of, and respect, these choices.

## Budgets for home care commissioning

The Commission's home care Inquiry evidence revealed a link between some commissioning practices (for example reverse e-auctions)<sup>14</sup> and threats to the human rights of older people. It also found that the high turnover, low status and pay of many care workers are likely to exacerbate these threats. In some instances, when travelling time was accounted for, care workers were receiving less than the minimum hourly wage. This was a particularly serious concern in rural areas where distances between care jobs are longer. Some provider organisations told us that they would not be able to provide services to an acceptable or safe standard at the low rates paid by some local authorities.

We understand the increasingly severe financial pressures local authorities are facing along with competing demands on their budgets. However, local authorities should be aware that there will be a tipping point for home care contract

budgets which, when crossed, will potentially jeopardise the human rights of home care users. In addition, if care contract budgets are set too low providers may struggle to pay care workers the minimum wage. Some local authorities have taken steps to do what they can to ensure care workers get paid a locally competitive salary.

One local authority has introduced a framework agreement for domiciliary care which includes a local hourly 'fair rate' calculated so that providers can compete within the local employment market. In exchange, 'fair rate' providers are required to evidence implementation of fair employment staff terms including remuneration at 'well above the National Minimum Wage'. At the same time, the council has implemented a separate payment for travel time. This framework approach has resulted in reports of lower rates of staff turnovers and fewer late care visits.

We would encourage other authorities to design similar systems of doing what they can to ensure better conditions for care workers.

EU procurement rules, which apply to all public sector contracts, do not prevent human rights obligations being meaningfully incorporated into procurement processes. The EU procurement framework is generally more concerned with **how** public bodies

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<sup>14</sup> Reverse e-auctions are where providers place online bids for contracts in real time, competing to offer the lowest price that meets all of the service specifications.

procure, rather than **what** they procure – provided value for money is delivered and the processes do not displace competition. Where compliance with human rights has been explicitly identified as a core requirement in the service specification, it follows that this should be incorporated into the contract as monitoring measurements.

### Key tips when developing commissioning documents

- Involve and engage service users, local authority commissioning and procurement staff and home care providers in developing service specifications and contracts.
- Specify outputs rather than inputs, as this imposes a less limiting framework for tenderers and is more likely to promote innovation.
- Link human rights based service outcomes to relevant ECHR rights protected by the HRA, referencing the sources of these rights.
- Be explicit in documentation about human rights being a key priority for your authority.
- Avoid superficial or marginalised references to the HRA in service specifications and contracts (for example, in an appendix or mentioned in a general list of legislation) as this will send a message that respect for human rights is secondary or an optional extra.

### Managing contracts

Through the contract management process, local authorities can actively manage and monitor how well in practice the home care they have commissioned is protecting human rights, and take action if any risks to human rights become apparent. This is an important element of their positive obligations to promote and protect human rights. The Commission's Inquiry revealed that some local authorities monitor dignity and respect measurements when managing contracts, often as a result of the Department of Health's Dignity in Care agenda. However, few do so in a way that specifically links dignity and respect to relevant ECHR rights protected by the HRA. This misses another important opportunity to underpin home care commissioning with a human rights based approach.

If home care service specifications, PQQs, ITTs and contracts have been framed around a human rights approach, including human rights outcomes and measures, you will have a good platform from which to procure services that protect service users' human rights. For example, your contract might require providers to promote and protect service users' human rights or to act as though it is a 'public authority' in relation to human rights obligations (see page 24). When reviewing home care providers' records of service user complaints as part of contract monitoring, complaints should be assessed through a human rights lens. The Commission's human rights and home care framework (see page 13) could be used for this purpose.

## Safeguarding teams

The ‘No Secrets’ guidance on developing and implementing multi-agency policies and procedures to protect vulnerable adults from abuse<sup>15</sup> is founded on respect for human rights. And, when Safeguarding Boards are given a statutory basis, local authorities will be under a legal duty to run them and ensure proper investigations of safeguarding complaints are undertaken. All adult safeguarding referrals and investigations will have a direct connection to local authorities’ positive obligations to promote and protect human rights because they relate to incidents involving vulnerable adults exposed to significant harm or exploitation. There may be valuable information in safeguarding teams about home care which could inform your contract management. In serious cases where providers were at fault, this may result in contracts being terminated.

## Service user care reviews

Local authorities should conduct annual reviews of the care needs of people receiving local authority commissioned home care (through managed budgets or otherwise) or direct payments. These reviews can be another source of valuable information to measure provider performance on human rights. Service users should be encouraged to give candid feedback about whether their care package meets their needs without fear of retribution for any negative comments. Review questions can be structured around the Commission’s human rights and home care framework (see page 13) to elicit replies that inform the reviewer

about dignity and security, autonomy and choice, privacy and social and civic participation. So, for example, reviews could include questions like:

- Do you get enough home care to do the things you want and need to do each day, and to do these things safely?
- Are there personal care tasks you get help with which you can and would prefer to do on your own?
- If you need help to go out to social or other events, do you get this if you want?

We know that some local authorities are using reviews in this way. One has told us that all reviews now include an opportunity for people to give direct face to face comments on the services they receive and their feedback is given to the quality monitoring team and informs provider risk assessments.

There will be other positive ways of involving home care service users more directly in contract monitoring to enhance a human rights based approach to commissioning. For example, you could consider using advocates to carry out face to face interviews with service users and their families to get feedback about providers. You could also ask citizen advocates to contribute to human rights training for providers. You will be in a position to know what works best for your authority and, if you’re not sure, consult local organisations and networks who can help develop practical and inexpensive ways of involving service users and their families in contract management.

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<sup>15</sup> ‘No secrets – guidance on developing multi-agency policies and procedures to protect vulnerable adults from abuse’, DH, 2000.

## Working with contracted providers

By clearly stating their commitment to human rights in strategic and commissioning documents, publicly championing human rights at leadership level and consulting providers when assessing area needs, local authorities will give themselves a head start in avoiding the need for remedial action against providers. By the time providers are contracted to deliver home care services, they are likely to share the authority's understanding of, and commitment to, human rights, reducing the likelihood of remedial action. In addition, if contract monitoring exposes human rights concerns, the groundwork laid through embedding a human rights culture within contractual requirements will help avoid the need for remedial action. Cases involving serious breaches of human rights are likely to have been dealt with through your safeguarding procedures; this may result in contracts being terminated immediately or providers being excluded from bidding for contracts for defined periods.

There are other mandatory and voluntary requirements on care providers, potentially bolstering local authority efforts to mainstream human rights into commissioning home care. For example, all care providers must be licensed by the CQC and meet its essential standards of quality and safety. These standards are based on CQC regulations and outcomes. Of particular relevance to human rights is 'Outcome 1' which provides that service users should be involved in decisions about care and treated with respect for

their privacy, dignity and independence. So when monitoring contracts, local authorities' use of CQC inspection reports should include specific attention to the assessment against Outcome 1.

From April 2013 the National Institute for Health and Clinical Excellence (NICE) assumed a new responsibility to develop quality standards and other guidance for social care in England. NICE quality standards, which are not mandatory, are designed to drive priority quality improvements. The Commission will work with NICE to support the consideration of equality and human rights principles in the development of NICE guidance and quality standards for domiciliary care.

## Key tips when monitoring contracts

- Prepare the ground by mainstreaming human rights into earlier stages of commissioning, to get provider buy-in and make it more straightforward to monitor contracts on human rights issues.
- Involve service users and citizen advocates to provide feedback on services or contribute to training of providers on human rights.
- Use information from care reviews, safeguarding referrals, complaints teams and CQC.
- Use the Commission's human rights and home care framework to inform and structure the monitoring of contracts.





# Chapter 5:

## More information about human rights and home care

The following publications may be useful if you want more information about human rights and home care:

‘Close to Home: an inquiry into older people and human rights in home care’, Equality and Human Rights Commission, 2011. Available at: [http://www.equalityhumanrights.com/uploaded\\_files/homecareFI/home\\_care\\_report.pdf](http://www.equalityhumanrights.com/uploaded_files/homecareFI/home_care_report.pdf)

‘Your home care and human rights’, Equality and Human Rights Commission, 2012. Available at: [http://www.equalityhumanrights.com/uploaded\\_files/your\\_rights\\_to\\_home\\_care\\_web\\_low\\_res.pdf](http://www.equalityhumanrights.com/uploaded_files/your_rights_to_home_care_web_low_res.pdf)

‘Care at home’, Age UK. Available at: [http://www.ageuk.org.uk/Documents/EN-GB/Information-guides/AgeUKIG23\\_Care\\_at\\_home\\_guide\\_inf.pdf?dtrk=true](http://www.ageuk.org.uk/Documents/EN-GB/Information-guides/AgeUKIG23_Care_at_home_guide_inf.pdf?dtrk=true)

‘Making personal budgets work for older people’, Age UK. Available at: <http://www.ageuk.org.uk/professional-resources-home/services-and-practice/care-and-support/personalisation-hub/making-personal-budgets-work-for-older-people/>

‘Personalisation in practice - lessons from experience’, Age UK. Available at: [http://www.ageuk.org.uk/Documents/EN-GB/For-professionals/Care/Personalisation\\_in\\_practice-lessons\\_from\\_experience.pdf?dtrk=true](http://www.ageuk.org.uk/Documents/EN-GB/For-professionals/Care/Personalisation_in_practice-lessons_from_experience.pdf?dtrk=true)

# Appendix:

## Home care and the Articles of the European Convention on Human Rights

Convention Article	What this means for local authorities in practice	How the Article might be relevant to older people using home care services
<p><b>Article 2: right to life</b> (this is an <b>absolute</b> right)</p>	<p>Local authorities must take positive steps to safeguard the lives of adults at risk and people in their care.</p>	<p>If an older person who is highly dependent on home care services were to die as a result of care visits being stopped without warning, this could amount to a breach of the right to life.</p>
	<p>Local authorities must follow laws and procedures which help to protect the lives of people at risk.</p>	<p>There should be an effective policy for safeguarding adults at risk – including older people using home care services – backed by strong leadership of the local Adult Safeguarding Board working in compliance with national guidance.</p>
	<p>There should be an effective investigation into the death of an adult at risk where abuse or neglect is suspected to be a factor.</p>	<p>In the first example above, the local Adult Safeguarding Board should consider whether a serious case review should be carried out to learn lessons from the circumstances of the death and consider whether practices could be improved.</p>



Convention Article	What this means for local authorities in practice	How the Article might be relevant to older people using home care services
<p><b>Article 3: freedom from torture and inhuman and degrading treatment</b> (this is an <b>absolute</b> right)</p>	<p>Local authorities, and organisations delivering services on their behalf, must not subject anyone to inhuman or degrading treatment.</p>	<p>If a worker from an agency commissioned to provide home care were to seriously and systematically abuse a frail older person – for example, by withholding food as a punishment – this would amount to inhuman and degrading treatment.</p>
	<p>Local authorities have a positive obligation to take action to protect individuals at risk of serious ill-treatment, and to carry out an investigation if there are credible allegations of ill-treatment taking place.</p>	<p>If the local authority had been made aware of the problem in the example above and failed to take any action, it would be in breach of its positive obligations to prevent inhuman and degrading treatment.</p>
<p><b>Article 5: right to liberty and security</b> (this is a <b>limited</b> right)</p>	<p>Everyone has a right to liberty and local authorities should not take away anyone’s liberty except in one of the circumstances specified by Article 5, for example on mental health grounds. Detaining someone is only lawful if correct procedures are followed. A detained person should be able to challenge the lawfulness of their detention.</p>	<p>If care workers were to keep an older person with dementia locked inside their own home to prevent them wandering, without going through formal procedures or giving them the opportunity of challenging this decision, it could breach the person’s right to liberty – even if the care workers had acted with good intentions.</p>
<p><b>Article 8(1): right to respect for private and family life, home and correspondence</b> (this right is <b>qualified</b> by Article 8(2))</p>	<p>In commissioning home care services, local authorities should promote and protect the right to respect for private and family life, home and correspondence. This includes respect for a person’s private life, dignity and personal autonomy (including decisions relating to a person’s own health and welfare).</p>	<p>If home care services are commissioned in a way that denies service users a choice in the timetable of their day, or undermines their dignity by allocating insufficient time for their home care visits, this may be a breach of the right to respect for private and family life.</p>

Convention Article	What this means for local authorities in practice	How the Article might be relevant to older people using home care services
<p><b>Article 8(1): continued</b></p>	<p>‘Private life’ includes personal privacy, and confidentiality of correspondence and other personal information.</p>	<p>An older person using home care services could expect their personal modesty to be respected, as far as possible, when they are being dressed or bathed. They could also expect home care workers to respect the confidentiality of their personal documents stored at home.</p>
	<p>In addition, ‘private life’ includes respect for social relationships, including sexual relationships, and links with the community.</p>	<p>An older person with a mobility impairment might be entitled to support from home care services in maintaining social contacts outside of the home and links with their local community.</p>
	<p>‘Family life’ covers a wide range of family relationships, including with husband, wife or partner, children, grandchildren and siblings.</p>	<p>An older woman facing declining health may want to continue living at home with her husband, rather than moving alone into residential care. If possible, home care services should be available to support this choice.</p>
	<p>‘The right to respect for one’s home’ includes the right of occupation and the peaceful enjoyment of residence there.</p>	<p>Instead of having to move into sheltered housing or residential care, an older wheelchair user may need adaptations to their home to enable them to continue living there, supporting the right to respect for their home.</p>

Convention Article	What this means for local authorities in practice	How the Article might be relevant to older people using home care services
<p><b>Article 8(2): the state can restrict Article 8(1) rights if this has a basis in law, and is justified as a proportionate response to one of the prescribed legitimate aims</b></p>	<p>A local authority may limit someone’s rights under Article 8, provided this restriction is for one of the listed reasons:</p> <ul style="list-style-type: none"> <li>■ national security</li> <li>■ public safety</li> <li>■ the country’s economic wellbeing</li> <li>■ prevention of disorder/crime</li> <li>■ protecting health or morals</li> <li>■ protecting the rights and freedoms of others.</li> </ul> <p>Any restriction must be proportionate to the aim it is designed to meet, and must be set out in legal rules that are accessible and reasonably clear.</p>	<p>A local authority may decide that an older person with advancing dementia is not able to continue living safely at home, and that moving them into residential care is in their best interests. Although this is a restriction on the right to respect for their home, the restriction could be justified as a proportionate response to the need to protect their health and safety.</p> <p>A local authority might operate an inflexible policy requiring care staff to use hoist equipment to lift clients on health and safety grounds. This could restrict service users’ right to respect for private life by limiting their ability to move about their home or to pursue activities outside it. The local authority should conduct a balancing exercise, and consider whether manual lifting, even though it carries a real risk of injury to the care worker, is sometimes necessary to provide appropriate care which respects the dignity of service users.</p>

Convention Article	What this means for local authorities in practice	How the Article might be relevant to older people using home care services
<p><b>Article 9(1): freedom of thought, conscience and religion</b></p> <p>(Every person has an <b>absolute</b> right to hold religious or other beliefs, but freedom to manifest one’s religion or belief is <b>qualified</b> by Article 9(2))</p>	<p>Local authorities should not do anything that undermines the general right to freedom of religious or non-religious belief.</p>	<p>If a local authority were to consider adopting a policy that, for example, made access to home care services conditional on being a practising Christian, this would be in breach of the right to freedom of thought, conscience and religion.</p>
<p><b>Article 9(2): the state can restrict Article 9(1) rights if this has a basis in law, and is justified as a proportionate response to one of the prescribed legitimate aims</b></p>	<p>Article 9(2) limits the aims that can be legitimately used to restrict the right to manifest one’s religion or belief under Article 9(1).</p> <p>These aims are:</p> <ul style="list-style-type: none"> <li>■ public safety</li> <li>■ protection of public order</li> <li>■ protecting health or morals</li> <li>■ protecting the rights and freedoms of others.</li> </ul> <p>The restriction must be proportionate to the aim it is designed to meet, and must be set out in legal rules that are accessible and reasonably clear.</p>	<p>A housebound older Muslim man might ask for help attending the mosque on Fridays. In deciding whether to make special arrangements for him, the local authority should consider whether it is proportionate to restrict his right to manifest his religion for one of the listed reasons – for example, the need to ration limited resources to protect the rights of others.</p> <p>A Buddhist care worker who insisted on chanting in the homes of all her clients would not be able to rely on her right to manifest her religion, because in doing so she would be interfering with her clients’ right to peaceful enjoyment of their homes.</p>

Convention Article	What this means for local authorities in practice	How the Article might be relevant to older people using home care services
<p><b>Article 14: enjoyment of other Convention rights without discrimination on any ground</b> (This is not a free-standing right – it can only be used in conjunction with another Convention right)</p>	<p>Local authorities should make sure that people using the services they commission can enjoy Convention rights without discrimination of any kind. However, <b>indirect discrimination</b> and <b>positive action</b> may be lawful if they can be objectively and reasonably justified, ie, where the treatment is for a legitimate aim and the means used to achieve that aim are proportionate and necessary.</p>	<p>For example, an older man from the Chinese community relies on a home care service provided by a local Chinese community group. Compared to generic home care services, this service receives inadequate local authority funding. As a result, the time allocated is less than for other people and the man feels anxious about his ability to carry on living independently at home. This could amount to a discriminatory enjoyment of his rights under Article 14 combined with Article 8 (the right to respect for private life and home).</p>
<p><b>Article 1 Protocol 1: the right to peaceful enjoyment of possessions</b> (this is a <b>qualified</b> right)</p>	<p>When commissioning services, local authorities should ensure that service users have peaceful enjoyment of their possessions. The term ‘possessions’ has been interpreted widely to include financial assets and the property rights of home owners and tenants. No-one should be deprived of their possessions unless this is lawful, proportionate and in the public interest.</p>	<p>If an older woman’s care worker pilfered items of jewellery or money from her purse, this would be a breach of her right to peaceful enjoyment of possessions (as well as being a criminal offence). If a care worker put up posters on the kitchen wall in spite of the client’s request not to do so, this would also be a breach of the client’s right to peaceful enjoyment of possessions.</p>

# Contacts

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