research
in practice
for adults

Leaders'
Briefing

Embedding human rights in adult social care

Dartington

www.ripfa.org.uk

Introduction

All too often, tragic failures of care hit the headlines, from the Mid-Staffordshire scandal to Winterbourne View, raising issues around the right to life and the right not to be treated in inhuman and degrading ways.

The challenge now is to eliminate poor practice and ensure healthcare services are designed and delivered with the person and their rights at the core.
Stephen Bowen (2013)

The British Institute for Human Rights (BIHR) describes how the *Human Rights Act 1998* (HRA) sets down the rights everyone in the UK has, be they British citizen or visitor, and how it places a duty on those with power (which includes police, the NHS, local authorities and councils) to ensure our human rights are respected, protected and fulfilled.

BIHR provide a useful summary of human rights for members of the public in a two minute video which concludes that "Ultimately, human rights are about power and people."
www.bihr.org.uk/my-human-rights

People accessing health and social care services also have the right to be treated with dignity and respect and the right to confidentiality according to the professional standards set out by the Health and Care Professionals Council (HCPC, 2016), the regulating body for sixteen such professions, and the British Association of Social Workers' code of ethics (BASW, 2012).

Background

Over the centuries, since 'habeas corpus'[1] in 1215, the values and principles of human rights have evolved in the UK and are seen by many as one of the foundations of British history and culture. Fundamental inequalities in the domestic legal system have been, and continue to be, challenged as part of the UK democratic process.

Following the Second World War, the United Nations drafted the *Universal Declaration of Human Rights 1948*, which remains today as a common standard for all people and all nations. Winston Churchill proposed European unification and, subsequently, the Council of Europe[2] (not to be confused with the European Union) was set up, drafting the *European Convention on Human Rights 1951* and establishing the European Court of Human Rights in Strasbourg[3]. Any person who believes his or her rights have been violated by a member state can currently take a case to this court.

Until the *Human Rights Act 1998* (HRA)there was no UK domestic law that gave effect to the Convention rights, and people living in the UK had to go to the European Court of Human Rights (EHRC) to seek redress for violations of their rights (EHRC, 2012).

It is important to recognise that leaving the EU in 2019 does not automatically mean the UK will withdraw from the European Convention. Despite the possibility of future reforms, public authorities will remain accountable to human rights legislation in the longer term.

The Conservative manifesto promise (General Election, June 2017) was to keep Britain in the European Convention on Human Rights until 2022. Discussions regarding a 'British Bill of Rights' to date have featured many of the rights enshrined in the HRA. Invoking Article 50 to exit the EU and the recent terrorist attacks have heightened calls from some quarters for Britain to leave the Convention - however some Conservative MPs argue that the judgements of the European Court of Human Rights have strengthened human rights in Britain, and wish to ensure the UK remains signatory to the European Convention of Human Rights. Any future reform is likely to face substantial opposition.

1 'Habeas corpus' - the right to release from unlawful detention or imprisonment which, along with 'trial by jury', was introduced by the Magna Carta in 1215.

2 Today the Council of Europe consists of 47 countries, and the European Convention protects the human rights of about 800 million people.

3 This is different to the European Court of Justice in Luxembourg (see Fiona Kendall, 2015, for clarification).

Current UK human rights legislation

The *Human Rights Act 1998* has been described as 'bringing rights home' by explicitly incorporating Convention rights into UK constitutional structures for the first time (House of Commons, 1998). Section 6 places a duty on all public authorities and private bodies carrying out public functions to act in a way which is compatible with the Convention rights. It is therefore essential that strategic leaders, directors, councillors and managers are able to apply legal literacy on the HRA in the development and delivery of effective social care services. It is incumbent on leaders in health and social care services to understand the obligations of public authorities under this legislation.

A human rights approach in adult social care works with the entitlements we all have and that we share as members of society, ensuring these are protected for all. The HRA sits alongside other core legislation, yet it is unique in that it focuses on ***humanity***, the basic freedoms and protections that every person has simply because they are human, as opposed to focusing on behaviour, needs or identity.

Five practical benefits from adopting a human rights approach:

- More person-centred.
- Reduced risk of complaints and litigation in the longer term.
- Improved decision-making.
- More meaningful engagement.
- Broader range of marginalised groups involved and considered. (BIHR, 2013)

This Leaders' Briefing outlines key factors which can help organisations to embed human rights in the planning and delivery of social care services. It aims to provide service leaders from a range of public authorities and provider organisations, as well as representatives from service user and carer communities, with a summary of evidence to support the implementation of a rights-based approach, illustrated by practice examples. It also offers a series of questions to help service leaders to consider human rights in the way they lead their social care system. It works on the premise that human rights are universal, inherent and inalienable (cannot be forfeited) (UNFPA, 2005).

The *Human Rights Act* includes the right to:

- **Life** (Article 2).
- **Freedom from torture and inhuman or degrading treatment** (Article 3).
- **Freedom from slavery and forced labour** (Article 4).
- **Liberty and security** (Article 5).
- **A fair trial** (Article 6).
- **Not be punished for something that is not against the law** (Article 7).
- **Respect for private and family life, home and correspondence** (Article 8).
- **Freedom of thought, conscience and religion** (Article 9).
- **Freedom of expression** (Article 10).
- **Freedom of assembly and association** (Article 11).
- **Marry and found a family** (Article 12).
- **Peaceful enjoyment of possessions** (Article 1, Protocol 1).
- **Education** (Article 2, Protocol 1).
- **Free elections** (Article 3, Protocol 1).

It also includes:

- **The prohibition of discrimination** (Article 14)[4] - the enjoyment of all rights and freedoms as set out in the Convention are secured regardless of sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
- **The abolition of the death penalty** (Article 1, Protocol 13).

4 Article 14 is ***not*** an independent right but operates to prevent discrimination in the context of other Convention rights. It can only be invoked if another Article has breached the prohibition of discrimination. This is often misunderstood.

Can your rights be restricted under the *Human Rights Act*?

There are two types of rights - **Absolute** and **Restricted**.

Absolute rights can never be restricted (this includes Articles 3, 4 and 7).

Restricted rights are those which may have to be restricted, usually to protect the rights of others.

Human rights can only be restricted if this is lawful ***and*** for a legitimate aim ***and*** proportionate.

Restricted rights may be either **Limited** or **Qualified**:

Limited rights, such as the right to liberty (Article 5) may be restricted only in explicit and finite circumstances, for example when someone commits a crime. Another example might be the right to life (Article 2) being limited by the right of the state to use force, no more than absolutely necessary, to protect people from unlawful violence.

Qualified rights are those requiring a balance between the rights of the individual and the needs of another, or of the wider community, for example, when your right to free speech may have to be restricted to protect someone else's right to privacy (this includes Articles 8, 9, 10 and 11).

If in doubt seek legal advice.

When can a public authority interfere with a qualified right?

A public authority can only interfere with a qualified right if it is allowed under the law. It must show that it has a specific reason for interfering with your rights, called a **legitimate aim**, including:

- protection of other people's rights
- national security
- public safety
- prevention of crime
- protection of health.

The interference must be no more than is absolutely necessary to achieve one of the aims of the Act.

The right to **hold** particular beliefs cannot be restricted but the right to **manifest** these beliefs may be restricted (Article 9).

(Source, Citizens Advice: **www.citizensadvice.org.uk/law-and-courts/civil-rights/human-rights/when-can-a-public-authority-interfere-with-your-human-rights.)**

How does the *Human Rights Act 1998* support the effective delivery of services under the *Care Act 2014* and the *Mental Capacity Act 2005*?

> *The Human Rights Act is designed as a framework to help negotiate better outcomes at a practice level, outside of courts.* **(BIHR, 2016)**

Human rights are a common parlance which practitioners can use in everyday conversations and negotiations with service users, their families and advocates. The 'wellbeing principles' of the *Care Act* (s.1.2) link to the commonly agreed 'FREDA' principles[5] of international human rights. Article 10 - the right to freedom of expression - underpins the 'Making Safeguarding Personal' guidance (Lawson et al, 2014) whereby adults at risk of harm must be at the centre of safeguarding adults enquiries and involved in a way that enhances the person's choice and control within the process (Pike, 2016). A person's right to take risks is further discussed in Faulkner (2012).

Practice example: Mersey Care Learning Disability Service

The Mersey Care Learning Disability Service developed a *Keeping Me Safe and Well* manual co-produced with, and for, people with learning disability. They used a human rights approach to risk assessment focused on rights maximisation.

The tool uses stories and pictures to identify risks and any restrictions on a person's rights as a result of these risks. In this way the human rights which may be engaged by any risk or difficulty are made explicit in a user-friendly and accessible way. A simple traffic-light system is used to ensure that any risks are discussed with service users along with any restrictions on their rights, ensuring any such restrictions are lawful, legitimate and proportional.

The manual was produced following involvement in the Department of Health's 'Human Rights in Healthcare' project (Department of Health, 2008) supported by BIHR who report that Mersey Care staff now often refer to 'rights maximisation' rather than 'risk assessment'.

www.humanrightsinhealthcare.nhs.uk/Library/a-z/learning_disability_keeping_me_safe_and_well.pdf

5 Fairness, Respect, Equality, Dignity and Autonomy (choice and control) (CQC, 2014)

In addition, the HRA can be used as a practical tool by which public authorities can identify the impact of best interests decisions, support plans, policy or action on particular human rights. The Act supports the delivery of quality care by underpinning practice with defensible decisions in accordance with Deprivation of Liberty Safeguards (DoLS) informed by case law, such as that in respect of Steven Neary, a young man with autism **(see Hillingdon v Neary case precedent on page 13).**

A Supreme Court ruling in the 'Cheshire West' case (*Mental Capacity Act 2005* DoLS judgement, 2014[6]) clarified that people who lack capacity to consent to arrangements for their care and treatment have the same rights to liberty as anyone else. Cornwall County Council offer 'tripartite' training that links the *Human Rights Act*, DoLS under the *Mental Capacity Act* and safeguarding under the *Care Act 2014*.

The increased vulnerability of people with care and support needs to abuse is recognised in *Care Act* guidance, which now makes specific reference to protecting people from coercion and control and modern slavery (Department of Health, 2016). Absolute rights under Articles 3 and 4 of the HRA underpin safeguarding interventions in these situations, supported by two important new pieces of legislation:

- The *Modern Slavery Act 2015*, which tackles slavery in the UK[7] and consolidates previous offences relating to trafficking and slavery - including sexual exploitation, domestic servitude and compulsory labour (see Haughey's review, 2016).
- The *Serious Crime Act 2015* (s.76), which creates the new offence of coercion and control in intimate or familial relationships (see **www.coercivecontrol.ripfa.org.uk**).

6 See this short video from the Social Care Institute for Excellence (SCIE) (2015) for an explanation of the Cheshire West judgement - **www.scie.org.uk/publications/mca/video-player.asp?v=dols-in-light-of-the-supreme-court-judgement**

7 In the three months from April to June 2016, 1002 people in the UK (including adults and minors) were referred as suspected victims of modern slavery or human trafficking, a 12 per cent increase on the previous quarter (National Crime Agency via the National Referral Mechanism & Duty to Notify, Home Office 2016). 45.8 million people were estimated to be in some form of modern slavery in 167 countries worldwide in 2016, meaning more people are in slavery today than at any point in history - see: **www.globalslaveryindex.org/findings**.

Practice example: Manor Gardens Health Advocacy Project

Eleanor Tomlinson, project manager at the Manor Gardens Health Advocacy Project, describes how training on human rights and violence against women has been useful to their work in tackling Female Genital Mutilation (now a crime under the *Serious Crime Act* s.76) by exploring how to relate human rights to women's own experiences of the issues they face.

She refers to how the Human Rights in Healthcare Project "helped us to think about how to make human rights meaningful for our clients and our volunteers" when working with a particularly marginalised and disempowered group of women who have experienced sexual and domestic violence.
(BIHR, 2013)

www.manorgardenscentre.org/our-services/health-advocacy

As part of a rights-based approach strategic leaders have a key role to play in supporting all adult social care staff to develop their knowledge and skills in putting this new legislation into practice, and in ensuring that those particularly vulnerable to exploitation are themselves aware of their human rights as a means of prevention as well as intervention. The HRA gives all people, be they UK citizen, visitor or victim of trafficking into or within the UK, absolute rights protected by centuries old British values and present day legislation.

How does the *Human Rights Act 1998* support the effective delivery of services under the *Equality Act 2010*?

> *Talents are everywhere but opportunity is not.*
> **(Sarah Churchman, 2017)**

The *Equality Act 2010* (s.149) requires public authorities to have due regard for the need to eliminate discrimination, advance equality of opportunity and foster good relations between those who share a relevant protected characteristic and those who do not share it. It gives **legal protection from discrimination based on nine specific characteristics:**

Age **Sex** **Pregnancy and maternity** **Race**
Disability **Religion or belief** **Marital status**
Sexual orientation **Gender reassignment**

People with one of these 'protected characteristics' may be described as belonging to a particular 'equality group'. However, it is important not to assume that all members of an equality group have the same needs - there will be a wide diversity of people within any 'equality group' (brap[8], 2010). Differences such as gender, ethnicity, class and age shape people's experiences of inequality, raising the complexities of addressing an intersection of several factors for people with care and support needs, and the experience of multiple oppression for many members of specific equality groups (Crenshaw, 2012) - for example older LGBT people with dementia (National Care Forum, 2016).

8 brap is a partnership that promotes evidence-based thinking on equalities issues. It used to be known as Birmingham Race Action Partnership - **www.brap.org.uk**.

Practice example: Sue

Sue, diagnosed with Alzheimer's, needed 24 hour care and eventually moved into a care home. She had no contact with family as they had rejected her when she transitioned from male to female earlier in her life. The care home managers became worried as she began on occasions to refer to herself as "Cliff" and she was distressed by her appearance at these times. The social worker contacted Gay Advice Darlington/Durham who formed a partnership with Sue's GP, social services and the care home. Care staff at the home also received training on trans identities, including the impact of stigma and misgendering, - especially during periods of regression.

This approach enabled more appropriate, empathic care and a significant improvement in her wellbeing and quality of life was noticed (The National LGB&T Partnership, 2016). The *Adult Social Care Outcomes Framework LGB&T Companion Document* makes a series of recommendations to better promote LGBT rights and improve services.

In tackling such complexities brap (2010) describe the benefits of an approach to equality that draws on human rights and the basic entitlements *we all have*, that we share as members of society. Human rights provide the benchmark or minimum standard against which provision of services to a range of people can be judged. In this way the focus moves from 'a plethora of different approaches' to enabling *all to have equal benefit* by creating *benchmarks of quality* (brap, 2010) with measurable outcomes.

Case precedent: Burnip v Birmingham City Council 2012

In this case, UK housing benefit rules were found to infringe Article 14 as the rules did not allow for the fact that in some cases a person's disability would mean they require an extra bedroom; for example, for a carer.

The Court of Appeal accepted that the housing benefit rules failed to reflect the different needs of disabled people and decided that this was not justified. The court held that the case involved a positive obligation to allocate resources. As well as an important ruling for those with physical disability, the judgement is significant for older people living with dementia who wish to continue to be cared for at home.

The importance of strategic leadership on human rights

> *Human rights approaches can provide the basis for ensuring and driving up quality, as well as a tool to change the culture of services towards one that supports person-centred approaches, co-production, safeguarding and personalisation. Making this shift requires increased understanding - particularly among those using and delivering services – of how human rights can be put into practice.*
> **(BIHR, 2013)**

Strategic leaders have a key role in supporting staff to develop their knowledge and skills in implementing human rights approaches in accordance with professional standards such as those set out by the HCPC (2016), the Nursing and Midwifery Council (2015), the Professional Capabilities Framework (BASW, 2016), *Knowledge and Skills Statement for Social Workers in Adult Services* (Department of Health, 2015) and Occupational Therapy Standards (College of Occupational Therapists, 2017). The President of the International Federation of Social Workers emphasises that, as a global profession, 'social work is a human rights discipline... It's not just an element of it - it is the core principle' (Stark, 2014).

To deny people their human rights is to challenge their very humanity.
Nelson Mandela

The discourse of social justice continues to permeate and inform professions, including occupational therapy and clinical psychology as well as social work, with respect for human rights as a means to achieve it (Ife, 2012). Moreover, the Care Quality Commission (2014) stress the importance of providing organisational leadership and commitment to achieving this by protecting the human rights of both staff and service users. Strategic leaders therefore need to be proactive in relation to the HRA.

Carr and Goosey (2017) refer back to the *Local Authority Circular 17* (2000), issued to guide local authorities when the HRA came into force. They reinforce that good practice should continue to actively develop 'in a manner suited to the... human rights culture' which has been repeated in subsequent guidance.

Practice example: Care about Rights

Care about Rights is a training and awareness raising resource relating to the care and support of older people developed by the Scottish Human Rights Commission. Around 1,000 care staff and managers have taken part in this training since September 2010, as well as around 80 older people and older people's advocates across Scotland.

Over half of the care staff respondents to the follow-up survey felt that it was helping them to deliver better person-centred care, whilst also helping older people and their representatives to articulate concerns and provide a framework for change. The evaluation included a recommendation that using person-centred, human rights-based approaches becomes a core competence for the care workforce. (Alliance Scotland, 2013)

Key messages from evidence[9] to support the development of a human rights approach in organisations

In 2012 the Equality and Human Rights Commission's review of how well public authorities protect human rights concluded that:

> *Health and social care commissioners and service providers do not always understand their human rights obligations, and the regulator's approach is not always effective in identifying and preventing human rights abuses.*
> (EHRC, 2012)

The Care Quality Commission (CQC) has since developed a human rights approach (see page 15) to the regulation of health and social care services, providing a useful model to strategic leaders.

Case precedent: Hillingdon v Neary

Steven, a young man with autism and severe learning disability, went into a respite unit for a few weeks whilst his father was unwell. It took over a year for him to be returned home, contravening his right to liberty and to family life (Articles 5 and 8, ECHR). The evidence before the court was that the local authority did not sufficiently discuss its concerns or plans with Steven himself, who had consistently expressed a desire to go home, nor with his father. The judge found that:

"*Nowhere in their very full records of Steven's year in care is there any mention of the supposition that he should be at home, other things being equal, or the disadvantages to him of living away from his family, still less an attempt to weigh those disadvantages against the supposed advantages of care elsewhere. No acknowledgement ever appears of the unique bond between Steven and his father, or of the priceless importance to a dependent person of the personal element in care by a parent rather than a stranger, however committed. No attempt was made at the outset to carry out a genuinely balanced best interests assessment, nor was one attempted subsequently.*"

(Essex Chambers, Hillingdon v Neary, 2011)
www.39essex.com/cop_cases/london-borough-of-hillingdon-v-neary-2

9 By research evidence we mean academic research, practitioner knowledge and experience, and the views of people using services.

The EHRC review (2012) also concluded that the human rights of some groups were not always fully protected:

- Ethnic minority groups are disproportionately more likely to be subject to stop and search and counter-terrorism legislation, contravening Articles 5, 8 and 14.
- Transgender people have limited choice in terms of the right to marriage, contravening Article 12.
- Gypsies' and travellers' rights to a home and to practise their traditional way of life, protected by Article 8, were at times overlooked with some local authorities failing to invest in site development.

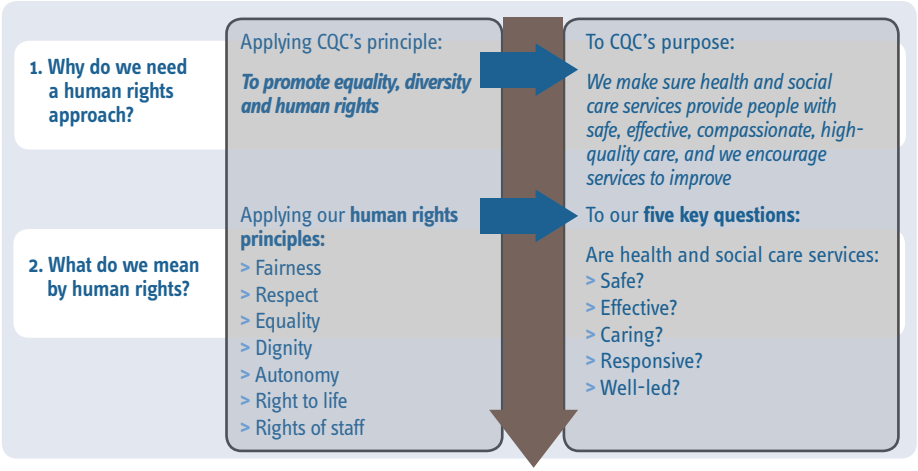
Research by Women's Aid (2015) draws from literature on the prevalence of violence against women (Stark, 2007; Johnson, 2008) contravening Articles 2, 3 and 8, and highlights the significant numbers of women and children continuing to seek refuge from domestic abuse in the UK[10].

Figures published by the National Police Chiefs' Council (2016) have signalled a rise in hate crime towards EU migrants since the EU referendum, including attacks against their homes (Corcoran and Smith, 2016) contravening Article 8 and Protocol 1(1). Similarly subjected to hate crime, asylum seekers and refugees can also face detention for long periods without any realistic prospect of removal, which can have a detrimental effect on the mental and physical health of already vulnerable adults and children, contravening Articles 3, 5, 8 and 14 (EHRC, 2012).

EHRC conclude that immigration procedures may 'favour administrative convenience over safeguarding individuals' rights to liberty and security' in contravention of Article 5 (EHRC, 2012). Similar concerns about deprivation of liberty have been raised in mental health and social care settings (see Hillingdon v Neary case precedent on page 13).

10 From 1st April 2014 to 31st March 2015, in a survey of a sample of domestic abuse services in England, 6,189 women were supported in refuge services and 44,534 women in community-based services. At the time there were 356 services in England on the domestic abuse services database. This sample was from only 162 of them. See **www.womensaid.org.uk/research-and-publications/annual-survey-2015**.

CQC's Human rights approach to regulation (CQC, 2014)



Leads to our **human rights topics**

3. Building human rights topics into assessment frameworks

> Regulations (led by the Department of Health).
> Guidance on how we regulate services.
> Key issues to look for.

4. Developing our human rights approach for each type of services

> Risk to human rights: measures and monitoring data.
> Inspecting for human rights: methods, tools, information.
> Building confidence in human rights: learning and development for inspection teams.

5. Supports principles for applying human rights approach

> Putting people who use services at the heart of our work.
> Embedding human rights into our inspection approach.
> Able to be used by everyone involved in inspections with tailored advice and support, if required, from human rights specialists in CQC.

6. Continuous improvement as inspection model develops

Evaluation of approach

Innovation eg. testing new human rights surveillance measures, inspection methods, learning approaches.

Supports CQC's ability to comment on equality and human rights in health and social care, as well as embedding equality and human rights into each inspection we do.

A human rights approach counters any national or global tendency towards the creation of a 'hierarchy of humanity' which treats some as less than human. James O'Brien (2017) cautions against this as echoing the creation of an *Untermenschen* - those persecuted as racially or socially inferior people not deserving of the same rights under law nor the same protections according to the fundamental principles of universal human rights.

> *A human rights approach means putting the human being and their legally protected rights at the centre of policy-making and day-to-day practice.*
> **(BIHR, 2013)**

Practice example: Calderdale Council

As part of a Named Social Worker pilot project (SCIE, 2017) Calderdale Council is working alongside young people with learning disabilities to develop a named social worker-client relationship in which power and control meaningfully shift to the young person, and which is based on full respect for individuals' human rights.

SCIE & Innovation Uni - see **www.scie.org.uk/files/social-work/named-social-worker/nsw-learning-report.pdf**.

This is a five step guide to implementing human rights in your organisation:

1. ***Consultation*** - find out what is most important to service users and staff in the way they are treated in your organisation, locality or team. What are the most fundamental things your organisation needs to be doing if it is to treat people with dignity and respect?
2. ***Identify the rights you should be protecting*** – translate these views into a list of specific rights that are important to people and compare with your legal duties under the HRA (make the links in working to both lists).
3. ***Create a quality standard*** - agree a set of staff behaviours that protect human rights and can be used to judge the effectiveness of your organisation.
4. ***Support your staff*** - to try out new approaches to equality using a human rights approach.
5. ***Monitor your success*** – build on what is working well in using a rights-based approach.

Based on *Why bother with human rights?* (brap, 2010). Available at: **www.brap.org.uk/resources-publications-342/human-rights-publications-565**

Using the PANEL principles to embed a human rights approach
(Adapted from BIHR, 2013)

Identify which rights fit into your strategy. You have to be able to name the rights you're working with, get the board to sign up to this and link this to performance.

Senior Manager, NHS Trust

*One of the benefits of absolute rights is that we **don't have to have a moral debate** about whether to act or not when there is an emergency.*

Health Service Provider

We need to visibly identify, for a range of our services, the rights holders, the human rights involved and how our staff impact on these with their actions.

Head of Inclusion and Diversity, Primary Care Trust

We will promote a rights-based approach in everything we do, with a focus on outcomes for people...this is more than just ensuring compliance - it is about changing attitudes and behaviours, organisational cultures and practices.

Care Quality Commission, Equality and Human Rights Scheme, 2010-13

*A human rights approach which is 'just another policy' misses the point - a commitment to human rights has to **be part of the essence of the organisation.***

Chief Executive, NHS Trust

P - enabling meaningful **participation** of all key people and stakeholders.

A - ensuring clear **accountability**, identifying who has legal duties and practical responsibility for a human rights approach.

N - promoting **non-discrimination**, where discrimination is avoided and attention is paid to groups made vulnerable.

E - **empowerment** of staff and service users with knowledge, skills and commitment to realising human rights.

L - expressly applied human rights **laws**, particularly the HRA.

*What has worked well is contacting people who are members of **socially excluded groups** and getting them on board. If we hadn't gone out it wouldn't have happened. It means that when we go for Foundation status we have a **broader base of people** with a more positive view of the organisation. It's a 'win win' for us as an organisation and a win for service users and carers from socially excluded groups.*

Staff Member, NHS Trust

It is very important for staff to identify themselves how human rights can be used in their work.

Project Lead, NHS Trust

*A human rights approach is about ensuring staff support service users to meet their optimal level of recovery by **promoting and respecting the individual's views and dignity**...It is about ensuring we **take account of all aspects of the person** and deliver care to a high standard while **involving the person in choices about their care,** and that we stand up for people when we see inappropriate care or people not being consulted or bullied by services to accept things they don't really want.*

Equality and Human Rights Adviser, NHS Trust

With grateful thanks to the British Institute of Human Rights

Questions for leaders to consider

The resources and practice examples signposted throughout this Leaders' Briefing, together with the reference list and useful websites at the end, aim to offer guidance to strategic leaders to illustrate the sorts of actions they and their workforce can take in fulfilling their HRA duties.

> *Human rights are a set of recognisable principles on which public authorities can base their everyday work.*
>
> **Nicky, a public authority manager (quoted in BIHR, 2016)**

Q

- What action are you taking to ensure transparency in the supply chain (*Modern Slavery Act 2015*) in the provision of goods and services within your organisation? See **www.corporate-responsibility.org/issues/modern-slavery-bill**

Q

The Equality and Human Rights Commission's (2011) inquiry into how home care respects and enhances the rights of older people to ensure freedom from undignified, degrading or humiliating treatment, showed that many local authorities and primary care trusts do not include human rights in their commissioning criteria.

- How is your organisation attending to this?
- How robust are your organisation's wider monitoring systems in ensuring absolute rights?

Q

- Is your organisation working to meet all the recommendations made in the ASCOF *LGB&T Companion Document* (National LGB&T Partnership, 2016)?
- Is LGBT affirmative language and imagery used in published materials?

Q

- Where is co-production working well in promoting human rights across your organisation?
- How can such good practice be built upon to better embed a human rights approach?

Q

The EHRC review (2012) concluded that the *Data Protection Act 1998* and the *Regulation of Investigatory Powers Act 2000* 'provide only patchy protection of the right to a private life' (HRA, s8).

- What further steps can your organisation take to provide sufficient protection of the right to a private life and in balancing this with other rights?

Q

> Do ***all*** people accessing your service know how to make a complaint if they feel their rights are not being met?

> How do you monitor any tendency not to do so for fear this will adversely affect their care?

Q

> What systems are in place to ensure people have access to processes of fairness in access to services?

> Have changes in legal aid limited people's access to legal advice? If so, how can your organisation mitigate this when advocating for the rights of people with care and support needs?

Q **HCPC Standard 3.5 states 'You must ask for feedback and use it to improve your practice.'**

> Do all staff (frontline, supervisors and strategic managers) routinely ask for feedback from service users and carers in relation to what supports the promotion of their human rights in everyday practice?

> What systems are in place for learning from all stakeholders - service user, practitioner and manager experience?

Q **HCPC Standard 2.4 states 'Registered health and care professionals must make sure that, where possible, arrangements are made to meet service users' and carers' language and communication needs.'**

> How well does your organisation meet this standard, when enabling people to understand their rights?

> How might you develop good practice from examples of where this is working well?

Q

> Is the public information provided across your organisation rights based?

Q **The EHRC Review highlights that 'Frontline staff do not always make the link between human rights and the care they provide ... their lack of awareness can lead to abuse and neglect of patients' (2012).**

> How might you use the practice examples and models provided here to support staff development in using a human rights approach more consistently?

Q Staff welfare and wellbeing:

- Does your agency have a dyslexia support policy for employees and is professional assessment of employee capability SENDA[11] compliant?

Q

- Which strategic actions are your organisation taking to meet the requirements of the *Modern Slavery Act 2015* and *Serious Crime Act* Clause 76?
- What staff training is available to support the implementation of this legislation?
- How are you measuring staff awareness of the vulnerability of people with care and support needs to being coerced, controlled or exploited?
- How are you supporting staff to respond in these situations?

11 *Special Educational Needs and Disability Act 2001*, now subsumed under the *Equality Act 2010* and still applies.

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Useful websites

Amnesty International:
www.amnesty.org.uk

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

Equality Advisory Support Service:
www.equalityadvisoryservice.com

Equality and Human Rights Commission:
www.equalityhumanrights.com/human-rights

European Court of Human Rights:
www.echr.coe.int (Use the HUDOC database to search for case law)

International Federation of Social Workers - Human Rights:
www.ifsw.org/policies/human-rights-policy

Liberty:
www.liberty-human-rights.org.uk

Justice:
www.justice.org.uk

Ministry of Justice:
www.education.gov.uk/publications/eOrderingDownload/MOJSummary.pdf
(A short introduction to the HRA with useful FAQs)

NHS Litigation Authority:
www.nhsla.com/OtherServices/HumanRights/Pages/Home.aspx (Case sheets highlighting key cases in healthcare law)

Northern Ireland Human Rights Commission
www.nihrc.org

Rights info - 50 Human Rights cases that transformed Britain:
www.rightsinfo.org/infographics/fifty-human-rights-cases

Scottish Human Rights Commission:
www.scottishhumanrights.com

UK Human Rights blog:
www.ukhumanrightsblog.com

United Nations Convention on the Rights of Disabled Persons:
www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/un-convention-rights-persons-disabilities

United Nations Principles for Older Persons:
www.ohchr.org/EN/ProfessionalInterest/Pages/OlderPersons.aspx

United Nations Refugee Agency:
www.unhcr.org/uk

Wales Advice and Guidance - EHRC:
www.equalityhumanrights.com/en/wales-advice-and-guidance

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