**Training resource 3**

Commissioning for human rights in home care for older people:

An information and training toolkit for elected members in England



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What is this toolkit for?

This toolkit contains background information and resources to supplement elected member learning through the main presentation on home care and human rights [(training resource 2)](http://www.equalityhumanrights.com/private-and-public-sector-guidance/public-sector-providers/human-rights-health-and-social-care/commissioning-human-rights-home-care-older-people#2) and the 'self-service' presentation [(training resource 4).](http://www.equalityhumanrights.com/private-and-public-sector-guidance/public-sector-providers/human-rights-health-and-social-care/commissioning-human-rights-home-care-older-people#4)

It should be used by:

* Trainers delivering the main presentation who should make themselves familiar with the toolkit contents before undertaking to train elected members and have it with them as a resource during training.
* Elected members as a resource to refer to during the main presentation and as a standalone resource to dip in to when they choose, including when going through the 'self-service' presentation.

Introduction

Living at home, making our own choices and retaining as much autonomy as possible, even when we need support, are commonly shared hopes. Following recommendations made in the Equality and Human Rights Commission’s (EHRC) ‘Close to home’ inquiry (2011) and ‘Close to home recommendations review’ (2013) these materials aim to support elected members (EMs) in their responsibilities for making this hope a reality – through expressly considering human rights obligations (including positive obligations) as part of the planning, commissioning and delivery of home care services for older people.

This Toolkit is designed primarily to support EMs in their responsibilities for decision making, policy making, scrutiny and community leadership. We recognise that the role of an EM is busy, with diverse pressures and priorities, so we have designed the materials to be used flexibly. They are intended to be accessed directly by individuals as well as to support group training.

These materials are not intended to provide in depth or detailed legal information. EMs should also refer to the following EHRC documents when contributing to commissioning home care for older people:

* Close to home: An inquiry into older people and human rights in home care (2011) <http://www.equalityhumanrights.com/legal-and-policy/inquiries-and-assessments/inquiry-into-home-care-of-older-people/close-to-home-report/>
* Guidance on human rights for commissioners of home care (2013) <http://www.equalityhumanrights.com/legal-and-policy/inquiries-and-assessments/inquiry-into-home-care-of-older-people/guidance-on-human-rights-for-commissioners-of-home-care/>
* Close to home recommendations review (2013) <http://www.equalityhumanrights.com/legal-and-policy/inquiries-and-assessments/inquiry-into-home-care-of-older-people/close-to-home-recommendations-review/>
* Your home care and human rights (Revised edition September 2013) <http://www.equalityhumanrights.com/publication/your-home-care-and-human-rights>

At a glance: Charting the landscape and World of social care

These charts each offer a single page visual overview of both the legislative and social care frameworks. In particular ‘Charting the landscape’ aims to clarify the important differences between the Human Rights Act legal duties and the Equality Act Public Sector Equality Duty (PSED).

‘World of social care’ recognises the complexity in adult social care and seeks to summarise the essential legislation, documentation and organisations which shape these vital services.

Quick facts and sources of further information

Provides further information about relevant legislation, and social care guidance, reports and social care organisations, with several links to more in-depth information and original sources.

Question suggestions

Recognises that commissioning specifications, contract and quality monitoring and scrutiny are all essential to embedding human rights obligations consistently into home care services. The practical questions and prompts are intended to support the integration of human rights at each stage of the commissioning process.

Checklist

This framework aims to provide a useful starting point for commissioners and providers of services to make sure that human rights obligations (including positive obligations) are expressly embedded into the planning, commissioning and delivery of home care services.

Myths and minefields

This document aims to address some recent media coverage of human rights issues and provide possible responses to ‘myth-bust’ misconceptions.

Evaluation and feedback

These materials will be kept under review and evaluated as they are disseminated and used. However we very much welcome your thoughts, experiences and suggestions and any feedback you are able to provide.

|  |  |  |  |
| --- | --- | --- | --- |
| **Human Rights Act 1998****(HRA)** | **Equality Act 2010** | **Overarching or related documents** | **Home care** |
| **Rights and freedoms apply equally to everyone from birth**HRA expresses the European Convention on Human Rights (ECHR) in UK domestic law. Cases now only heard in Strasbourg exceptionally**.****European Convention on Human Rights (ECHR)**- ratified by the UK in 1951**Articles and Protocols include:*** Right to life
* Prohibition of torture, inhuman or degrading treatment
* Right to liberty and security
* Right to respect for private and family life
* Freedom of thought, conscience and religion
* Prohibition of discrimination in the enjoyment of other ECHR rights
* Protection of property.

**Local Authorities have a positive obligation to actively promote and protect human rights including through:*** preventinghuman rights from being breached, including breaches that occur because of the actions of third parties
* responding to human rights breaches, which may include carrying out an effective investigation.
 | **Protection from discrimination because of 9 protected characteristics:*** Age
* Disability
* Gender Reassignment
* Race
* Religion or belief
* Sex
* Sexual orientation
* Marriage and Civil Partnership
* Pregnancy and Maternity

**When and Where?**- At work- In education - Providing goods and services- Buying and renting property- Using private clubs and  Associations.**Discrimination can be:*** Direct
* Indirect
* By association
* Perception

People also have protection from harassment and victimisation.**Public Sector Equality Duty (PSED):**In carrying out all their functions, public authorities must have due regard to the need to:* Eliminate discrimination
* Advance equality of opportunity
* Foster good relations.
 | **United Nations Convention on the Rights of Persons with Disabilities** (ratified by the UK government June 2009), includes:* Right to participate in cultural life, recreation, leisure and sport
* Respect for dignity, autonomy, equality of opportunity and independence of each individual
* Each person with a disability has right to respect for physical and mental integrity.

**United Nations Principles for Older Persons (1991)** includes recognition of older people’s rights to independence, participation, care, self-fulfilment and dignity. The Principles include a statement that: ‘Older persons should be treated fairly regardless of age, gender, racial or ethnic background, disability or other status, and be valued independently of their economic contribution.’**Common core principles to support dignity in adult social care** (Skills for Care 2013) which include:* Value the uniqueness of each individual
* Value workplace cultures that promote everyone’s dignity
* Challengecare that may reduce the dignityof the individual.
 | **‘**Helping an elderly person to eat and swallow, bathing someone with dignity and without hurting them, communicating with someone with early onset dementia; doing these things with intelligent kindness, dignity, care and respect’ (Cavendish Review. July 2013)Local authority statutory responsibilities under the Human Rights Act cannot be contracted out.Ensure the following human rights principles are explicit in the commissioning, delivery and monitoring of personalised Home Care services:**F**airness**R**espect**E**quality**D**ignity**A**utonomy.**Framework for human rights in home care:*** Dignity and security
* Autonomy and choice
* Privacy
* Social and civic participation.

Mainstream human rights obligations, through outcome-based and person-centred approaches. |

**Charting the landscape - Human rights and home care**

**World of social care**

|  |  |  |  |
| --- | --- | --- | --- |
| **Legislation** | **White papers** | **Guidance and significant documents** | **Social care organisations** |
| **National Assistance Act 1948**Duty to provide or arrange services.**Chronically Sick and Disabled Persons Act 1970** Duty to assess.**National Health Service (NHS) and Community Care Act 1990**Duty to carry out assessment and provide services if the needs are assessed as eligible.**Mental Health Act 1983**Covers care and treatment of people who are mentally ill (‘disordered’). People can be detained for assessment or treatment. (Amended 2007)**Community Care (Direct Payments) Act 1996**Direct cash payments to be offered.**Carers**Carers (Recognition and Services Act 1995).Carers (Equal Opportunities Act 2004).**Mental Capacity Act 2005**including Deprivation of Liberty Safeguards (DoLS) (2007).**Health and Social Care Act 2012**Structural and organisational change**Care Act 2014**- when implemented, will simplify and create single statute. | **Our health, our care, our say – a new direction for community services (2006):*** better prevention services with earlier intervention
* more choice and a louder voice
* more on tackling inequalities and improving access to community services
* more support for people with long-term needs.

**Valuing People (2001) and Valuing People Now (2009) –** Strategy for people with learning disabilities:* same rights and choices as everyone else
* right to be treated withdignity and respect
* same chances and responsibilities as everyone else
* family carers and families of people with learning disabilities have the right to the same hopes and choices as other families.

**Caring for our future (2012)*** to prevent, postpone andminimise people’s need for formal care
* people should be incontrol of their own care and support.
 | ***‘*No Secrets*’* Guidance on protecting vulnerable adults (2000)****Fair Access to Care Services (FACS)** Guidance on eligibility criteria for adult social care (DH 2003, Revised 2010).**Putting People First –** shared vision and commitment to the transformation of adult social care (2007). Confirmed and developed by**Think local, act personal *-*** partnership agreement (2011)**Dilnot Commission (2011)**  Funding care and support, recommendations:* capped costs and an extended means test
* national eligibility threshold for adult care and support
* clear, universal and authoritative source of information about health and care
* right to a carer’s assessment and entitlement to public support
* improved integration between health and care.
 | **ADASS– Association of Directors of Adult Social Services****Care Quality Commission (CQC)**Independent regulator.**Centre for Workplace Intelligence (CfWI)**Health and Social Care Workforce planning and development.**Health and Care Professions Council (HCPC)**Statutory regulator of health and care professionals.**National Skills Academy– Social Care (NSA-SC)*** Employers organisation to develop leadership in social care.

**NICE– National Institute for Health and Care Excellence****Skills for Care *-***Sector skills council.**Social Care Institute for Excellence (SCIE)**Promotes good practice in social care and social work.**The College of Social Work (TCSW)** Centre of excellence for social work. |

Human rights and home care: Quick facts and sources of further information

Legislation summary

* Human rights and equality

Social care and public services

Guidance and reports relevant to home care (extracts and references)

Useful organisations

Legislation summary

Human rights and equality

Human Rights Act 1998 (HRA)

* UK-wide Act of Parliament which brings the European Convention on Human Rights (ECHR) into our own law. The ECHR in turn reflects the Universal Declaration of Human Rights.
* ECHR rights in HRA are underpinned by commonly held values:
* **F**airness
* **R**espect
* **E**quality
* **D**ignity

**A**utonomy.

* Protects everyone from birth regardless of nationality.
* Public authorities (including LA’s etc) must exercise powers and duties in a way that is compatible with ECHR rights.
* Also, public authorities have ‘positive obligations’ to promote and protect human rights.

Some rights are absolute, eg: Article 2 ‘Right to Life’. Others are limited or qualified.

***Source:*** <http://www.equalityhumanrights.com/human-rights/what-are-human-rights/the-human-rights-act/>

Equality Act 2010

* Consolidated nine primary and over 100 other pieces of equality legislation – with cross-party support.
* Protects people from discrimination because of nine protected characteristics:
* Age
* Disability
* Gender Reassignment (gender identity)
* Race (colour, nationality/national origin)
* Religion or Belief (or no belief)
* Sex (gender)
* Sexual orientation
* Marriage and Civil Partnership (NB in employment only)
* Pregnancy and Maternity.
* In the following situations:
* at work
* in education
* as a consumer
* when using public services
* when buying or renting property
* as a member or guest of a private club or association.
* Protection from discrimination extends when:
* You are experiencing less favourable treatment because of associating with someone who has a protected characteristic, eg a family member or friend, or because you are wrongly perceived as having a protected characteristic.
* You have complained about discrimination or supported someone else’s claim (victimisation) or been harassed.
* You suffer disadvantage because of indirect discrimination (ie when an apparently neutral policy disadvantages people sharing aprotected characteristic, unless this can be justified).
* Public Sector Equality Duty – public bodies need to have due regard to the need to:
* eliminate discrimination, harassment and victimisation
* advance equality of opportunity

foster good relations between those who share a protected characteristic and those who do not.

***Source:*** <https://www.gov.uk/equality-act-2010-guidance>

Social care legislation and public services

Note: the information included below is only a small part of the overall legislative and guidance framework on social care. This background information will help place in context the discussion on human rights and home care.

NHS and Community Care Act 1990

Local authorities have a duty to assess the need for community care services, choose someone to provide it and make sure that it is delivered within the local authority’s available funds.

Also:

* Carers have a right to an assessment (Carers Act 1995 and others)

Fair Access to Care Services (FACS) identifies whether a person has ‘eligible needs’ for funded social care services.

***Sources:***

*Carers:* <http://www.nhs.uk/carersdirect/guide/rights/Pages/carers-rights.aspx>

*FACS:* <http://www.scie.org.uk/publications/guides/guide33/files/guide33.pdf>

Health and Social Care Act 2012

Revised the structure of health and social care in England:

* **National Commissioning Board (NCB)** set up to provide leadership for local **Clinical Commissioning Groups**.These are GP-led bodies responsible for commissioning primary care services such as GPs, dentists and pharmacies, and secondary care services such as those provided by hospitals.
* **Public Health England**, created to provide leadership for local authorities (councils) in their new public health role and work with other bodies on promoting public health issues.

**Local authorities are responsible for** public health promotion, including issues such as obesity, smoking, health screening and vaccinations. Councils need to consider health in all of their policies, including duties towards social care, transport, housing and education. Each local authority to undertake a Joint Strategic Needs Assessment (JSNA) identifying local needs and priorities.

Also:

* **National Institute for Health and Care Excellence (NICE)** develops quality standards for social care and guidance to GPs, CCGs, community services and secondary care services.
* **Care Quality Commission (CQC)** is responsible for ensuring that health and adult social care services meet standards of quality and safety. The CQC regulates GPs, community services and secondary care services.
* **Healthwatch** protects the interests of all who use health and social care services by communicating the views of patients to commissioning bodies and regulators. It also provides information, advice and support to members of the public.

**Health and Wellbeing Boards** bring together health and social care commissioners, councillors and lay representatives to promote joint working and tackle inequalities in people’s health and wellbeing in their local area.

***Source:*** <https://www.gov.uk/government/publications/health-and-social-care-act-2012-fact-sheets>

**Care Act 2014 –** to be implemented in stages over two years.

* Places the individual at the heart of a reformed legal framework for adult social care, creating a single statute.
* Clarifies rights and responsibilities for older and disabled people and local councils, and will improve the position of carers.
* Introduce Ofsted-style ratings for hospitals and care homes.
* Establish Health Education England and Health Research Authority as statutory bodies.

Brings regulated home care into the scope of the HRA, when publicly funded or publicly arranged.

***Source:*** <https://www.gov.uk/government/news/government-publishes-care-bill>

Mental Capacity Act (MCA) 2005

Principles:

* The MCA provides a framework to empower and protect people who may lack capacity to make some decisions for themselves.

‘Lack of capacity’ is inability to make a decision in relation to a specific matter. A person who is considered to lack capacity for one particular decision may not necessarily lack capacity to make other decisions.

The five key principles of the MCA:

* Every adult has the right to make his or her own decisions and must be assumed to have capacity to make them unless it is proved otherwise.
* A person must be given all practicable help before anyone treats them as not being able to make their own decisions.
* Just because an individual makes what might be seen as an unwise decision, they should not be treated as lacking capacity to make that decision.
* Anything done or any decision made on behalf of a person who lacks capacity must be done in their best interests.

Anything done for or on behalf of a person who lacks capacity should be the least restrictive of their basic rights and freedoms.

***Source:*** <http://www.scie.org.uk/publications/guides/guide03/law/capacity.asp>

Deprivation of Liberty Safeguards (DoLS)

Introduced by the Mental Capacity Act 2007. This amendment to the MCA came about as a result of the ‘Bourne wood’ case which was taken to the European Court of Human Rights under Article 5 of the Convention – Right to Liberty.

DoLS applies to someone who:

* Is vulnerable, aged 18 or over, and also
* Lacks capacity to make decisions about their care or treatment, as assessed under the MCA, and
* Has a mental health condition although not subject to detention under the Mental Health Act 1983, and
* Is in a care, supported living or hospital setting, and

Has not made a conflicting advanced decision (under lasting power of attorney).

The deprivation of liberty must be in the best interests of the individual and be the least restrictive option. **Note: DoLS does not apply when receiving care at home.**

***Source:***

Deprivation of Liberty Safeguards: putting them into practice <http://www.scie.org.uk/publications/reports/report66.pdf>

Public Services (Social Value) Act 2012

Places a duty on public bodies to include social value when procuring goods or services through considering:

(a) how what is proposed to be procured might improve the economic, social and environmental wellbeing of the relevant area, and

(b) how, in conducting the process of procurement, it might act with a view to securing that improvement.

This is likely to involve consultation with stakeholders while being proportionate in all circumstances.

***Source:*** <http://www.navca.org.uk/social-value-bill>

Guidance and reports

Safeguarding Adults

No Secrets Guidance (Dept. of Health 2000)

Provided the foundation for the development of local multi-agency partnerships supported by inter-agency policies, procedures, joint protocols and codes of practice. It aimed to prevent abuse and neglect and protect adults at risk of harm or neglect.

* A **vulnerable adult** is someone, over the age of 18 years: ‘Who is or may be in need of community care services by reason of mental or other disability, age or illness; and who is or may be unable to protect him or herself against significant harm or exploitation’.
* **Abuse** is: ‘a violation of an individual’s human and civil rights by any other person or persons.’(No Secrets, Dept. of Health, 2000)

Abuse may be:

**Physical –** includes hitting, slapping, pushing, kicking, misuse of medication, restraint, or inappropriate sanctions.

**Sexual –** includes rape and sexual assault or sexual acts to which the vulnerable adult has not consented, or could not consent or was pressured into consenting.

**Psychological –** includes emotional abuse, threats of harm or abandonment, deprivation of contact, humiliation, blaming, controlling, intimidation, coercion, harassment, verbal abuse, isolation or withdrawal from services or supportive networks.

**Financial or material –** includes theft, fraud, exploitation, pressure in connection with wills, property or inheritance or financial transactions, or the misuse or misappropriation of property, possessions or benefits.

**Neglect and acts of omission -** includes ignoring medical or physical care needs, failure to provide access to appropriate health, social care or educational services, the withholding of the necessities of life, such as medication, adequate nutrition and heating. It also includes denying access to home adaptations/equipment, without which a person’s home may become inaccessible, unsafe, or confusing.

**Discrimination –** includes racism, sexism, discrimination based on a person’s disability, other forms of harassment, slurs or similar treatment.

***Source:*** <https://www.gov.uk/government/publications/no-secrets-guidance-on-protecting-vulnerable-adults-in-care>

‘Putting People First’ (Dept. of Health December 2007)

* Concordat with the Local Government Association (LGA), Association of Directors of Adult Social Services (ADASS), NHS and others.
* A shared vision and commitment to the transformation of adult social care through:
* prevention
* early intervention and re-enablement
* personalisation

information, advice and advocacy.

* Requires Councils to:
* move to a system of personal budgets for everyone who is eligible for publicly-funded adult social care support

provide universal information, advice and advocacy services for all who need services and their carers, irrespective of eligibility for public funding.

***Source:*** <http://www.local.gov.uk/home/-/journal_content/56/10180/3511414/ARTICLE#sthash.3nEnBBqp.dpuf>

‘Close to home’ 2011 and ‘Close to home recommendations review’ 2013 (EHRC)

* Evidence of serious risks to older people’s human rights due to poorly commissioned and delivered home care (Close to home 2011).
* The low pay and status of care workers, coupled with high workforce turnover rates, was a significant factor exacerbating threats to the human rights of older people (Close to home 2011).
* Regulation and legal protection need to be improved (Close to home 2011).

Although in 2011 Close to home recommended that elected members were provided with human rights and home care training only 1/3 of local authorities who responded to the 2013 recommendations review had taken some action to deliver this training to elected members.

* Recommendations review called for:
* costing models to be used in the commissioning process so that National Insurance Contributions, training, supervision, travel time and expenses and provider overheads, as well as pay rates, are factored in to ensure safe, fair and sustainable services.

human rights are protected by including clauses to provide ‘third party’ rights so that service users have the right to challenge possible breaches.

***Source:*** <http://www.equalityhumanrights.com/legal-and-policy/inquiries-and-assessments/inquiry-into-home-care-of-older-people/close-to-home-report/>

Dilnot Commission – on Funding for Care and Support (2011)

Recommendations:

* To put a cap on the lifetime care costs that people face, and raise the threshold at which people lose means tested benefits..
* To provide access to deferred payments for people in residential care.

Review recommendations partly adopted by Care Act 2014.

***Source:*** <http://www.scie.org.uk/publications/reports/report57.pdf>

Cavendish Review (July 2013) – an independent review into Healthcare Assistants and Support Workers in the NHS and social care settings:

‘Helping an elderly person to eat and swallow, bathing someone with dignity and without hurting them, communicating with someone with early onset dementia; doing these things with intelligent kindness, dignity, care and respect requires skill. Doing so alone in the home of a stranger, when the district nurse has left no notes, and you are only being paid to be there for 30 minutes, requires considerable maturity and resilience.’ Making sure that staff feel valued and respected will transfer into the support and care they provide.

An inescapable fact is that good caring takes time. It will not be possible to build a sustainable, caring, integrated health and social care system on the backs of domiciliary care workers who have to travel long distances on zero hours contracts, to reach people who have to see multiple different faces each week. Local authorities must start to commission for outcomes, not by the minute – which is a false economy when so many staff are quitting (Recommendation 16).

And staff must be paid for travel time, since non-payment can push their earnings below the National Minimum Wage (Recommendation 18).

***Source:***<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236212/Cavendish_Review.pdf> (Page 7 Executive Summary)

**Your home care and human rights** – an information booklet for people who receive home care and their relatives or friends. Sets out:

* How do I get home care and what are my rights? p8
* What standards should I expect from my home care? p12
* What are my legal rights when using home care? p16
* What can I do if I am unhappy with my home care? p19
* Can I get help with making a complaint? p28

Where can I find out more information about my rights? p29

***Source:*** <http://www.equalityhumanrights.com/legal-and-policy/inquiries-and-assessments/inquiry-into-home-care-of-older-people/information-for-people-who-receive-home-care/>

Association of Directors of Adult Social Services (ADASS) –

has produced Top Tips for Directors

***Source:***<http://www.adass.org.uk/images/stories/Publications/Miscellaneous/TopTipsDec13.pdf>

ADASS have also produced a Route Map for Commissioning for Better Outcomes

***Source:*** <http://www.adass.org.uk/policy-documents-commissioning-for-better-outcomes/>

Guidance on human rights for commissioners of home care

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.

***Source:*** <http://www.equalityhumanrights.com/legal-and-policy/inquiries-and-assessments/inquiry-into-home-care-of-older-people/guidance-on-human-rights-for-commissioners-of-home-care/>

Useful organisations

Human rights organisations

Equality and Human Rights Commission (EHRC)

Independent statutory body established to help eliminate discrimination, reduce inequality, protect human rights and to build good relations.

<http://www.equalityhumanrights.com/>

British Institute of Human Rights (BIHR)

BIHR is an independent human rights charity that is committed to challenging inequality and social injustice in everyday life in the UK.

<http://www.bihr.org.uk/>

Adult social care organisations

Association of Directors of Social Services (ADASS)

The Association of Directors of Adult Social Services (ADASS) represents all the directors of adult social services in England as well as senior managers who report to them. http://www.adass.org.uk/

Care Quality Commission (CQC)

The independent regulator of all health and social care services in England.

[www.cqc.org.uk/](http://www.cqc.org.uk/)

Health and Care Professions Council (HCPC)

The statutory regulator of 308,000 health and care professionals from 16 professions in the United Kingdom.

<http://www.hpc-uk.org/>

Centre for Workforce Intelligence (CfWI)

The national authority on workforce planning and development, providing advice and information to the health and social care system.

http://www.cfwi.org.uk/

Local Government Association (LGA)

The national voice of local government in England and, via the Welsh LGA, in Wales.

<http://www.local.gov.uk/>

National Institute for Health and Care Excellence (NICE)

[Non-departmental public body](http://en.wikipedia.org/wiki/Non-departmental_public_body) of the [Department of Health](http://en.wikipedia.org/wiki/Department_of_Health_%28United_Kingdom%29) in the [United Kingdom](http://en.wikipedia.org/wiki/United_Kingdom), serving both the [English NHS](http://en.wikipedia.org/wiki/National_Health_Service_%28England%29) and the [Welsh NHS](http://en.wikipedia.org/wiki/Welsh_NHS). NICE provides guidance to ensure: quality and value of treatment, prevention and treatment of ill health and disease, reduction in health inequalities.

www.nice.org.uk/

National Skills Academy – Social Care (NSA)

A membership organisation, created by social care employers to transform the quality of: leadership, management, training, development, and commissioning.

https://www.nsasocialcare.co.uk/

Research in Practice for Adults (RiPfA)

Promotes the use of evidence-informed policy and practice in adult health and social care.

www.ripfa.org.uk/

Skills for Care (SfC)

Skills for Care is the strategic body for workforce development in adult social care and the employer led authority on the training standards and workforce development needs of social care staff in England.

www.skillsforcare.org.uk/

Social Care Institute for Excellence (SCIE)

SCIE develops and promotes knowledge about good practice in social care and social work.

www.scie.org.uk/

The College of Social Work (TCSW)

TCSW is the centre of excellence for social work, upholding and strengthening professional standards to the benefit of the public.

www.tcsw.org.uk/

The Local Government Ombudsman

People who pay for their care privately can now complain about their care to the Local Government Ombudsman. They had no external complaints system before the Ombudsman’s remit was expanded in October 2010 to include complaints from self-funders. This was also expected to improve the standard of complaint handling by independent care providers.

[www.lgo.org.uk](file:///%5C%5Cfilestore%5CCorporate%5CStrategy%5CPolicy%5CHuman%20Rights%20in%20the%20Public%20Sector%5COlder%20People%20and%20Human%20Rights%20training%20pack%5Cdraft%20documents%5Calmost%20final%20docs%2030Oct14%5Cwww.lgo.org.uk)/

Question suggestions

Commissioning specifications

Have the following been included as requirements in commissioning specifications which specifically reflect human rights obligations, including positive obligations? Are the measures clear?

Fundamental statement in service specification (example): ‘Midchester Council has a statutory duty to consider the need to eliminate all forms of unlawful discrimination and to protect human rights. Providing dignity and respect is a core value in service provision.’

Service delivery:

* Sign up to the Skills for Care Social Care Commitment (7 Principles) :<http://www.skillsforcare.org.uk/thesocialcarecommitment/>
* Human rights targets within an approach that embeds human rights obligations into the commissioning of home care. Use the EHRC human rights and home care framework (ref. Guidance on human rights for commissioners of home care, page 13. 2013): <http://www.equalityhumanrights.com/legal-and-policy/inquiries-and-assessments/inquiry-into-home-care-of-older-people/>
* Individual needs of people using services are explored and responded to positively, for example needs arising from faith or religious practice, sexual orientation, gender, culture or language.

Service delivery is based on agreed outcomes rather than just activity.

Service planning and staffing:

* Clear and sustainable costing model which incorporates essential elements for safe and legal care used to determine commissioning rates. The UK Homecare Association model is extensively used: <http://www.ukhca.co.uk/CostingModel/>This includes rates of staff pay, linked to the National Minimum Wage, paid travel time and travel costs, rotas and timetables with flexibility to account for some variation in need, traffic conditions or other variables, training, support and overheads.
* Use of a schedule making it a fundamental term of the contract that the contractor pays the National Minimum Wage to all eligible employees, and keeps records as required by the National Minimum Wage Regulations 1999.The EHRC has drafted a model contract schedule which may be adapted by local authorities for use in their contracts with home care providers. A template is included in the ‘Close to home recommendations review’ Appendix B: <http://www.equalityhumanrights.com/legal-and-policy/inquiries-and-assessments/inquiry-into-home-care-of-older-people/close-to-home-recommendations-review/>

Plans to reduce turnover rates of staff (ref. The Cavendish Review 2013): <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236212/Cavendish_Review.pdf>

Skilled, supported and trained workforce:

* Use of value based recruitment (National Skills Academy for Social Care Based Recruitment Toolkit )<https://www.nsasocialcare.co.uk/values-based-recruitment-toolkitValue>
* Paid time and funding for training and development
* Include for example: ‘Ensure all staff receive training in equality and human rights, are familiar with the associated policies and are able to positively support and promote each person’s diversity.’
* Embedding and transferring learning into competent practice.
* Supervision and support.
* Opportunities for qualifications and career progression.

Contract and quality monitoring

Include a reminder, for example:

*‘*Provide services in accordance with human rights protected by the Human Rights Act, recognising that these are underpinned by the human rights principles of fairness, respect, equality, dignity and autonomy.*’*

What resources, processes and mechanisms for consistent and sustainable contract and quality monitoring are in place?

**Prompt:**

Are there forums or processes for engagement with service providers, regularity of review, involvement of people who use services? ‘For example, using advocates to carry out face to face interviews with service users and their families to get feedback about providers.’ (Framework for human rights in home care’ Page 13 Guidance – *see*above)

* A Capitated and Outcome Based Incentivised Contracts (COBIC) approach could enable:
* A clear weighted per person cost
* Outcome based incentives – rewards and penalties
* Providers to collaborate in delivering high quality care
* Improved health inequalities

Explicit criteria which relate to the promotion of equality and human rights

([www.cobic.co.uk](http://www.cobic.co.uk))

Scrutiny

Ask for or about:

Evidence that age discrimination is challenged and addressed – at individual and institutional levels.

**Prompt:**

* The Equality Act ban on age discrimination in providing services came into force on 1 October 2012. Older people must not be discriminated against, either directly or indirectly, because of age unless this can be objectively justified.

Have issues of age bias been addressed in care and support planning processes, as well as the Resource Allocation System? For example, how are older people supported so they can have social contact and inclusion (going out and having visitors) as compared to younger people receiving care?

* Article 8 (right to respect for private and family life) includes participation in the local community. Article 8 is a qualified right which means that financial constraints in the public sector can be relevant. However any interference with a qualified right must be lawful, necessary and proportionate.

Any decisions to restrict a right must be made on an individual basis and not as a blanket decision.

Is enough time allowed for sustainable person-centred support – how is consistency assured?

**Prompt:**

* High staff turnover rates (these can be up to 30 per cent in domiciliary care) are likely to compromise good care. How are rates monitored and reductions planned?
* Skills for Care Common Core Principles for Dignity are a practical resource to enable providers to know how standards and best practice apply. <http://www.skillsforcare.org.uk/developing_skills/Dignity.aspx>
* Is genuine choice and control offered? For example, how much influence does a person have when choosing their care provider, worker(s) and priorities for what and when care is given?

Remember that Article 3 – Prohibition of torture and inhuman or degrading treatment – is an absolute right which cannot be qualified under any circumstances

What steps have been taken to ensure commissioned home care providers protect human rights?

**Prompt:**

* Because of the Care Act 2014, regulated private and third party providers of home care that is publicly funded or publicly arranged will soon be covered by the HRA, just like providers of publiclyfunded/arranged residential care.
* Meanwhile, local authorities can include clauses in commissioning contracts requiring providers to act in compliance with the HRA and giving care service users ‘third party’ rights to challenge human rights breaches directly with providers. This could protect the local authority from legal challenge and express best practice principles. A template for including human rights and the National Minimum Wage in contracts is included in the ‘Close to home recommendations review’ Appendix B: <http://www.equalityhumanrights.com/legal-and-policy/inquiries-and-assessments/inquiry-into-home-care-of-older-people/close-to-home-recommendations-review/>

Make sure that human rights obligations (including positive obligations) are expressly reflected in planning and policy development, as well as practice. (For example in safeguarding: Have an internal ‘Safeguarding Adults’ policy which includes a clear statement of every person’s right to live a life free from abuse. This will define abuse to include physical, financial, psychological, institutional, sexual abuse, neglect, discriminatory abuse, self-harm, inhuman or degrading treatment through deliberate intent, negligence or ignorance and neglect. A copy of the Provider’s policy shall be available on request in a range of formats.)

What processes, mechanisms, or supporting agencies are in place to gather and assess people’s experiences of home care?

**Prompt:**

* Voluntary sector engagement? Examples could include: advocacy services, carers forums or Volunteer Quality Monitors (see below).

Using and sharing examples of good practice

How are complaints and concerns addressed and by whom? How is learning from both complaints and compliments used to improve services?

**Prompt:**

* Through internal processes, Care Quality Commission, Local Government Ombudsman.
* Example from the EHRC ‘Close to home recommendations review’ (2013): ‘[We have] planned a “tell us what you think” day, recruited additional Volunteer Quality Monitors, produced a “making a complaint” film, widely distributed complaints and comments leaflets to hospitals/GP surgeries and have invited complainants to be involved in overall engagement processes working towards service improvement.’ Local authority – Midlands.
* Through collating and analysing complaints to identify common themes, possible institutional or indirect discrimination.

Checklist for elected members and commissioners

A framework for building human rights obligations and principles into home care

This framework draws on the European Convention on Human Rights, the UN Convention on the Rights of Persons with Disabilities and the UN Principles for Older Persons. It may provide a useful starting point for commissioners and providers of services to consider human rights obligations (including positive obligations) and underlying human rights principles into the planning, commissioning and delivery of home care services.

Dignity and security

* Physical wellbeing
* Freedom from intentional physical abuse
* Freedom from unintended/careless neglect
* Protection from pharmaceutical/medical abuse
* Protection from sexual abuse
* Psychological and emotional wellbeing
* Freedom from bullying and threats
* Freedom from disrespectful treatment
* Freedom from being ignored/not talked to
* Respect for cultural heritage/religion
* Financial security/security of possessions
* Protection from financial abuse
* Financial decisions taken in one’s best interests (if someone lacks capacity)

Freedom to control one’s personal possessions

Autonomy and choice

* Self-determination in one’s life
* Right to live as independently as possible
* Right to make routine decisions (eg what to eat/wear)
* Right to be consulted about ongoing professional decisions

Right to determine the timetable of one’s day

Support for decision-making about care

* Right to information and advice about options
* Right to be offered meaningful choices and time to decide
* Right to be offered support for personalisation of care
* Right to nominate a third party to decide, if desired

Appropriate application of Mental Capacity Act (if someone lacks capacity)

Privacy

* Respect for privacy
* Modesty when dressing/bathing
* Privacy when one’s personal circumstances are discussed by others
* Respect for personal space
* Respect for wish to be alone
* Respect for wish to be intimate with others
* Respect for private correspondence
* Respect for private letters
* Respect for private documents

Respect for private phone calls

Social and civic participation

* Friends and family
* Right to maintain relationships with family
* Right to participate in the community

Right to participate in elections

***Source:*** <http://www.equalityhumanrights.com/legal-and-policy/inquiries-and-assessments/inquiry-into-home-care-of-older-people/principles-for-good-home-care/>

**Myths and minefields** – a tool to help dispel commonly expressed misconceptions which may be voiced in community settings or conversations

Note: This document is not intended to provide in depth legal information.

**Myth**: The Human Rights Act only protects the rights of minority groups, illegal immigrants and criminals

**Fact**: Human rights are universal and guarantee the rights that are fundamental to a democratic society. The HRA protects everyone in the UK equally, from birth and regardless of their citizenship or immigration status. Anyone could suffer from a breach of privacy, be wrongly accused of a crime or suffer a breach of their human rights because of poor decision making by a local authority. The HRAalso puts positive obligations on the State to take active steps to prevent human rights breaches for people whose rights are at risk and respond to serious breaches that take place, for example by conducting an investigation.

**Myth**: The Human Rights Act is misused because we simply can’t afford to give everyone a gold standard of care at home

**Response**: In a court case, the HRA can only be used to argue that the standard of care is so poor that the human rights of the service user are at risk of being breached. It can’t be used to argue for a ‘gold standard’ of care. Decisions about care needs to be proportionate to someone’s needs and to the resources available, which has been recognised in judgments made, for example the case of Elaine McDonald discussed below [*McDonald v United Kingdom 20 May 2014].* However it is usually more costly to fight a court case than to get it right first time. Aside from the question of court challenges, taking a human rights approach to the design, commissioning and delivery of care services has a lot of advantages. It can help change the whole culture of care **–** for example, promoting zero tolerance of abuse, supporting the individual’s choice and control over their daily lives, making people feel they can complain without retribution.

**Myth:** When receiving care at home older people should not expect it to include help to go out – it only covers basic personal care like keeping clean, eating, drinking and staying safe.

**Response:** The right to respect for social relationships and for retaining contact with one’s community is covered by Article 8, and so is a fundamental part of human rights protection for everyone. Getting out of the home for these purposes should be seen as a necessary activity for those who receive care, not an optional extra (ref. Article 8). There should be no differential treatment between older people and younger adults receiving care in being supported to go out.

**Minefield:** It may be suggested that a straightforward common sense approach would mean that everyone would understand what it is to behave reasonably.

**Facts:** Opinions about what is reasonable vary greatly because we all have different views and perspectives.

Human rights are common to us all and working them out together helps us to make sense of them. They are ‘…rights and freedoms that belong to all individuals regardless of their nationality and citizenship. They are fundamentally important in maintaining a fair and civilised society’.

***Sources:***

Liberty. ‘Human Rights Act Myths’ <http://www.liberty-human-rights.org.uk/human-rights/human-rights/the-human-rights-act/human-rights-act-myths/index.php>

Ministry of Justice ‘Making sense of human rights – a short introduction’. 2006. <http://www.justice.gov.uk/downloads/human-rights/human-rights-making-sense-human-rights.pdf>

**Ministry of Justice ‘Human rights, human lives** – **a handbook for public authorities** –his guide is designed to assist officials in public authorities to implement the Human Rights Act 1998’ 2006. <http://www.justice.gov.uk/downloads/human-rights/human-rights-handbook-for-public-authorities.pdf>

Equality and Human Rights Commission ‘Human Rights in Action: case studies from regulators, inspectorates and ombudsmen 2014. <http://www.equalityhumanrights.com/publication/human-rights-action-case-studies-regulators-inspectorates-and-ombudsmen>

Case examples and reflections from local authorities

**Case examples** – real effects on real people

(Although not all home care cases these still raise similar commissioning and human rights issues.)

Mr and Mrs Driscoll

In 2005, Mr and Mrs Driscoll,both 89, were separated when Mr Driscoll needed residential and nursing care. Mrs Driscoll was told that she didn’t qualify for a subsidised place in the council-run home and went to live with her son. Human rights experts and older people’s organisations pointed out that this was a breach of the couple’s right to respect for their private and family life (Article 8), protected by the Human Rights Act. Following publicity and a campaign by the family, Mrs Driscoll’s needs were reassessed and Gloucestershire County Council offered her a subsidised place in the same care home as her husband. The media campaign and publicity, fuelled by human rights arguments under Article 8, persuaded the local authority to reconsider.

Ms E

Ms E[1], amental health service user said she did not want her nearest relative – her sister – involved in decisions regarding her admission to hospital. The two were not close and had not seen each other for nearly two years and a psychiatrist considered it unhelpful to Ms E’s health for her sister to be given decision-making powers. Ms E argued that if her sister was informed or consulted about her proposed hospital admission, this would breach her Article 8 right to respect for private life. The Court made a declaration that it was not practicable for the social worker to either inform or consult the nearest relative. This allowed Ms E’s wishes to be respected. As a result, legal advisors and mental health advocates are now able to advise service-users that if they have reasons for not wanting their nearest relative involved in decisions regarding their admission to hospital, they should draw their social worker’s attention to this case.

Elaine McDonald

The case of *McDonald v United Kingdom*involved Elaine McDonald, age 67, who had a stroke in 1999 and needed support to continue living on her own in her flat. She had mobility problems and problems with her bladder which meant she needed to use the toilet frequently at night.

In 2008, she fell and broke her hip and was assessed by the Royal Borough of Kensington and Chelsea as having an eligible need for support both during the day and ‘“assistance at night to use the commode’”. Initially a sleep-in care worker was provided for seven nights a week but later (December 2008) the Council decided it could save £22,000 a year by supplying Ms McDonald with incontinence pads for use at night.

The High Court found that the Council was entitled to meet Ms McDonald’s need in a more economical manner. The Appeal and Supreme Courts upheld the council’s right to amend a care plan where a cheaper alternative is available. The key is whether the alternative is suitable.

The case went on to the European Court of Human Rights in Strasbourg, which confirmed that Ms McDonald’s rights under Article 8 of the Convention (the right to respect for private and family life) were involved. In this situation, an explicit link should be made between her personal dignity and independence and her rights under Article 8. A local authority could breach someone’s Article 8 rights by withdrawing care. However, in this case the authority’s actions were proportionate and lawful – apart from a period of one year when the care plan was changed without a proper review. The Court decided that compensation should be paid to Ms McDonald for this period.

Mr F

*Ref. ‘Community Care’ February 7th, 2014.*

Council rapped after social workers moved man to cheaper care home contrary to assessment recommendations

Worcestershire Council has been heavily criticised for moving a man with dementia to a less suitable care home contrary to a social worker’s assessment recommendations that this would be detrimental to his health.

The man, Mr F, died in January 2012, two months after the move following a sharp decline in his health, and the evidence suggests this was caused by the impact of the move and the poor care he received at the second home, Grove House, found[the Local Government Ombudsman](http://www.lgo.org.uk/news/2014/jan/worcestershire-social-workers-moved-elderly-man-despite-warnings-own-report/) (LGO).

Mr F, who was also doubly incontinent, needed help from two carers to mobilise and became agitated in noisy environments, was settled at the first home, Applewood House, where he had moved in February 2011, funded by NHS continuing healthcare. However, NHS funding for the £800-a-week nursing home placement was withdrawn in October 2011, making Mr F’s care the responsibility of Worcestershire Council. At the time, the ‘usual rate’ that the council paid for nursing home care was £495 a week.

He was assessed by a council social worker, Officer A, in September 2011, who found that his needs were being met at Applewood House, care staff knew how to prevent him from becoming agitated and that any move ‘would be detrimental to his health and wellbeing’.

Council records show that senior managers with budgetary responsibility did consider taking over funding the placement at Applewood House, but this option was not pursued despite Officer A’s conclusions.

‘Worcestershire County Council’s social workers ignored their own recommendations which stated that any move would have a detrimental effect on the man’s health and wellbeing and should have considered if any move should take place in these circumstances,’ said the ombudsman, Jane Martin.

Instead, Officer A first gave Mr F’s family the impression they would have to pay an unaffordable top-up of £300 for him to stay at Applewood House by telling Mr F’s son, Mr E, that the council would pay no more than its usual rate for a placement. This is contrary to the [Choice of Accommodation Directions 1992](http://webarchive.nationalarchives.gov.uk/%2B/www.dh.gov.uk/en/Publicationsandstatistics/Lettersandcirculars/LocalAuthorityCirculars/AllLocalAuthority/DH_4004615), which states that a council could not seek a top-up if it could not identify a suitable placement at its usual rate.

Then, the council’s brokerage team asked several nursing homes whether they could meet Mr F’s needs and had vacancies, with only Grove Lodge saying that it met both criteria, at a rate £100 a week above the council’s usual rate. The council agreed to meet the cost, minus Mr F’s assessed contribution, and he moved there on 15 November 2011.

However, the ombudsman found that the council did not properly assess whether Mr F could be moved without detriment to his health or how Grove Lodge could meet his needs, particularly his agitation, relying instead on the provider’s assertions.

On 9 December Mr E contacted Mr F’s new social worker, Officer C, to complain about the care he was receiving at Grove Lodge. He said Mr F had developed a pressure sore not referred to in his notes, was regularly being returned to his room for ‘shouting out’ and was found in bed on one occasion, sweating, fully clothed and ‘with two pillows nearly covering his face’. Mr F was then admitted to hospital on 28 December 2011 and was dehydrated on admission, reported Mr E in an email to the NHS trust that was passed on to the council. Mr F died in hospital on 24 January 2012.

The LGO found that the council mishandled Mr E’s complaint, made on 9 December. Firstly it did not record it as a complaint under its adult social care complaints procedure despite it pertaining to care being provided on the council’s behalf.

Secondly, while Officer C asked Grove Lodge’s provider to investigate the complaint, the council did not monitor the adequacy of its handling of the complaint or challenge its failure to answer all of Mr E’s concerns.

Thirdly, despite Mr E’s complaint including safeguarding issues, these were not immediately referred to the council’s adult protection chair for consideration under its safeguarding procedures. While a safeguarding investigation was later triggered in January 2012 it was closed in July 2012 because the provider had by then completed its complaint investigation. However, the LGO concluded that this was not an adequate explanation, as there had been no finding about why Mr F had been admitted to hospital with dehydration or about the incident when he was found in distress in his room.

Human rights making a difference

The man concerned was a widower who lived independently and had done so for at least two decades; he had been a senior military man who by this stage had cancer of the spine and was almost immobile as well as being in considerable pain.

He was, whenever a health or social care professional called, immaculately turned out wearing a smart suit, pressed shirt and tie and his shoes were polished to a high shine. He was a very engaging man, highly involved in his care and quite assertive, asking questions and challenging anyone whom he felt was lacking.

For a while he spent some time in the local community hospital but the prognosis was that he would return home with a package of care. His daughter in law had been providing home care but was struggling as his health deteriorated. A meeting was called at the hospital to start to look at what would be needed to help this man at home.

Everyone was to meet in the dayroom at the end of his ward in the hospital. His daughter in law arrived with him in his pyjamas and slippers with a hospital blanket over his knees.During the meeting he was quiet and held his head low; even with gentle but direct questions he was very unresponsive.

At the end of the meeting he was returned to the ward and the healthcare professionals in the room felt that he was too ill to move to his home as he was so unresponsive. The Care Co-ordinator from the local authority was concerned as he was sure there was something else going on and spoke to the man’s daughter in law.

She had been late getting to the hospital and anxious about her father in law’s state of mind. The Care Co-ordinator mentioned the fact that her father in law was always very smartly dressed even though it must have been very painful for him to get dressed. The daughter in law agreed but said she had thought he would be more comfortable in his pyjamas.

The Care Co-ordinator called another meeting later in the day so the daughter in law could get there in time; the worker arrived early too and helped to get the man dressed making sure his tie was just so and his shoes were polished just right.

For the meeting the man was there first, in a commanding chair, dressed as he always was for meetings with professionals. He led the meeting and received a package of care suitable for him and his circumstances. Respecting his human rights meant that he was once again in charge of his life and care.

Examples of individual experiences taken from ‘Close to home – an inquiry onto older people and human rights in home care’ (EHRC 2011)

* **Marian**, a housebound woman, became depressed because she had not had a shower for several weeks. The home care provider decided to provide Marian with only strip washes after a care worker pulled a muscle trying to manoeuvre her out of the shower.

A human rights approach would emphasise the importance of understanding the fundamental rights at stake – in particular Article 8 (right to respect for private and family life). It would also involve critically reviewing the available courses of actions so as to balance Marian’s rights with the interests of the care workers. For example, have alternative options been explored that better meet Marian’s needs and interfere less with her rights? Have staff been properly trained in moving and handling? Can more than one worker be allocated, or can a hoist or specially designed wheelchair be used? (Page 21)

* A home care worker had seen a family member verbally and financially abusing her elderly relative. The lady was bullied, given little food, and she had to beg for her own money to be spent. The family member refused to buy incontinence pads and left her alone and unfed on Christmas Day. The worker raised this with their line manager, who allegedly did not want to rock the boat with the relative as the care company received a lot of money for the lady’s care. The worker was then removed from supporting the older woman until staff shortages meant the caller was placed with her again, and had the same concerns. The worker then raised their concerns with the regional care manager, who investigated the matter. (Page 81)
* ‘Both my parents have been enabled to stay independent as long as they can due to the adult social care they have been provided with … [They] are able to enjoy a dignified life, in their communities, at little cost to the state, and remain in control and as independent as they can be.’Daughter whose parents receivehome care, Midlands. (Page 23)

‘The care agency chosen [by social services] did not provide an adequate service. They failed on many occasions to give the correct medication, which severely affected my father’s health. We transferred to self-directed supportand now employ personal staff. My father now gets an excellent servicewhich supports the care that we can give as a family. They’re a lifeline.’ Daughter of man aged over 75, partfunded local authority care, North West. (Page 60)

Local authority reflections:

‘Close to home’ (Inquiry report. EHRC 2011)

‘On a formal contracting basis most documents will refer to the human rights of people receiving services. However, simply including such statements within the contract is not the same as promoting people’s rights. What is more crucial is that specifications outlining the service make a reality of the issues of human rights, and monitoring tools such as quality assurance frameworks are designed to look at how services are provided, but even more crucially toensure that providers are aware of how their services will be monitored and the areas that commissioners feel are crucial. The other issue with inclusion in contracts is that the documents will not necessarily prioritise areas that providers are expected to comply with. Therefore issues such as human rights will sit along[side] more mundane areas such as payment terms and conditions and will not always be viewed with importance.’ Local authority response to survey. (Page 45)

‘Close to home recommendations review’ (EHRC2013)

* One local authority fed in the findings of the Close to home report to a working group set up to review the commissioning of 15-minute care slots. As a result of this review, a list of care tasks which should not be included in 15-minute care calls has been developed. These are: bathing; hoisting; encouragement and support to eat a prepared meal/drink; assisting to dress/undress; assisting to toilet/with toileting; and assisting with continence aids including continence pads and catheter care (this includes elements of personal care). Local authority – North of England. (Page 18)

In relation to mainstreaming human rights into decision-making processes, one local authority reported that during the tendering process they require providers to give evidence of practice that protects human rights at each stage.

To assess this, they conduct surveys, telephone questionnaires, one-to-one interviews and observation visits with the providers. (Page 20)

* Costing tool:

Brighton and Hove Council examined a number of existing tools and then developed a costing model to set a fair rate for their home care. They benchmarked rates with other councils and consulted existing providers, to see not only what rate providers would view as realistic, but also which elements of the previous package they wanted to keep. Providers highlighted the importance of access to free training for care staff, which was retained. The Council agreed payment of the local Living Wage (£7.09/hour in 2011) as it wanted to attract and retain the right calibre of staff. The costing model was then used to build in relevant costs in order to set the rate at a fair level for all providers. These included staff on-costs, training, travel costs and provider overheads. The rate was set at the same level for all providers, with the intention of raising standards to a consistently high level and – through the payment of the same fair rate to workers – maintaining a stable local care market. The rate was £14.50 per hour with enhanced payments for calls shorter than an hour, bank holidays and complex cases.(Page 17)

‘Guidance on human rights for commissioners of home care’ (EHRC 2013)

* Good practice:

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. (Page 23)

Contacts

This publication and related equality and human rights resources are available from the Commission’s website: www.equalityhumanrights.com

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