

Resource 5

Further Resources

Further Resources on Equality and Human Rights

This document sets out a number of further resources for information on equality and human rights which you can use to build on your learning and to keep up to date with further developments.

Court Cases

➔ **UK Human Rights Blog**
<http://ukhumanrightsblog.com/>

The UK Human Rights Blog website provides regular updates on developments in the law and court cases which have an impact on equality and human rights. It is also possible to subscribe to free e-mail updates on the website.

➔ **RightsInfo**
<http://rightsinfo.org/>

RightsInfo is a website containing information on the European Convention on Human Rights, the Human Rights Act and court cases. There are short summaries of key human rights cases, infographics on human rights, guides to the rights within the Human Rights Act and a blog with regular updates on developments.

➔ **One Crown Office Row**
<http://www.1cor.com/resources-introduction>

One Crown Office Row is a set of barristers' chambers. Their website contains a dedicated resources section with a "Human Rights and Public Law Update" service with summaries of key human rights cases. Access to the update is free although you will need to register on the website. There is also a free e-mail alert service to which you can sign up.

➔ **Supreme Court**
<https://www.supremecourt.uk/>

The Supreme Court is the highest court in the UK. All of the court's judgments are published online along with short summaries of the decisions. You can also watch videos of the court hearings and the judges' summaries of their decisions.

➔ **Judiciary**
<https://www.judiciary.gov.uk/judgments/>

The website of the judiciary publishes a small number of key judgments from courts other than the Supreme Court. Usually these are judgments from higher courts such as the Court of Appeal and the High Court, but sometimes judgments of lower courts are published if the case is a high-profile one.

➔ **British and Irish Legal Information Institute**
<http://www.bailii.org/>

The British and Irish Legal Information Institute website is the largest free database of court decisions. Almost all higher court decisions are published on the website. There is also a helpful FAQ section on the website and how to use it.

➔ **European Court of Human Rights**
<http://www.echr.coe.int/>

The European Court of Human Rights' website contains the full judgments of all of the cases heard by the court. The database of judgments is called HUDOC and there are useful manuals on the website on how to use the database.

There are also summaries of the court's case law on particular human rights factsheets on specific issues such as children's rights, healthcare, detention and discrimination.

Legislation

- **Joint Committee on Human Rights**
<http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/>

Parliament's Joint Committee on Human Rights analyses Bills in Parliament for their compatibility with the European Convention on Human Rights. For some Bills, which raise human rights concerns, the committee will publish a report with its conclusions. The committee also undertakes inquiries onto different human rights issues and publishes reports with its conclusions.

- **Women and Equalities Committee**
<http://www.parliament.uk/womenandequalities/>

Parliament's Women and Equalities Committee reviews the work of the Government Equalities Office and its performance on equalities (i.e. equality regardless of gender, age, race, religion or belief, sexual orientation, disability, gender identity, pregnancy and maternity, marriage or civil partnership status). The committee also undertakes inquiries onto different equalities issues and publishes reports with its conclusions.

Webcasts

- **Equality and Human Rights Commission: equality – online**
<https://www.equalityhumanrights.com/en/commission-scotland/legal-work-scotland/>

The Scotland Legal Team at the Equality and Human Rights Commission have produced a series of webcasts for practitioners across Great Britain who work with legal issues on equality in their day-to-day work. These webcasts look at: (i) equality in the context of international human rights law; (ii) Article 14 of the European Convention on Human Rights and recent cases from the UK and Europe; (iii) EU equality legislation and cases.

General Reading and Resources

- **Equality and Human Rights Commission: Reading Lists**
<http://www.equalityhumanrights.com/publications/reading-lists>

The Equality and Human Rights Commission have published extensive reading lists on further sources of information on a variety of topics relating to equality and human rights. Some of the most useful include:

- **Children and young people's rights:**
<http://www.equalityhumanrights.com/publications/reading-lists/children-and-young-peoples-rights-reading-list>
- **Disability:**
<http://www.equalityhumanrights.com/publications/reading-lists/disability-reading-list>
- **Equality Act 2010:**
<http://www.equalityhumanrights.com/publications/reading-lists/equality-act-2010-reading-list>
- **Good relations / social cohesion:**
<http://www.equalityhumanrights.com/publications/our-research/reading-lists/good-relations-social-cohesion-reading-list>
- **Health inequalities:**
<http://www.equalityhumanrights.com/publications/our-research/reading-lists/health-inequalities-reading-list>
- **Human rights:**
<http://www.equalityhumanrights.com/publications/reading-lists/human-rights-reading-list>

➔ **Older people/workers:**
<http://www.equalityhumanrights.com/publications/reading-lists/older-peopleworkers-reading-list>

➔ **Pregnancy and maternity:**
<http://www.equalityhumanrights.com/publications/reading-lists/pregnancy-and-maternity-discrimination-reading-list>

➔ **Race:**
<http://www.equalityhumanrights.com/publications/reading-lists/race-reading-list>

➔ **Religion or belief:**
<http://www.equalityhumanrights.com/publications/reading-lists/religion-or-belief-reading-list>

➔ **Sex:**
<http://www.equalityhumanrights.com/publications/our-research/reading-lists/sex-discrimination-reading-list>

➔ **Sexual orientation:**
<http://www.equalityhumanrights.com/publications/our-research/reading-lists/sexual-orientation-reading-list>

➔ **Trans:**
<http://www.equalityhumanrights.com/publications/reading-lists/trans-reading-list>

➔ **Equality and Diversity Forum**
<http://www.edf.org.uk/blog/information-bank/>

The Equality and Diversity Forum (EDF) is a network of organisations committed to equality. The Information Bank on the EDF website contains information and resources on equality, human rights and related subjects.

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CQC Equality and Human Rights
Learning Programme 2015-16

Unconscious Bias

Background

One of the CQC's Equality Objectives for 2015 – 2017 is to deliver learning and development for all CQC staff by March 2016 to address unconscious bias. This will help to promote equality, diversity and inclusion in our regulatory work, in employment at CQC and in our wider relationships with colleagues. As the Equality Objectives set out:

- Everyone has unconscious biases that affect their perceptions, judgements and decisions. An understanding and awareness of unconscious bias will help all CQC staff to improve the judgements they make as part of their roles and regulatory work (for example, when inspecting services, registering new managers or taking calls at our National Customer Service Centre).
- An understanding of how unconscious bias works can contribute to the fair treatment of staff, helping to build an inclusive and fair organisational culture in CQC.

What is unconscious bias?

Unconscious bias is the process by which our brain makes quick judgments, assessments and decisions which are biased in nature without us even realising. One part of our brain, the pre-frontal cortex, regulates slow, rational, considered decision-making; the other part, the amygdala, governs 'fight or flight' thinking. When we are under pressure, stressed or anxious, the amygdala governs decision-making. Our brain uses shortcuts to make judgments quickly – these shortcuts are guided by unconscious biases.

These biased judgments can be based on a variety of characteristics such as:

- Gender
- Attractiveness
- Ethnicity
- Clothing
- Religion/belief
- Piercings/tattoos
- Perceived or actual sexual orientation
- Work ethic
- Weight
- Age
- Haircut
- Disability
- Body language
- Accent
- Personality

Why do we have unconscious bias?

- Our brains make incredibly quick judgements and assessments of people and situations.
- The brain finds shortcuts based on previous experiences.
- Usually, we are able to check these judgements, but in time sensitive or pressured situations bias can go unchecked.
- Unconscious bias is defined as our implicit people preferences, formed by our socialisation, our experiences, and by exposure to others. It affects our decision making, our relationships, who we have affinity to, and consequently provide opportunities to in the workplace.

When might unconscious bias influence the delivery of care and treatment?

Unconscious bias can influence any area of the delivery of care and treatment which involves making an assessment or perception of another person, forming a judgements or making a decision. This can include:

- Assessments of a person's needs;
- Risk assessments;
- Decisions about which healthcare and treatment will be provided and in what manner;
- Service accessibility;
- Culture of the organisation; and
- Judgements about quality of care.

What is the research behind unconscious bias?

There have been a number of research studies looking into the impact of unconscious bias. Three of these are summarised below:

“Selective looking and the noticing of unexpected events”, Robert Becklen & Daniel Cervone (1983)

Method: Subjects presented with film of ballgame with unexpected event and asked to attentively watch the game.

Results: 18 out of 85 subjects noticed a “highly conspicuous” woman in background holding umbrella, despite subjects’ “painstakingly accurate” description of video.

Conclusion: When directing attention to some specific object, we often fail to notice others.

The full study can be read at <http://link.springer.com/article/10.3758/BF03198284>

“Your Hidden Censor: What Your Mind Will Not Let You See”, Keith Payne (2013)

Study: White women tasked with looking at online profiles of men and selecting profiles for either potential co-workers or dates. Shown preliminary ball-tossing video in which a young black man or young white man walked across the screen.

Results: Those women tasked with selecting profiles for dates noticed the white man more often in the preliminary task.

Conclusion: The unconscious mind is “screening what we see based on goals and emotions”. Our attention is therefore selective.

“Implicit Bias among Physicians and its Prediction of Thrombolysis — Decisions for Black and White Patients”, Green et al. (2007)

Method: Physicians given an internet-based tool to diagnose patients followed by a questionnaire. Physicians using the internet-based tool were randomised with accompanying pictures of black or white patients, both presenting with symptoms of acute coronary syndrome.

Results: Physicians assigned black patients were measured as more hesitant in diagnosing symptoms and less likely to prescribe medicine.

Conclusion: The stronger a clinician’s unconscious bias against black patients was, the less likely they were to offer black patients potentially life-saving treatment.

The full study can be read at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2219763/>

What are the different types of unconscious bias?

Research and literature on unconscious bias has highlighted a large number of different types of bias. Below are summaries and examples of six key types that are particularly likely to be relevant in a health and social care setting.

1

Affinity bias

Affinity bias leads us to favour people who are like us, i.e. those who sound like us, look like us or behave like us.

Example: A nurse may favour the opinion of colleague with a similar professional background over other colleagues who have different qualifications.

2

Confirmation bias

Confirmation bias refers to our tendency to search for, interpret, focus on and remember information in a way that confirms our preconceptions.

Example: If we visit a doctor's surgery with an untidy waiting room area, we may draw conclusions about the standard of care we receive based on this initial judgement.

3

Attribution effect

Attribution effect involves placing undue emphasis on internal characteristics to explain behaviour, rather than focusing on external factors that influence behaviour. This results in us attributing behaviour to character when we should attribute it to a situation.

Example: If we witness a healthcare assistant caring for someone in a hurried way we may attribute this to the healthcare assistant's character rather than taking into account the external environment in which they are working.

4

Social comparison bias

Social comparison bias results in us comparing ourselves to other people in order to develop a sense of individual and group identity.

Example: When observing a clinician speaking to an older person, we may think that we would never speak to a patient in that way.

5

Priming

Priming refers to the way in which one action influences a response to another, by its association.

Example: A patient who is given a leaflet on giving up smoking by their doctor is more likely to follow this advice than if they had picked up the same leaflet in the surgery reception.

6

Stereotyping/implicit association

Stereotyping refers to the manner in which we group together individuals and judge the group based on their association with one another. It describes how we simplify our social world, by reducing the amount of thinking we have to do when we meet a new person.

Example: When attending a doctor's surgery a person may assume that "Dr Jones" is male, only to discover Dr Jones is a young woman.

What are the conditions and situations where unconscious bias is most likely to have an impact?

Conditions

- **Time:** Our medial pre-frontal cortex plays a role in moderating the amygdala's rushed judgements with more measured, learned reactions. But being hurried means it doesn't operate properly which prevents the part responsible for controlling biases doing its job. When we are hurried our cognitive function is impaired and the amygdala becomes the major regulator of our judgements. Therefore when we are rushed this can lead to bias impinging upon our actions. We are more likely to suppress abundant information and fall back onto our biases. Making sure there is sufficient time to carefully consider will help reduce the impact of unconscious biases within any process.
- **Stress, anxiety, responsibility:** Stress and anxiety mean we are less likely to consciously step back and think about the decisions we are making. As can responsibility because it can cause stress for the person, and mean that individual biases do not go unchecked.
- **Sensory interference:** This also relates the medial pre-frontal cortex being impaired because the brain is being overloaded with sensory information. It doesn't operate properly which prevents the part responsible for controlling biases from doing its job. When there is too much noise, or a lot going on in a room, we get distracted and cannot process abundant information, so we are more likely to fall back onto biases.
- **Being the only one:** Being the only one to make a decision can mean that individual unconscious biases go unchecked as there aren't other opinions to counter them.

Situations

- **Any type of assessment/selection decisions:** Our brains are hard wired to rapidly categorise people instinctively, and we use the most obvious and visible categories to do this: age, body weight, physical attractiveness, skin colour, gender and disability. This can come about in selection processes when we automatically assign a whole suite of unconscious characteristics – good and bad – to anyone categorised as being from a particular group, instead of looking at the individual.
- **First impressions:** This is linked to stereotyping. As our unconscious brain works a lot faster than our conscious brain, we automatically fall into quick and irrational judgements of people we meet for the first time. Unfamiliarity may trigger biased actions or responses because it is too difficult to take in all of the complexities of other people as individuals, it's simply easier to categorise and group people together. Unconscious bias can be triggered when we see what a person is wearing, what their race, class, gender, age etc. is.
- **Discretion:** Biases can go unchecked, and when a person has a lot of discretion this can be stressful which can also mean people are less likely to step back and think about the decisions they're making.

What can we do to mitigate the impact of unhelpful unconscious bias?



Be aware of and reflect on possible biases

Just being aware means that we can override some of our automatic judgements and begin to think rationally about certain situations and people. Making a simple declaration about valuing a diverse workforce can have an impact.



Give yourself and others time to make important decisions

When we are rushed the medial pre-frontal cortex (which plays a role in moderating the amygdala's rushed judgements with more measured, learned reactions) does not operate properly.

Allowing more time for people to make important decisions means the medial pre-frontal cortex can do its job and moderate the amygdala's activity. Decisions won't be based on unconscious biases but be made rationally.



Create an environment where staff can challenge and be challenged

This will ensure individual unconscious biases are checked which people may not have realised they had.



Think about procedures

Think about situations where unconscious bias can take place such as interviews and meetings, and make sure there are procedures in place to prevent unconscious biases from happening.

For example ensuring there is more than one person making decisions with shared responsibility, there is enough time to make decisions, and that people aren't stressed and are in a quiet environment.

Where can I go to find out more about unconscious bias?

Discover your own unconscious biases

implicit.harvard.edu/implicit/takeatest.html

NB: due to the nature of this particular style of testing, not all of the tests are accessible to people using assistive technology for screen reading as the tests relate to reaction times viewing words on the screen. Some of the tests use images rather than words and may be more accessible.

Medical Daily, The Mind's Hidden Censor: 'Selective Selectivity' And What Your Unconscious Bias Won't Let You See

www.medicaldaily.com/minds-hidden-censor-selective-selectivity-and-what-your-unconscious-bias-wont-let-you-see-246694

Exposing hidden bias at Google

www.nytimes.com/2014/09/25/technology/exposing-hidden-biases-at-google-to-improve-diversity.html?_r=0

Your biased brain

www.wict.org/programs/conference/Documents/PeopleMgtBiasArticle.pdf

Unconscious bias in the workplace

www.theguardian.com/women-in-leadership/2013/aug/15/guilty-of-unconscious-bias-job-roles

Unconscious bias – silver bullet or just a useful tool?

www.linkedin.com/pulse/joy-warmington-roger-kline-unconscious-bias-silver-bullet-roger-kline

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Key Questions

Equality and Human Rights and the Key Questions

Equality and Human Rights Law: A Summary

The Human Rights Act 1998

The Human Rights Act is one of the key ways human rights are protected in the UK. The Human Rights Act (HRA) came into force in the UK on 2 October 2000. The Human Rights Act places a legal duty on all public authorities in the UK (e.g. NHS Trusts, local authorities, government departments and regulators) to act in a way which is compatible with human rights when making decisions. This includes policy and strategic decisions, and operational decisions around service delivery. There are 16 rights in the Human Rights Act which public authorities must respect and protect. The Human Rights Act protects everyone in the UK, without any exceptions. When Parliament passed the Human Rights Act, one of its aims was to create a 'culture of respect for human rights' and to place human rights at the heart of the way public services are delivered.

The Human Rights Act also acts as a 'foundation law'; other laws should be compatible with the rights in the HRA. This means the rights are the foundation upon which other laws are built. Courts and tribunals have to make sure that all laws are interpreted compatibly with the Human Rights Act when they make decisions; this includes laws such as the Equality Act and the Health and Social Care Act and regulations. This applies irrespective of whether other laws were passed before or after the HRA.

The rights contained in the Human Rights Act are:

- **Right to life:** Article 2
- **Right not to be tortured or treated in an inhuman or degrading way:** Article 3
- **Right to be free from slavery or forced labour:** Article 4
- **Right to liberty:** Article 5
- **Right to a fair trial:** Article 6
- **Right not to be punished for something which wasn't against the law:** Article 7
- **Right to respect for private and family life, home and correspondence:** Article 8
- **Right to freedom of thought, conscience and religion:** Article 9
- **Right to freedom of expression:** Article 10
- **Right to freedom of assembly and association:** Article 11
- **Right to marry and found a family:** Article 12
- **Right not be discriminated against in relation to any of the rights contained in the Human Rights Act:** Article 14
- **Right to peaceful enjoyment of possessions:** Article 1, Protocol 1
- **Right to education:** Article 2, Protocol 1
- **Right to free elections:** Article 3, Protocol 1
- **Abolition of death penalty:** Article 1, Protocol 13

The full text of all of the rights are contained within Schedule 1 to the Human Rights Act and can be found here (<http://bit.ly/2a3KMZa>).

The Equality Act 2010

The Equality Act brought together over a hundred pieces of legislation that dealt with equality and anti-discrimination in various sectors. The Equality Act contains a list of nine protected characteristics. Employers must not discriminate on the grounds of these protected characteristics. Those who provide goods or services to the public or sections of the public or who exercise public functions must not discriminate on the grounds of most of these characteristics (marriage or civil partnership is excluded).

The protected characteristics are:

- **Age:** Age is a protected characteristic either when it relates to people of a particular age; for example 18 year olds, or when it relates to people falling within a range of ages; e.g. people aged 18-30. Age does not cover people under the age of 18 with respect to the provision of goods and services or exercising public functions.
- **Disability:** Disability is understood as a mental or physical condition that has a significant and long-term effect on a person's ability to carry out 'normal' daily activities. Disability also covers progressive illnesses such as HIV and cancer from the moment of diagnosis.
- **Gender reassignment:** The Act prohibits discrimination against people transitioning to or identifying as a different gender to the one that they were assigned at birth.
- **Marriage and civil partnership:** The Act protects married couples and same-sex couples in civil partnerships. It does not protect single people.
- **Pregnancy and maternity:** The Act prohibits discrimination against women on the grounds of pregnancy or maternity. A woman cannot be discriminated against with regard to employment during her pregnancy, or during statutory maternity leave. Outside of work, a woman is protected from discrimination on maternity grounds for 26 weeks after giving birth. The Act also prohibits discrimination against a woman on the grounds that she is breastfeeding.
- **Race:** Race includes colour, nationality, citizenship, and ethnic or national origin, and the Act protects people from discrimination on any of these grounds.
- **Religion or belief:** Religion or belief includes philosophical belief and non-belief. The Act protects people from discrimination on any of these grounds, provided that their religion, belief or non-belief affects their life choices.
- **Sex:** The Act prohibits discrimination against men and women on the basis of their sex; for example with regard to rates of pay.
- **Sexual orientation:** The Act prohibits discrimination against any person on the grounds that they are lesbian, gay, bisexual or heterosexual.

As well as banning unlawful direct discrimination against a person with a protected characteristic (or who is perceived to have a protected characteristic), the Equality Act also protects an associated person against unlawful discrimination (e.g. the parent carer of a disabled child). Organisations must also prevent indirect discrimination on the basis of the protected characteristics. In relation to disability, organisations must also make reasonable adjustments to their conditions of employment or provision of services to prevent indirect discrimination against a disabled person. For example:

- An employer must not refuse to hire somebody because they use a wheelchair. This is direct discrimination.
- A service provider must make reasonable adjustments to their premises so that a disabled person can use the premises safely and comfortably. This prevents indirect discrimination.

The Human Rights Act and the Equality Act: A Note on Discrimination

Article 14 of the Human Rights Act prohibits discrimination in relation to the other rights in the HRA. This means a claim of discrimination under Article 14 must be attached to another right in the Human Rights Act (or “piggy-backed” on to another right, such as the right to life). Article 14 lists a number of protected grounds such as race and gender. This means that you cannot be treated less favourably than another person for any reason based on a personal characteristic you have in the exercise of your rights under the Human Rights Act. For example an older person cannot be prevented from enjoying their right to liberty simply because of their age.

Article 14 is wider than the Equality Act because it is open ended and prevents discrimination on grounds of ‘any other status’. Examples of other statuses under Article 14 have included discrimination based on place of resident or being the parent of a child born out of wedlock and place of residence. The Human Rights Act has been and can be used to fill in the gaps in equality legislation – for example, it protected the right not to be discriminated against because of mental health before the Equality Act caught up. However, the duty in the Human Rights Act to respect and protect rights only applies to public authorities or those carrying out a public function, whereas the Equality Act applies also to employers and providers of goods, facilities and services.

Where both apply, you do not have to choose which one to use. This is demonstrated in this court case:

Legal Case: ZH v Commissioner of Police for the Metropolis (2013)

ZH, a young man with autism and epilepsy was detained by police after jumping fully clothed into a swimming pool. He was removed from the pool in distress and the police restrained him with handcuffs and leg restraints. He was placed in a police van, still wet and having soiled himself.

The UK courts said this was a breach of his right to be free from inhuman and degrading treatment under the Human Rights Act, given the physical and psychological harm caused, his right to respect for private life, and the right to liberty. They also said that under the Equality Act, the police officers had a duty to make reasonable adjustments on the grounds of ZH's disability. If they had consulted his carers before taking action, they would have been able to de-escalate the situation appropriately.

Although they have their differences, the Equality Act and the Human Rights Act both have very positive effects. They both have duties that apply outside of court, they cannot be contracted out of, and they have made a real difference in people's lives.

The Key Questions

Safe

By safe, we mean that people are protected from abuse and avoidable harm.

Making the links

Under the Human Rights Act, public officials have a “negative duty” not to interfere with people’s human rights, but they also have a “positive duty” to take reasonable steps to protect people’s human rights when they know (or should know) that they are at risk. This means that public officials, including service providers, have a “positive duty” under the Human Rights Act to take steps to protect people from abuse and avoidable harm where such abuse or harm would be a breach of their human rights (such as those set out below).

Under the Equality Act, all service providers are prohibited from discriminating against service users. In some health and social care contexts, discrimination will be a form of abuse or avoidable harm.

Relevant human rights:

The right not to be tortured or treated in an inhuman or degrading way (Article 3)

Torture means intentionally inflicting severe pain or suffering, whether physical or mental, on a person by a public official (or with the acquiescence of a public official) for a particular reason such as to extract information, to obtain a confession, or to punish them. Torture will always be a form of abuse for the purposes of the “safe” question, however it is unlikely to occur often in a health and social care context due to the high level of harm necessary to meet the threshold and the fact that it must be caused intentionally.

Inhuman and degrading treatment means causing (whether intentionally or not) severe physical or mental harm to another person, or treatment which results in severe humiliation and violates a person’s dignity. As the level of harm required for treatment to be inhuman or degrading is a little lower than for torture, and as it can result unintentionally (for example due to neglect or a lack of staff or resources), it is more likely to occur than torture in a health and social care context. Whether the particular treatment is inhuman or degrading will depend, in part, on the individual person experiencing the treatment – factors such as their age, gender and whether they have a particular disability or health condition will impact upon whether it is inhuman or degrading for them. Inhuman and degrading treatment will always be a form of abuse or avoidable harm for the purposes of the “safe” question.

The right not to be tortured or treated in an inhuman or degrading way is an absolute right which means any torture, inhuman or degrading treatment will always be a breach of this right and can never be justified, whatever the reason.

The right to respect for private and family life, home and correspondence (Article 8)

The right to respect for private life includes a right to physical and psychological integrity. This includes bodily integrity and mental and physical wellbeing more broadly. Where abuse or avoidable harm has an impact upon a person’s bodily integrity or their mental or physical mental wellbeing, it may well be a form of abuse or avoidable harm for the purposes of the “safe question”. As the right to respect for private life is one that can be restricted or limited in certain circumstances, service providers are able to act in a way which would restrict or limit a person’s right to respect for private life if it is for a good reason, proportionate and after a fair decision-making process.

Case studies

- A hospital has insufficient staff numbers so that patients are often left for long periods of time without pain-relieving medication or food or drink. This causes some patients, including young children and older patients, significant distress. This would be an issue for the CQC under the “safe” question and possibly a breach of those patients’ rights to be free from inhuman and degrading treatment (Article 3) and to respect for their private life (Article 8) which includes physical and mental wellbeing.
- At a care home, an older resident with dementia is given his medication in his food without his knowledge. The care home staff do this because they don’t think he will understand why he needs the medication, despite the fact that he has capacity to make decisions about what medication he wants (or doesn’t want) to take. This would be an issue for the CQC under the “safe” question and possibly a breach of his right to respect for private life (Article 8) which includes bodily integrity and the right to be involved in decisions about yourself, including care and treatment.
- A GP notices that a young girl regularly attends the practice with unexplained bruising and scars. The GP has concerns that she might be suffering abuse at home but there is no proper safeguarding referral process in place and the GP is not sure what to do in response. As such, she does nothing. This would be an issue for the CQC under the “safe” question but it might also be a failure on the part of the GP to fulfil her positive duty to protect the girl’s right to be free from inhuman or degrading treatment (Article 3) and to respect for her private life (Article 8) which includes physical and mental wellbeing.

Effective

By effective, we mean that people's care, treatment and support achieves good outcomes, promotes a good quality of life and is based on the best available evidence.

Making the links

The "effective" question covers a range of different issues, one of which is whether or not people's consent to care and treatment is always sought in line with legislation and guidance. Providing care or treatment without a person's consent (or, where they are unable to consent, in line with relevant legislation and guidance) will raise human rights issues. A second issue under the "effective" questions is whether staff have the skills, knowledge and experience to deliver effective care and treatment. If staff do not have these and harm is caused to a patient or service user as a result, then this could risk or even breach one or more of their human rights.

Relevant human rights:

The right to respect for private and family life, home and correspondence (Article 8)

The right to respect for private life (Article 8) includes the notion of bodily integrity. This means that public officials are not permitted to act in a way which would interfere with a person's bodily integrity unless they have that person's consent. If the person is unable to give consent (perhaps because they are a young child, lack capacity for that decision, or are unconscious), then the public official must take steps to obtain the consent of the parent, follow the process under the Mental Capacity Act to consult relevant family members and others, or act in the person's best interests as appropriate. Where care or treatment is provided without a person's consent or in accordance with relevant legislation and guidance, this will be an issue for the CQC under the "effective" question and may well be a breach of their right to respect for private life.

Case studies

- A girl arrives at hospital with her father and she has what appears to be bruising on her legs. The paediatrician says that the bruising does not appear to be a skin disease and so sends the girl for further tests. The father has to go to work and so, before leaving the hospital, leaves instructions that no further medical examination or tests are to be carried out until his wife arrives and gives the necessary consent. When the mother arrives an hour later, she discovers that blood samples and photographs of the girl's legs had nonetheless been taken. This would be an issue for the CQC under the "effective" question but it might also be a breach of the girl's right to respect for her private life (Article 8) which includes bodily integrity. (This case study is taken from the case of *MAK and RK v United Kingdom* (2005))
- A care home employs a carer who is insufficiently qualified or experienced for the role. In addition, he is given little training and has minimal supervision. The carer regularly walks into residents' rooms without knocking first. On occasion, residents have been undressed or having personal conversations with others and have been distressed by the experience. Their complaints have not been followed up. This would be an issue for the CQC under the "effective" question but it might also be a breach of the residents' right to respect for private life (Article 8).
- A Child and Adolescent Mental Health Unit at a hospital regularly uses tranquilising medication to calm children and young people experiencing emotional difficulties and mental health problems. The staff at the hospital have had limited training in appropriate use of tranquilising medication and many parents have expressed concern that medication is used too readily. This would be an issue for the CQC under the "effective" question but it might also be a breach of those children and young people's right to liberty (Article 5) if the medication impacts their ability to move around freely, and their right to respect for private life (Article 8).

Caring

By caring, we mean that staff involve and treat people with compassion, kindness, dignity and respect.

Making the links

The “caring” question covers a number of issues. A failure to ensure that service users are treated with dignity and respect, in particular, may amount to a breach of their human rights as these are integral to a number of the rights. If a person is treated less favourably than others because of a particular characteristic, then this may also be discrimination in breach of the Human Rights Act and/or the Equality Act.

Relevant human rights:

The right not to be tortured or treated in an inhuman or degrading way (Article 3)

Inhuman and degrading treatment means causing (whether intentionally or not) severe physical or mental harm to another person, or which causes severe humiliation and violates a person's dignity. As the level of harm required for treatment to be inhuman or degrading is a little lower than for torture, and as it can result unintentionally (for example due to neglect, a lack of staff, or resources), it is more likely to occur than torture in a health and social care context. Whether the particular treatment is inhuman or degrading will depend, in part, on the person experiencing the treatment and factors such as their age, gender and whether they have a particular disability or health condition. In extreme cases, a failure to ensure people are treated with dignity and respect for the purposes of the “caring” question may also amount to inhuman or degrading treatment.

The right to respect for private and family life, home and correspondence (Article 8)

The right to respect for private life includes the right to keep private and confidential information secret and for others to ensure it remains so unless consent is given or sharing it is necessary to prevent serious harm (such as inhuman or degrading treatment). Where a service fails to respect the confidentiality of a person's private information (including sensitive information relating to them or their health), this will be an issue for the CQC under the “caring” question.

The right to non-discrimination (Article 14) and the Equality Act

The right to non-discrimination prohibits discrimination in the enjoyment of all other human rights. This means that if a service user's other rights are involved when they are receiving care and treatment, they must not be discriminated against on the basis of any status in how that care and treatment is provided. In addition, the Equality Act prohibits discrimination on the nine protected characteristics in the delivery of care and treatment by all service providers, including discrimination by association (i.e. where a person is treated less favourably as a result of their association with a person with a protected characteristic; for example family members of disabled people). Where service users are treated less favourably because of a particular characteristic by staff, this may be discriminatory and may raise questions for the CQC under the “caring” question.

- At a particular hospital ward, the medical records of all of the patients hang in loose folders at the end of their beds. Family members, visitors and others are free to pick them up and look at them. There is a failure to ensure the confidentiality of the patients and their private medical information. This will raise issues for the CQC under the “caring” question and may also be a breach of their right to respect for private life (Article 8).
- At a care home, there is one resident who has night-time urinary incontinence. Despite the fact that he wakes up at 6.00am every morning with his sheets needing changing, the staff (who are aware of his situation) do not come in until 8.00am with breakfast and to change his sheets. He is therefore left every morning for two hours in wet bedsheets and this has gone on for several weeks. This will raise issues for the CQC under the “caring” question and may also be a breach of his right not to be treated in an inhuman or degrading way (Article 3) and his right to respect for private life (Article 8).
- A community physiotherapist expressed a wish not to deliver physiotherapy treatment to a particular person he knows is transgender because “it can be quite intimate and I feel uncomfortable doing it”. He was been told that he must do it as part of his job but has responded by saying “Fine, but I'll do it quickly and I don't want to look at them too much whilst I do it”. As such, he has been told that he will only have to do it if no-one else is available. This will raise issues for the CQC under the “caring” question and may also be discrimination on the basis of gender reassignment under the Equality Act.

Responsive

By responsive, we mean that services are organised so that they meet people's needs.

Making the links

The “responsive” question focuses on ensuring that people's individual needs are met. This will require consideration of their particular characteristics. Failure to provide care and treatment in a way which meets their particular needs may amount to discrimination under either the Human Rights Act or the Equality Act. Failure to meet people's needs may also amount to a breach of the right to respect for private life which includes the right to form and maintain relationships with other people.

Relevant human rights:

The right to respect for private and family life, home and correspondence (Article 8)

The right to respect for private life includes the right to form and maintain relationships with other people. The right to respect for family life includes the right to maintain existing family relationships. Service providers have a positive duty to take reasonable steps to support people in developing and maintaining these relationships. Where a service fails to ensure that service users are able to form, develop and maintain relationships with other people (whether family relationships, sexual and romantic relationships, or friendships), this will be an issue for the CQC under the “responsive” question.

The right to non-discrimination (Article 14) and the Equality Act

The right to non-discrimination prohibits discrimination in the enjoyment of all other human rights. This means that if a service user's other rights are involved when they are receiving care and treatment, they must not be discriminated against on the basis of any status in how that care and treatment is provided. In addition, the Equality Act prohibits discrimination on the nine protected characteristics in the delivery of care and treatment by all service providers including discrimination by association (i.e. where a person is treated less favourably as a result of their association with a person with a protected characteristic; for example family members of disabled people). Where care or treatment is not provided in a way which takes into account a person's needs which are related to their characteristics, this may be discriminatory and may raise questions for the CQC under the “responsive” question.

- A GP surgery decides to open up an online booking and repeat prescription service but the website is not made accessible for people with certain visual impairments (such as allowing for different colour contrasts or larger font size). It is not clear from the website what alternatives are available (such as telephone booking or coming into the practice). The service is therefore not considering people's needs and characteristics in the way the service is designed and delivered. This will raise issues for the CQC under the “responsive” question and may also be indirect discrimination and/or a failure to provide reasonable adjustments under the Equality Act.
- A number of service users at a care home feel isolated and want to develop new friendships and possibly romantic relationships with people outside of the care home. Despite requests for support to do this by attending social groups and dating events outside of the care home, little has been done. This will raise issues for the CQC under the “responsive” question and may also amount to a breach of the right to respect for private life (Article 8).
- A sexual health clinic only provides its services between 9.30am and 5.00pm. For many people who might wish to use the service, these times are unsuitable because they are in full-time work or have particular caring responsibilities. Despite a number of requests for appointments outside of these hours, the service has decided not to change its opening hours. This will raise issues for the CQC under the “responsive” question and may also amount to discrimination (by association) for those who have to care for disabled relatives, under the Equality Act.

Well Led

By well led, we mean that the leadership, management and governance of the organisation assures the delivery of high-quality person-centred care, supports learning and innovation, and promotes an open and fair culture.

Making the links

The links between the “well led” question and human rights are not as direct as with some of the other key questions, however human rights issues may well arise where a service is not well led. In particular, a service which is not well led might fail to ensure that service users’ human rights are protected, or discriminate (directly or indirectly) against service users.

Relevant human rights:

The right to respect for private and home life, family and correspondence (Article 8)

The right to respect for private life includes a right to be involved in the community, including the local community. This means that service providers may have a positive duty to take steps to ensure that services users have access to what is going on in their local community and to be involved in it. A failure to do this may well be an issue for the CQC under the “well led” question as well as a breach of their right to respect for private life.

The right to non-discrimination (Article 14) and the Equality Act

The right to non-discrimination prohibits discrimination in the enjoyment of all other human rights. This means that if a service user’s other rights are involved when they are receiving care and treatment, they must not be discriminated against on the basis of any status in how that care and treatment is provided. In addition, the Equality Act prohibits discrimination on the nine protected characteristics in the delivery of care and treatment by all service providers. If a service does not have a clear vision or set of values that includes equality, or if such vision or values are not understood by staff involved in the service, it might be more likely that discrimination may occur. This would be an issue for the CQC under the “well led” question and any discrimination might be a potential breach of the right to non-discrimination under the Human Rights Act or in breach of the Equality Act.

- A care home does not provide any activities for residents outside of the care home and provides minimal support for residents who wish to attend activities outside of the home such as social groups, going to restaurants and pubs, and attending meetings and talks. This is despite the fact that many residents have expressed a wish to do so and need support to be able to. This would be an issue for the CQC under the “well led” question but it might also be a breach of the residents’ right to respect for private life (Article 8).
- A male same-sex couple who are having a child together with the support of a surrogate go to hospital for an ultrasound scan. The hospital does not give particular importance to considerations of equality and non-discrimination and the nurse who is performing the ultrasound scan tells the same-sex couple and the surrogate that only the child’s “real parents” can be present and asks the partner in the same-sex couple who is not the child’s biological parent to wait outside. This may be an issue for the CQC under the “well led” question as the hospital’s failure to consider equality as part of its values might be connected to the staff’s lack of appreciation of the needs of different groups. This might also be discrimination in breach of the Human Rights Act (Article 14) and the Equality Act.

Conclusion

The Human Rights Act makes clear that all laws and policies should be compliant with human rights and it can be useful to use human rights as a lens when looking at and considering what is required from the Key Questions. Hopefully, the above shows how human rights and equalities can be key tools in helping to unpick the key questions and providing a framework for applying and interpreting the questions.

“Respecting diversity, promoting equality and ensuring human rights will help to ensure that everyone using health and social care services receives safe and good quality care. This is our core purpose.”

Care Quality Commission, “Human rights approach for our regulation of health and social care services”, September 2014.

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CQC Equality and Human Rights
Learning Programme 2015-16

Resource 4

Case Summaries

P v Cheshire West and Chester Council and P & Q v Surrey County Council (2014)



Court: Supreme Court of the United Kingdom



Facts: This case concerned three individuals known as MIG, MEG and P. MIG and MEG were sisters who lived in care after being removed from an abusive home. MIG had a learning disability, problems with her sight and hearing, and she found it hard to communicate. She lived with a foster family. MEG had a milder learning disability and better communication skills but exhibited challenging behaviour and lived in an NHS residential home. P, an older man, was living in a supported living bungalow with a small number of other residents. He received one-to-one care and supervision. All three individuals lacked capacity to consent to their living arrangements and all three of them were accompanied whenever they left the home. Although they had never expressed a wish to go out on their own, it was known that they would be prevented from doing so.

The question for the court was whether their living arrangements amounted to a deprivation of liberty for the purposes of Article 5 of the Human Rights Act.



Decision: The court set out the test for a deprivation of liberty as being whether (a) the person is under continuous supervision and control and (b) whether the person is not free to leave. If both conditions were met, then the person was being deprived of their liberty.

The court rejected the “relative normality” of their living arrangements and instead focused on the extreme vulnerability of the three individuals. Lady Hale, the judge who delivered the main judgment, said that decision-makers should err on the side of caution when deciding what constitutes a deprivation of liberty as it is important that vulnerable people have access to the procedural safeguards that Article 5 of the Human Rights Act and the Deprivation of Liberty Safeguards DOLS provide.



Relevance for the CQC: It is important to remember that regardless of the fact a person lacks capacity and is living in an environment which is deemed to be in their best interests, this does not supersede the procedural safeguards to which they need access if they are being deprived of their liberty. However, each case needs to be considered on an individual basis with reference to the test above.

Examples for the CQC:

- A hospital putting blanket DOLS for everybody on a ward living with a dementia;
- A service provider avoiding applying for a DOLS for a person because their living environment is deemed to be in their best interests;
- A care home not making any DOLS applications because residents have never asked to leave.

Pretty v the United Kingdom (2002)



Court: European Court of Human Rights



Facts: Diane Pretty was a woman who lived with motor neurone disease. Her life expectancy was a few weeks or months, she was unable to move and was fed by a tube. However, she did not lack capacity and her intellectual capabilities were unimpaired. She was expected to suffer a distressing and undignified death if the disease were allowed to run its course, however she was unable to end her own life without assistance. Her husband was willing to assist her in ending her life subject to an assurance from the Director of Public Prosecutions (DPP) that he would not be prosecuted under the Suicide Act 1961 which makes it a criminal offence to assist a person to take their own life. The DPP had refused to guarantee that he would not be prosecuted. As a result, she took a case to the European Court of Human Rights. She argued that the right to life (Article 2) also includes the right to choose whether or not to carry on living.



Decision: The court held that whilst some rights also imply a negative (for example the right to freedom of belief also includes the right not to have a particular belief), the right to life was not one of these and that there was no right not to carry on living as part of Article 2. As such, there was no violation of this right.

The court also rejected the argument that the UK had a positive duty to protect her from suffering inhuman and degrading treatment (Article 3) which she would be exposed to if her disease was left to run its course. The court thought this would be too great a stretch of the term “treatment” as understood under Article 3. Additionally, Article 3 had to be read in harmony with Article 2. Whilst sympathetic, the court did not accept that the UK had a positive obligation to take steps to alleviate her suffering.

The court did agree with Diane that her right to respect for private life (Article 8) was engaged. The court held that “the very essence of the Convention is respect for human dignity and human freedom” and that this included considering aspects of a person’s quality of life. However, the court concluded that the ban on assisted dying was a proportionate interference with her private life since it was a sensitive and controversial matter and one for national governments and parliaments to decide.



Relevance for the CQC: This case is significant as it sets out the current legal position on assisted suicide and the right to die. It is also significant because it establishes that human dignity and freedom are at the heart of the European Convention on Human Rights and because decisions relating to a person’s end of life care and quality of life may well engage Article 8.

Examples for the CQC:

- Making sure services providers include people in decisions that impact on their quality of life;
- Making sure services providers ensure that people are treated with dignity, which is inherent to respecting a person’s private life;
- Explaining to service providers what the law is if faced with a patient or resident who is seeking assisted suicide.

McDonald v the United Kingdom (2014)



Court: European Court of Human Rights



Facts: Elaine McDonald suffered a stroke in 1999 and had limited mobility. She needed assistance to move around safely, including when going to the bathroom at night. She had been provided with a night-time carer as part of a local authority care package. In November 2008, the local authority decided to cut her care package by a third as it had decided that Ms McDonald could instead use incontinence pads and sheets at night, despite having assessed her as being in “substantial need”. Elaine brought a case against the local authority challenging the decision. While the challenge was ongoing, the local authority agreed a compromise arrangement of night-time care for four or five nights each week. It completed a care plan review in November 2009 and found that incontinence pads were an acceptable solution as, in its view, the issue was really Elaine’s safety rather than any need for assistance in going to the toilet at night.

Elaine took her case to the European Court of Human Rights. She argued that the local authority’s decision to withdraw night-time care disproportionately interfered with her right to respect for private life (Article 8), not least because being forced to use incontinence pads exposed her to “considerable indignity”.



Decision: The court agreed that, like Diane Pretty, Elaine “was faced with the possibility of living in a manner which conflicted with her strongly held ideas of self and personal identity”, so her right to respect for private life was relevant to the decision to reduce her care package. However, as this right can be limited or restricted in certain circumstances, the court found that it was only the local authority’s failure to conduct a care plan review before reducing Elaine’s care package that amounted to an unlawful restriction of her right to respect for private life from November 2008 to November 2009 and not the reduction in the care package itself.



Relevance for the CQC: This case is significant because it reinforces the European Court of Human Rights’ view (set out in the case of Diane Pretty) that a person’s dignity is protected by Article 8 as well as by Article 3, and extends that reasoning to establish that in addition to being relevant in the context of end of life care, Article 8 may also be engaged in the context of welfare support. A reduction in care may well constitute an interference with a person’s right to respect for private life.

Examples for the CQC:

- Supported living residents who may have had cuts to their care package;
- Ensuring people are included and respected with their wishes with regard to their care plan as far as possible;
- Making sure any interferences with a person’s care plan is for a good reason and proportionate.

Re E (Medical treatment: Anorexia) (2012)



Court: Court of Protection



Facts: E was a 32 year old woman with extremely severe anxiety, a personality disorder and alcohol dependence. She was also a victim of child sexual abuse. She had a reduced life expectancy due to health conditions. She was a patient in a community hospital on a palliative care plan as her death was imminent. She was refusing food and drinking very little fluid. An application was made to the Court of Protection to determine whether she had capacity to refuse life-saving treatment or whether it was appropriate to force feed her. E had previously made advance decisions about refusing treatment so the court also had to determine the validity of those decisions.



Decision: The court ruled that it would be lawful and in E's best interests to force feed her for a period of "not less than a year". Using the Mental Capacity Act, the court had to decide whether at the material time she was unable to make the decision regarding her treatment because of an impairment in the functioning of her brain. With regards to her current capacity, the court held that the combination of her obsessive fear of weight gain and receiving strong sedative medication meant she currently lacked capacity to refuse treatment. With regards to her previous advance decisions, the test for the court was whether there was "clear evidence establishing on the balance of probability that the maker had capacity at the relevant time. Where the evidence of capacity is doubtful or equivocal it is not appropriate to uphold the decision." In both advance decisions, the court decided that E had lacked capacity to refuse treatment, in part because of her detention (or impending detention) under the Mental Health Act.

Given the lack of capacity, it was for the court to decide whether or not the treatment she was refusing was in her best interests. Considerations included the risks of treatment, the chance of success, her overall prognosis, her and her parents' wishes, and human rights principles. The court concluded that "the balance tips slowly but unmistakably in the direction of life-preserving treatment. In the end, the presumption in favour of the preservation of life is not displaced."



Relevance for the CQC: Whilst one person may lack capacity with regard to one type of decision, this should not be applied as a blanket lack of capacity assessment. If a person lacks capacity, you must consider their wishes (past and present) and have regard to their human rights when determining what is in their best interests.

Examples for the CQC:

- Where a person refuses lifesaving medical treatment, it will be necessary to assess their capacity to make this decision;
- Distinguishing between capacities to consent to medical treatment and, for example, maintaining a sexual relationship. You can lack capacity to one and not the other and you should ensure proper assessments are conducted.

A NHS Foundation Trust v Ms X (2014)



Court: Court of Protection



Facts: Ms X was a young woman who had been living with anorexia nervosa for over fourteen years. She also had alcohol dependence syndrome which had caused chronic and end-stage, irreversible liver disease. For years, she had received treatment, including being force fed in an attempt to reverse the effects of her anorexia. However, when free to make choices, she consciously acted to undo the weight gains achieved in hospital and an “immensely damaging” cycle of returning to hospital and being force fed, continued.

Her doctors believed it would be clinically inappropriate to continue to admit her for force feeding since at admission she had presented in a more fragile manner. They believed her life expectancy could be measured in months. The hospital trust sought an application declaring that it would not be in her best interests to continue to force feed her against her wishes.



Decision: The court accepted that Ms X lacked capacity to make decisions about her eating disorder, but did have capacity to make decisions about alcohol. Therefore, it was only for the court to consider what was in Ms X’s best interests regarding treatment for her anorexia nervosa. Relying on the medical evidence, the court found that any force feeding would not help the underlying cause of her anorexia it would just prolong her life.

The court balanced her right to life (Article 2) against her right to be free from inhuman and degrading treatment (Article 3) and right to respect for private life (Article 8), concluding that “repeated forcible feeding over a long period of time, against her clearly expressed wishes, most especially with the use of physical restraint, is likely in my judgment to amount to inhuman or degrading treatment, certainly it would amount to a severe interference with her private life and personal autonomy.” As a result, the court decided against compelling the treatment onto Ms X.



Relevance for the CQC: There may be a range of human rights issues at play in one situation so it is important to balance the rights of the individual appropriately. If a person lacks capacity, when making a best interests decision you will want to consider the impact that decision will have on their human rights and whether it would expose them to inhuman or degrading treatment.

Example for the CQC:

- If a person has capacity, they are able to make what other people might deem unwise decisions, for example, refusing lifesaving treatment.

Price v the United Kingdom (2001)



Court: European Court of Human Rights



Facts: Adele Price was a four-limb thalidomide victim with complex health needs and a wheelchair user. During court proceedings to recover a debt she owed, she refused to answer questions about her financial circumstances. She was held in contempt of court and sent immediately to prison for seven days, of which she served three nights.

She was initially held in a cell within her local prison station. Due to her disability and immobility, she struggled to keep warm and repeatedly informed the prison staff that she was cold which was making her feel unwell. She was later diagnosed with a kidney infection as a result of the cold. A doctor confirmed that the cell was not appropriately facilitated to meet her needs and that the room temperature needed to be higher. She also struggled to access the toilet and on one particular occasion two male prison staff had to assist her to use the toilet. Her underlying renal conditions meant that she needed constant fluids and this coupled with the difficulty in accessing the toilet meant she had to be catheterised during her stay.

Adele was moved to a women's prison but was detained within their health centre. However, this was not adapted to meet her needs. The doctor confirmed that she had difficulty accessing the bed and sink which she was unable to reach and her wheelchair battery was running out. Adele claimed that the court officer had refused to allow her to bring her wheelchair charger as this was deemed a "luxury item". She would usually drink juice as she needed lots of fluid because of her renal problems but this was not available.

Adele took her case to the European Court of Human Rights, arguing that the treatment she had received whilst in prison amounted to inhuman and degrading treatment (Article 3).



Decision: Although the court accepted that there were differing accounts of the treatment Adele received whilst she was detained, they commented that the sentence was particularly harsh and that regardless of the finer details, the police and prison authorities were unable to adequately cope with her severe disability needs. The court reaffirmed the principle that whilst ill-treatment must attain a minimum level of severity, the assessment was relative to the particular circumstances of the case and the individual. Given Adele's disabilities, and the lack of adequate facilities, they found that the treatment she received did amount to a violation of her right to be free from inhuman and degrading treatment.



Relevance for the CQC: Ensuring that the individual needs of patients and residents are respected and met. This may mean making reasonable adjustments for disabled people to ensure they are not limited in their enjoyment of their rights because of their disability. This may include making physical access changes, but it will also include information format and policies and procedures. Also relevant is the subjective nature of what will constitute "inhuman or degrading treatment" as protected by Article 3. It will be important to take into account the personal characteristics of an individual and assess the impact a decision or omission is having on them. This may mean considering their age, health status, gender, length of time, and any mental or physical effects of the treatment they are experiencing.

Examples for the CQC:

- Service providers not taking reasonable steps to ensure disabled patients or residents are able to access particular furniture or parts of a building;
- Service providers with insufficient staffing numbers to meet the needs of patients or residents and their specific needs.

Eweida and others v the United Kingdom (2013)



Court: European Court of Human Rights



Facts and Decision: This case involved four individuals who argued that they had suffered unlawful discrimination with their ability to manifest their religion (Article 9). All four cases were heard together by the European Court of Human Rights which had to determine whether or not appropriate steps had been taken to allow them to manifest their religion in the way they wanted to. The four individuals and their outcomes are as follows:

Nadia Eweida: Nadia was a British Airways (BA) employee who wanted to wear a visible cross necklace as a symbol of her Christian faith. However, she was told this would not comply with BA's uniform policy. She was sent home without pay as she refused to cover it up or remove it. She was later offered a non-customer facing role which would enable her to wear her cross visibly but she refused. Four months later, BA amended its uniform policy so religious symbols were permitted and Nadia returned to work. However, she brought a case against BA arguing she had suffered unlawful discrimination and sought compensation.

The court found that the UK courts had failed to ensure sufficient protection for Nadia's right to manifest her religion as protected by Article 9. They decided that the UK courts had failed to strike the right balance between the company's corporate image and Nadia's right to express her religion and there was no evidence to suggest that wearing a cross would detract from BA's brand.

Shirley Chaplin: Shirley worked as a nurse in a NHS hospital and was prevented from wearing a cross necklace as a symbol of her Christian faith. The hospital's uniform policy was based on Department of Health guidance which prohibited the wearing of necklaces "to reduce the risk of injury when handling patients". Staff were able to make a request to wear religious jewellery, however, Shirley's was refused on health and safety grounds. As an alternative, she was offered to attach the cross to her badge but she refused. She was moved to a non-nursing temporary position, but after this role ceased to exist she claimed unlawful discrimination.

The court found there was no violation of Shirley's right to manifest her religion. They found that the hospital policy was proportionate since it was for health and safety reasons which was of "inherently greater magnitude" than corporate image justifications, as in Nadia's case.

Lilian Ladele: Lilian was a registrar for a local authority who believed same-sex civil partnerships are contrary to God's law. The local authority had a policy which aimed to challenge discrimination in all forms and which covered staff, residents and service users. She had been a registrar for a number of years but did not want to conduct civil partnerships. She initially avoided conducting civil partnerships by making informal arrangements with colleagues. However, they later complained this was discriminatory. The local authority explained to Lilian that her refusal breached its equality policy and formal disciplinary action was taken, resulting in her losing her job. Lilian brought a claim arguing she had experienced discrimination.

The court rejected Lilian arguments. The court found that the local authority's policy demonstrated their obligation to ensure equality and therefore its aim was legitimate. With regards to the proportionality test, the court found that the policy was introduced to guarantee the rights of other people who may suffer discrimination, and in particular groups of individuals who have suffered discrimination on the grounds of their sexual orientation. Therefore, no discrimination was found in relation to Lilian.

Gary McFarlane: Gary was employed by a private organisation which provides confidential sex therapy and relationship counselling. Gary believed that same-sex sexual activity was sinful and it was thought that he would be unwilling to provide counselling on sexual issues to same-sex couples. The organisation had a policy which ensured that no client received less favourable treatment on the basis of their sexual orientation. An investigation took place and as a result Gary was dismissed from his role. He argued that this amounted to unlawful discrimination.

The court held that the most important consideration was the employer's intention to secure the implementation of its policy of providing a service without discrimination. Therefore, they rejected Gary's argument finding no violation of his right to manifest his religion free from discrimination.



Relevance for the CQC: Whilst the ability to hold any belief you want is absolute (Article 9(1)), the ability to manifest it can be limited or restricted in certain circumstances (Article 9(2)). It is important to ensure that a person's ability to manifest their religious or cultural belief does not expose any other individuals to discrimination. This is likely to be a good reason to limit their ability to manifest their religion.

Examples for the CQC:

- Uniform policies with regard to religious and cultural preferences for staff who deliver services;
- Whether residents are having their religious and cultural needs met with regard to their meals;
- Flexibility with meal times to respect observations of faith.

ZH v Commissioner of Police for the Metropolis (2012)



Court: High Court



Facts: ZH was a young man living with autism and epilepsy. When he was 16, he visited the swimming pool with his school. He was not intending to swim; it was a school trip to familiarise himself and his class with the pool and surroundings. As the group were leaving, ZH broke away and walked to the swimming pool edge. He became mesmerised by the water, as is common for people with autism. The pool manager became concerned that ZH may jump in. Although the carers explained they could de-escalate the situation, the manager called the police. Again the carers were ignored a police officer, concerned that he would jump, grabbed ZH's jacket which frightened him into jumping into the pool.

ZH could not swim but it was reported he was enjoying himself before lifeguards jumped in and pulled him out. Five police officers then physically restrained him on his back. They shouted loud commands which ZH could not understand. His carers tried to explain his condition to the police but they were moved away. Eventually, ZH was handcuffed, put in leg restraints and soiled himself from distress. He was kept in the back of a caged police van for thirty minutes, soaking wet and soiled. As a result, ZH developed post-traumatic stress disorder and his epilepsy became more prevalent.

A case was brought against the police arguing they had interfered with his right to be free from inhuman and degrading treatment (Article 3), his right to liberty (Article 5) and his right to respect for private life (Article 8).



Decision: The court agreed. Taking into account his disability, age, vulnerability and lasting detrimental impact, failure to consider less restrictive alternative, they found the police had breached all three human rights.



Relevance for the CQC: It is important to remember that the test for what constitutes inhuman and degrading depends on the specific circumstances of a situation and the impact this has on an individual. Similarly, in this case, half an hour was deemed long enough to amount to a deprivation of liberty. It need not be a long period of time before a circumstance constitutes a deprivation of liberty.

Examples for the CQC:

- Heavy handed restraint techniques;
- Leaving people in soiled conditions;
- Failing to understand a person's individual needs and behave in a way which is appropriate.

R (E) v Bristol City Council (2005)



Court: High Court



Facts: E had spent a large portion of her life in mental health detention. Her nearest relative was her sister with whom she did not get on. It would cause E distress if her sister was involved in her mental health care. The local authority wanted to respect E's wishes but felt that the law required E's sister not be excluded from her care. E did not accept the local authority's assurance that her sister would give up her position as nearest relative and instead sought through judicial review a declaration that it would be unlawful for the local authority to contact E's sister or any nearest relative without consent from E.



Decision: The court found that the E's right to respect for private life (Article 8) had been interfered with and found the requirement to contact the nearest relative if "practicable" or "reasonably practicable" could be interpreted to include taking account of her wishes and/or her health and well-being.



Relevance for the CQC: In order for a decision to be human rights respecting, it is important that the individual at the heart of the decision has their opinion heard. Respect for a person's private life goes beyond what is traditionally understood as privacy and includes the ability to have a say over things that happen to you.

Examples for the CQC:

- A hospital refusing to give any latitude to a patient who wants a different named nearest relative;
- A hospital sharing medical information with relatives against the patient's wishes;
- Refusing to share medical information with relatives despite clear assurances from a patient.

R (Tracey) v Cambridge University Hospitals NHS Foundation Trust and Others (2014)



Court: Court of Appeal



Facts: Janet Tracey was living with terminal lung cancer when she was involved in a major road traffic accident. Whilst recovering in hospital, a do not attempt cardio-pulmonary resuscitation (DNACPR) notice was placed on her notes. Her daughter discovered this notice and was horrified and registered her objections. As a result, the first notice was removed. In consultation with Janet and her family, a second DNACPR was completed and placed on Janet's notes. Janet died 3 days later.

Janet's family brought a case against the NHS Trust arguing that the first DNACPR breached her right to respect for private life (Article 8) as they had failed to discuss the notice with Janet or her family.



Decision: The court concluded that “the question whether to consult and notify the patient is inevitably one of the utmost sensitivity and difficulty” but this could not be a justification not to consult. The consultation process was deemed to be integral to the positive obligation set out by the right to respect for private life to take steps to protect a person's autonomy, integrity, dignity and quality of life. The court held that there should be “convincing reasons” not to involve a patient in treatment discussions, for example if it would cause them to suffer “physical or psychological harm”.



Relevance for the CQC: DNACPR notices are not unlawful in and of themselves. They are clinical decisions but in order to be lawful, they must be of sound clinical opinion and not for discriminatory reasons. Steps should be taken to include the patient and/or their family in the decision making process save for circumstances where it would expose the patient to physical or psychological harm.

There is no obligation to have a second opinion if the DNACPR has been agreed amongst a multi-disciplinary team.

Examples for the CQC:

- DNACPR notices being placed on people for discriminatory reasons (such as disability or age);
- Blanket DNACPR notices in care homes for all residents (this is unlikely to be rights respecting unless proper processes have been followed to validate each notice based on the specific circumstances of the individual);
- A failure to consult the patient or the family;
- DNACPRs which are indefinite in duration.

Winspear v City Hospitals Sunderland NHS Foundation Trust (2015)**Court:** High Court

Facts: Carl Winspear was a 28 year old man who lived with cerebral palsy, epilepsy, spinal deformities and other associated health conditions. He also lacked capacity under the Mental Health Act 2005. He was admitted to hospital after suffering from a chest infection. During his stay, his mother, Elaine, spoke to the consultant cardiologist looking after Carl. During their discussions, the question of cardiopulmonary resuscitation (CPR) arose. Elaine expressed her strong disagreement to the suggestion that if Carl stopped breathing resuscitation should not be attempted. However, prior to this conversation, a registrar had placed a do not attempt cardiopulmonary resuscitation notice (DNACPR notice) on Carl's notes without consulting him, his mum or any other family member. The reasons noted were Carl's cerebral palsy, limited communication and bed-bound state. It was also likely that he was suffering from pneumonia. Shortly after the conversation between the consultant and Elaine, the DNACPR notice was removed. Later that day, Carl died of bronchial pneumonia illness. Elaine argued that Carl's right to respect for private life under Article 8 had been interfered with unlawfully by the placing of the DNACPR notice on him from 3.00am until its removal without any consultation with a family member.



Decision: Following on from the Janet Tracey case (see above), the court concluded that DNACPR decisions engage Article 8 and the right to respect for private life. The court found that whilst decisions as to what treatment should or should not be given to a patient were a clinical judgment for medical professionals, there should be a presumption in favour of patient involvement. There needed to be convincing reasons not to involve a patient in the consultation process, taking into account the specific circumstances of the case and the nature of the decision to be taken.

It may be inappropriate to involve the patient personally if a clinical considers that to do so would cause the patient to suffer physical or psychological harm, but the mere fact that the subject matter is likely to distress the patient will generally not be sufficient to justify excluding them from the decision-making process. The fact CPR would be futile is also not a justification to avoid consultation.

Finally, the court found there is nothing in the case law to suggest that the concept of human dignity applies any less in the case of a patient without capacity.



Relevance for the CQC: People who lack capacity must also be included and consulted on any decisions about their treatment. Whilst you can take into account the relevant subjective factors of each case, the starting point should be to include the patient and or their family as far as possible.

Examples for the CQC:

- DNACPR notices being placed on people for discriminatory reasons (such as disability or age or because they lack capacity);
- A failure to consult the patient or the family where they lack capacity;
- Reasons given for failing to consult being the fact that resuscitation would be ineffective.

Milton Keynes Council v RR and others (2014)



Court: Court of Protection



Facts: RR was an 81 year old woman who had lived in her home for 32 years. She had recently developed severe dementia and was cared for at home by her son with the aid of financial support from the local authority. Concerns were raised about injuries RR had sustained and a social worker went to RR's home. Her son was out shopping and RR was unable to explain how she sustained the injuries. The social worker decided to remove RR from the home and asked RR to go with her to a care home.

Her son was not informed of her whereabouts until 19 days later, following a letter from his solicitor to the local authority to ascertain RR's whereabouts. 14 days after the removal, the court sought authorisation for the removal. The following day, the local authority applied to the Court of Protection to authorise the deprivation of liberty (DOLs). In the meantime, the allegations of abuse were referred to the police but they did not pursue them. Their own safeguarding investigation took 11 months and concluded that RR had suffered abuse at the hands of her son. His contact with her was then restricted.

A case was brought against the local authority challenging their decision-making processes and arguing that they had breached RR's right to liberty by failing to obtain authorisation for the deprivation of liberty which the court accepted. RR remained in the home, as there was no alternative place for her to be cared for.



Decision: The judge did not authorise restrictions on the son's visits, saying that "any decision made on behalf of RR must be made in her best interests and it must be the least restrictive of her rights and freedom of action". As she had enjoyed a close relationship with her son, the local authority agreed to fund the reasonable costs of contact between them and her son agreed to take a manual handling course to better support his mother on their outings.



Relevance for the CQC: Deprivation of Liberty Safeguards applications should be made immediately and reviewed appropriately and speedily. In depriving a person of their liberty, they do not lose their other human rights so it is important to consider these in any other decision making. For example, facilitating a person's right to respect for family life (Article 8) may be appropriate.

Examples for the CQC:

- Delays in applying for deprivation of liberty safeguards;
- Discriminatory reasons for depriving a person of their liberty;
- Failing to review the deprivation and ensuring it is still appropriate;
- Failing to respect a person's right to see their family for no good reason whilst they are deprived of their liberty.

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What do we mean by equality and diversity?

Summary

Every individual has an equal opportunity to make the most of their lives and talents. We provide a broad overview of where equality and diversity sits, some of the definitions, barriers and the outcomes we want to see for people who use health and social care services.

What do we mean by equality and diversity?

What is equality?

Equality is about ensuring that every individual has an equal opportunity to make the most of their lives and talents and believing that no one should have a poorer life chance because of where, what and or whom they were born, what they believe in or whether they have a disability. Equality recognises that historically, certain groups of people sharing particular characteristics relating to, for example, race, disability, sex and sexual orientation, have experienced discrimination.

Promoting equality of opportunity for all gives every individual the chance to achieve their potential, free from prejudice and discrimination. Within health and social care, equality is ensuring that people have equal access to services in practice, and that barriers do not exist to prevent one group from being treated less favourably than another. All people should be afforded the same status, rights and opportunities regardless of who they are under the law.

Equality in health and social care can be understood in four ways:

- equality of access to care and support, including taking positive action or the making of reasonable adjustments where necessary to facilitate access;
- ensuring equality of experience when using care and support, by tailoring services to be responsive to the protected characteristics of users;
- equality of outcomes from care and support;
- and the contribution care and support can make to people's equality of opportunity to participate and contribute fully in society.

In GB law, there are nine 'protected characteristics' covered by equality law: age, disability, gender, gender reassignment, pregnancy and maternity, race, religion and belief, sexual orientation and – for employment law only – marriage and civil partnership.

What is Diversity?



Diversity is the valuing of our individual differences and talents, creating a culture where everyone can participate, thrive and contribute. You can read more at the [Health and Social Care Information Service](#).

In order to provide accessible services which are barrier free and to promote inclusive working environments, organisations need to respond differently to both individuals and to groups. When people are valued and are included in society, they can be themselves, at school, at home and in the workplace.

Examples of meeting diverse needs include:

- An employer allowing an employee to work a flexible working pattern to accommodate child care arrangements
- A GP surgery offering surgeries at the weekends to accommodate those who work full time during the week
- A care home undertaking person-centred assessments of people's needs and circumstances in order to provide an individual and personalised service.
- A hospital providing interpreters for people whose first language is not English

To protect people and promote their rights, the Equality Act 2010 was created and is the main piece of legislation that is used to challenge inequality and discrimination. See our FAQ on What is the relationship between the Fundamental standards and the Equality Act?

Written with the assistance of the Equality and Human Rights Commission

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What is the purpose of the Human Rights Act 1998?

Summary

Understanding the purpose of the Human Rights Act 1998 will provide you with an overview of how it protects people's rights and freedoms.

The primary source of human rights law in the UK is the Human Rights Act 1998 (the HRA 1998), which came into force in 2000 and incorporates most of the rights set out in the European Convention on Human Rights (ECHR) into UK domestic law. (The UK ratified the ECHR in 1951.) You can read more about this on the [Equality and Human Rights Commission](#) website.

The ECHR includes a wide range of rights that focus on individuals' civil and political rights, such as: Right to life (Article 2), Prohibition of torture (Article 3), Right to a fair trial (Article 6), Right to Privacy (Article 8), and the Right to marry and found a family (Article 12).

There are three broad categories of rights under the ECHR: 'absolute', 'limited' and 'qualified': You can read more about these rights in our FAQ called 'What rights in the Human Right Act 1998 are most relevant to people who use health and social care services?'

Incorporating the ECHR into UK domestic law via the HRA 1998 was a significant change. This is because individuals who consider that their ECHR rights have been infringed can now have their claims considered by our national courts. Previously, their only means of redress was to bring a claim to the European Court of Human Rights in Strasbourg.

The HRA 1998 also has major implications for public services and those involved in regulation. All public authorities and other organisations performing public functions, must comply with the ECHR when carrying out their functions. This does not just mean that public bodies must avoid breaching individuals' rights; there will also be times when public authorities must also take concrete action to promote and protect human rights. Such duties to take action are often referred to as 'positive obligations'.

Because of the HRA 1998, individuals working for public authorities will need to take into account the rights set out under the ECHR when carrying out their day-to-day tasks. The term 'public authority' includes public bodies such as NHS agencies, local authorities and regulators such as CQC. The HRA also applies to other bodies, such as charities and private companies, whenever they are undertaking a public function such as providing NHS care.



We do not use the Human Rights Act directly when we take regulatory action. However, it is important that we are all aware of the human rights that people have in UK law, so we can take account of them in our work.

The HRA 1998 allows individuals, who consider that a public authority has infringed their rights under the ECHR, to take legal action in the national courts against that public authority. Only the 'victims' of breaches of the ECHR rights can bring proceedings under the HRA 1998. However, relatives may bring a claim on behalf of a person who has died, where the claim relates to the person's death, or if the person lacks capacity to pursue the claim for him or herself.

Read more about the Articles relevant to our work on the above Equality and Human Rights Commission's website and in our FAQ What rights in the Human Right Act 1998 are most relevant to health and social care services?

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What is the Universal Declaration of Human Rights?

Summary

The 30 Rights that are universal to us all as human beings are described briefly to give an understanding of what each and every one of us can expect.

The Universal Declaration of Human Rights (Universal Declaration) is an international document that states basic rights and fundamental freedoms to which all human beings are entitled. See the [Equality and Human Rights Commission](#) website for more information.

The Universal Declaration was adopted by the General Assembly of the United Nations on 10 December 1948. Motivated by the experiences of the preceding world wars, the Universal Declaration was the first time that countries agreed on a comprehensive statement of inalienable human rights (rights that cannot be taken away).

The 30 articles of the Universal Declaration of Human Rights proclaim in clear and simple terms the rights that belong equally to every person on this earth. These rights are your rights. Familiarise yourself with them and help to promote and defend them for yourself as well as for your fellow human beings.

Your rights can be restricted only in limited circumstances, such as to protect other people's rights. No person or state may use any of the articles in the Universal Declaration of Human Rights to justify undermining the rights to which we are all entitled. These rights are enforceable in international law. Though these rights are not directly enforceable in UK law, they form the basis of various human rights treaties which are enforceable in international law.

Some of the International treaties developed from the Universal Declaration apply to all people, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (which includes a right to the highest attainable standard of health). Some treaties apply the principles of the universal declaration to specific groups of people, such as the Convention on the Rights of the Child and the Convention on the Rights of Disabled Persons. When states sign up to these treaties, they are then monitored by the UN on how they are implementing treaty provisions.

The Universal Declaration of Human Rights has also inspired regional treaties, such as the European Convention on Human Rights,

Articles of the Universal Declaration of Human Rights

Article 1 - All human beings are born free and equal in dignity and rights



You have the same human rights as everyone else in the world because you are a human being. These rights are inalienable — they cannot be taken away from you. Every individual, no matter who they are or where they live, should be treated with dignity.

Article 2 - Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind

You should not suffer discrimination, or be deprived of any of your rights, because of your race, colour, sex, language, religion or political opinions or other status. When it comes to respect for your basic rights, it should not matter what country you were born in, what social class you belong to, or how rich or poor you are. Everyone should enjoy all the rights in the Universal Declaration of Human Rights.

Article 3 - Everyone has the right to life, liberty and security of person

We all have the right to live in freedom and safety. No one should be arbitrarily killed or deprived of their liberty without good reason.

Article 4 - No one shall be held in slavery or servitude

Human beings must not be owned, bought or sold. No one has the right to enslave anyone else. Slavery is a crime.

Article 5 - No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment

Torture is forbidden at all times and in all circumstances. No one should suffer treatment or punishment that is cruel or makes them feel less than human. These rules apply everywhere – in police stations, prisons, on the streets, in peacetime or during a war.

Article 6 - Everyone has the right to recognition everywhere as a person before the law

Every human being has the right to be treated as a person in the eyes of the law. We must all be granted the rights and bear the obligations accorded to every person by the law.

Article 7 - All are equal before the law and are entitled without any discrimination to equal protection of the law

You have the right to be treated by law in the same way as everyone else. You have the same right to be protected by the laws of your country as anyone else.



Article 8 - Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law

If your rights under the law are violated by someone else – be they another individual or a member of the police or security forces – you have the right to see justice done.

Article 9 - No one shall be subjected to arbitrary arrest, detention or exile

You may not be arrested or held in a police station or prison without good reason. You may not be kept out of your own country. If you are detained, you have the right to challenge the detention in a court of law.

Article 10 - Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal

You have the right to a fair and public hearing if you are ever accused of breaking the law, or if you have to go to court for some other reason. The courts must be independent from the government, competent to interpret the law and free to make their own decisions.

Article 11 - Everyone charged with a penal offence has the right to be presumed innocent until proved guilty

If you are accused of a crime, you have the right to be treated as innocent, unless or until you are proved guilty, according to the law, in a fair and public trial, where you are allowed to mount a proper defence. You cannot be tried for doing something which was not a criminal offence in law at the time it was done.

Article 12 - No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation

No one has the right to intrude in your private life or to interfere with your home or family without good reason. No one has the right to attack your good name without reason. The law should protect you against such interference.

Article 13 - Everyone has the right to freedom of movement

You have the right to move about freely within your country. You also have the right to travel freely to and from your own country, and to leave any country.

Article 14 - Everyone has the right to seek and to enjoy in other countries asylum from persecution



If you are forced to flee your home because of human rights abuses, you have the right to seek safety in another country. This means that border police or other authorities may not refuse you entry, or return you to your own country, without proper consideration being given to your request for asylum.

Article 15 Everyone has the right to a nationality

You have the right to be treated as a citizen of the country you come from. No one can take away your citizenship, or prevent you from changing your nationality, without good reason.

Article 16 - Men and women... have the right to marry and to found a family

All adults have the right to marry, regardless of their race, country or religion. Both partners have equal rights in the marriage, and their free and full agreement is needed for the marriage to take place. The family is entitled to protection by the state.

Article 17 - Everyone has the right to own property'

You have the right to own goods, land and other property, alone or with other people. No one has the right to take your property away without good reason.

Article 18 - Everyone has the right to freedom of thought, conscience and religion

You have the right to hold views on any issue you like without fear of punishment or censure. You also have the right to believe in any religion – or none at all. You have the right to change your religion if you wish, and to practise and teach your religion or beliefs.

Article 19 - Everyone has the right to freedom of opinion and expression

You have the right to tell people your opinion. You should be able to express your views, however unpopular, without fear of punishment. You have the right to communicate your views within your country and to people in other countries.

Article 20 - Everyone has the right to freedom of peaceful assembly and association

You have the right to gather together with other people, in public or private. You have the right to hold meetings and organise peaceful demonstrations. Everyone has the right to form or join societies, trade unions, political groups and other associations. No one may force you to join any group if you do not wish to.

Article 21 - Everyone has the right to take part in the government of his country

You have the right to be part of your government, either by being in it yourself or by choosing others to represent you. Governments have the authority to govern because they



represent the will of the people. This means there should be free and fair elections on a regular basis.

Article 22 - Everyone, as a member of society, has the right to social security and is entitled to realisation of economic, social and cultural rights

You have the right – by virtue of being a human being – to have your basic needs met. Everyone is entitled to live in economic, social and cultural conditions that allow them dignity and let them develop as individuals. All countries should do everything they can to make this happen.

Article 23 - Everyone has the right to work. Everyone has the right to form and to join trade unions

You have the right to work in fair and safe conditions and to choose your job. You have the right to be paid enough for a decent standard of living, or to receive supplementary benefits. You also have the right to form or join trade unions to protect your interests.

Article 24 - Everyone has the right to rest and leisure

You have the right to time off from work. No one may force you to work unreasonable hours, and you have the right to holidays with pay.

Article 25 - Everyone has the right to a standard of living adequate for health and well-being

Every human being has the right to a decent life, including adequate food, clothing, housing, medical care and social services. Society should help those unable to work because they are unemployed, sick, disabled or too old to work. Mothers and children are entitled to special care and assistance.

Article 26 - Everyone has the right to education

Everyone has the right to an education. It should be free of charge, and everyone should be required to complete at least the early years of schooling. Education at a higher level should be equally available to everyone on the basis of merit. Education should strengthen respect for human rights.

Article 27 - Everyone has the right freely to participate in the cultural life of the community

No one may stop you joining in cultural events organised within your community. You have the right to enjoy music, plays, exhibitions, poetry or any other form of artistic or collective expression. You have the right to share in the benefits that scientific discovery may bring.



Article 28 - Adequate standard of living and social protection

Disabled people have the right to a good enough standard of living including clean water, decent clothes, enough food and a decent home. There should not be big gaps between disabled people's standard of living and non-disabled people's. Disabled people should expect to see continuous improvements in their standard of living.

Article 29 - Participation in political and social life

Disabled people have the same political rights and should be able to enjoy them the same as everyone else. It means that disabled people have the right to vote, stand for election and fully and effectively participate in public life. It also means that you have the right to be involved in decisions which affect your human rights.

Article 30 - Participation in cultural life, recreation, leisure and sport

Disabled people have the right to access books, plays, films, television in accessible formats (for example books in large print, audio or Braille). They have the right to access libraries, cinemas, theatres, museums and other places of historical or cultural interest, to use and develop their creative, artistic and intellectual potential.

Governments should do everything they can to support disabled people to take part in mainstream sport and disability sport and to make sure disabled children can take part in play, leisure and sporting activities in and out of school on an equal basis with non-disabled children.

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What is our Human rights approach and what is FREDA?

Summary

CQC is committed to promoting human rights. There are a number of different ways to define human rights in the context of health and social care policy. Our human rights approach will provide you with the core values and what our approach will do.

In CQC we have developed a [human rights approach](#) and are using commonly agreed human rights principles. These are known as the FREDA principles – this stands for Fairness, Respect, Equality, Dignity, and Autonomy (choice and control). These principles are considered to underpin all international human rights treaties. We have also adopted two additional principles, the right to life and rights of staff.

Our human rights approach is summarised in this [infographic](#)

These are our working definitions of each principle, following a public consultation.

- | | |
|-------------------|---|
| Fairness - | People who use services and people acting on their behalf have access to clear and fair processes for getting their views heard, for decision-making about care and treatment and to raise and resolve concerns or complaints. |
| Respect - | People who use services are valued as individuals and are listened to, and what is important to them is viewed as important by the service. People acting on behalf of others, such as family and friends are also valued and listened to. |
| Equality - | People who use services do not experience discrimination and have their needs met, including on the grounds of age, disability, gender, race, religion and belief, sexual orientation, gender reassignment and pregnancy and maternity status. This includes looking at the needs of people who may experience multiple discrimination or disadvantage on more than one ground. |
| Dignity - | People who use services are always treated in a humanitarian way – with compassion and in a way that values them as a human being and supports their self-respect, even if their wishes are not known at the time. |



Autonomy- People who use services can exercise the maximum amount of choice and control possible – in care planning, in their individual care and treatment, in service development, in their relationships with others such as family and friends and as citizens beyond the health and social care services that they are using. Some organisations also refer to autonomy as ‘participation’

Right to life - People who use services will have their right to life protected and respected by the health and social care services that they use.

Staff rights and empowerment -

Staff working in health and social care have their human rights protected and respected, including being encouraged to freely speak up about concerns and have these considered, being free from unlawful workplace discrimination, harassment, bullying or violence and being supported and empowered to promote the human rights of people who use services.

Our human rights approach is consistent with CQC values. It emphasises the specific rights that everyone has, while still recognising their unique identities. We want to empower people, to treat them with the dignity that is their right, and to place them at the very centre of what we do. We emphasise people’s rights and entitlements, rather than their needs and requirements.

We have a plan to deliver our Human Rights Approach consistently through:

- Building human rights topics into assessment frameworks such as our key questions
- Developing our human rights approach for each type of service through the 4 ‘pillars’ of intelligence, methods, learning and development and communication
- Supporting principles for applying our human rights approach
- Continuous improvement through evaluation, innovation and leveraging change in the system through using our independent voice to comment on equality and human rights.

All staff can play a part in putting our human rights approach into action. If you want to be actively involved in developing how we deliver our approach, you can join the CQC equality and human rights network ([Add link to network](#))

We want people who use services to exercise choice and control over the services they receive.

A human rights approach will:



- Recognise that everyone has the right to be treated with respect and to receive fair and dignified treatment.
- Provide a framework for balancing competing rights and duties and so encourage social responsibility.
- Restrict human rights only where necessary and on specified legal grounds (like public safety and protecting the rights of others).
- Require services to have a non institutional attitude of mind in decision-making and the systemic implementation of a code for behaviour throughout the organisation.
- Provide the guiding principles for *how* decisions should be made, and
- Require constructive engagement and a fair process when staff and individual service users and their advocates challenge practices.

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What do I do if I think that a provider may be acting unlawfully under equality law?

Summary

Find about the circumstances that may help you to consider where action may be taken.

We need to be clear about our remit. We can only take legal action to remedy breaches of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (HSCA).

It may be that the unlawful action contributes to a judgment about whether a provider is meeting the fundamental standards under the HSCA, including decisions about whether enforcement action is needed. We would expect that the majority of equality and human rights issues uncovered through CQC evidence-gathering and analysis would be resolved through action under the HSCA.

However, CQC cannot take action under other legislation. There may be circumstances where a breach of equality law is suspected but the issue is outside CQC's regulatory remit. Some examples are:

- Commissioning issues
- Where people are refused access to a service because of a personal characteristic protected by equality law (we could take account of this in judgements about ratings, but this is not covered by regulations which only relate to 'service users' not people who have been refused a service)
- Where there may be a discriminatory policy but it has not yet affected anyone currently using the service
- Or the information given to CQC relates to a non-regulated provider.

In some circumstances, it may be appropriate to advise people using services or others (such as whistle-blowers) to seek legal advice about their rights under equality law, if they have raised the issue.

Discrimination may also be a safeguarding issue and inspectors may need to make a safeguarding referral, if appropriate, using our safeguarding procedures.

Discrimination can amount, in certain circumstances, to a breach of the European Convention on Human Rights (ECHR) and thus a breach of the Human Rights Act 1998:

- Article 14 - Freedom from discrimination in relation to the other rights. This is not a self-standing right; it is used in conjunction with other Articles such as:



- Article 3 - No one shall be subjected to torture or to inhuman or degrading treatment or punishment
- Article 8 - The right to respect for private and family life, home and correspondence.

CQC is obliged to act in a human rights compliant manner. Because of the public sector equality duty, we also have to have due regard to the need to eliminate discrimination. In some circumstances, evidence of a breach of equality law may require a proactive approach by us. If you have evidence of suspected breaches of equality law, please discuss this with your manager. Under an information-sharing agreement between CQC and the Equality and Human Rights Commission (EHRC), we may share information in order for both commissions to better carry out our regulatory roles.

If the inspector and manager need advice about a possible breach or they are clear that there is a potential breach of equality law that cannot be resolved through action under the HSCA, they can get in touch with the Equality, Diversity and Human Rights (EDHR) Team.

The EHRC will consult with its legal team to see if it wishes to take further action. If the EHRC wants to take further action, it will inform CQC of the way that the detailed information should be shared, to comply with the Data Protection Act and other requirements. The responsibility for ongoing contact with the EHRC from CQC will then lie with the inspector who raised the concern.

A Memorandum of Understanding (MOU) exists between CQC and EHRC to enable an exchange of information and legal advice. You can read the full MoU on our [Intranet](#) or read a summary in our FAQ What is the Memorandum of Understanding between CQC and the Equality and Human Rights Commission

The EHRC does not provide advice directly to the public. The Government has commissioned an advice service called the Equality Advisory Support Service (EASS) which is aimed at individuals who need expert information, advice and support on discrimination and human rights issues and the applicable law.

The contact details for the service are:

Tel: 0808 800 0082

Textphone: 0808 800 0084

Website: www.equalityadvisoryservice.com

Post: FREEPOST Equality Advisory Support Service FPN4431

Opening hours:

9am to 8pm Monday to Friday



10am to 2pm Saturday
Closed on Sundays and Bank Holidays

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What is the relationship between Fundamental standards and the Equality Act 2010?

Summary

Some of the provisions in the Equality Act 2010 are referenced directly in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 so it is important to know what they are. Find out more in this brief FAQ.

Even though the Health and Social Care Act 2008 is not primarily a piece of human rights or equality legislation, many of the regulations, and therefore the fundamental standards have equality or human rights dimensions.

Like all organisations, we need to comply with the Equality Act 2010 and so must not unlawfully discriminate – either as an employer or in dealings with our stakeholders. In addition, as a public sector body, we have to comply with the public sector equality duty, which means we must carry out our functions with due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations.

We do not take enforcement action under the Equality Act 2010 – we only use the Health and Social Care Act regulations. However, we need to be aware of some of the provisions in the Equality Act because they are referenced directly in the regulations.

The new Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 under **Regulation 10 Dignity and Respect**, says:

‘Service users must be treated with dignity and respect, include in particular (a) ensuring the privacy of the service user; (b) supporting the autonomy, independence and involvement in the community of the service user; and (c) having due regard to any relevant protected characteristics (as defined in section 149(7) of the Equality Act 2010) of the service user.’

And under **Regulation 13 Safeguarding**, it says:

‘Care or treatment for service users must not be provided in a way that includes discrimination against a service user on grounds of any protected characteristic (as defined in section 4 of the Equality Act 2010) of the service user.’

And under **Regulation 9 Person-Centred Care**, it says:

The care and treatment of service users must be appropriate, meet their needs, and reflect their preferences. The things which a registered person must do to comply



with that paragraph include making reasonable adjustments to enable the service user to receive their care or treatment.

The term “reasonable adjustments” comes from the Equality Act 2010. It means the adjustments that a service provider can reasonably be expected to make to avoid disabled service users being placed at a substantial disadvantage.

These Regulations provide a clear relationship between the Equality Act 2010 and the new Health and Social Care Act (2014) and strengthens the protection and outcomes for meeting the needs of particular groups of people.

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What is the Public Sector Equality Duty?

Summary

The public sector equality duty was created by the Equality Act 2010 and replaced the race, disability and gender equality duties. This FAQ will tell you what are the general duties and the specific duties that we have to have due regard to, when we carry out our work.

The duty came into force in April 2011 and covers the protected characteristics of age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation. The duty to have due regard to the need to eliminate discrimination also covers marriage and civil partnership in relation to employment issues; however, this is rarely used in practice. .

The general equality duty is set out in section 149 of the Equality Act 2010 and more information can be found on the [Equality and Human Rights Commission](#) website

The public sector equality duty is a statutory duty, meaning it is a legal obligation. The legislative framework has two components: the general duty and the specific duties.

The general duty

The Equality Act 2010 (section 149) sets out the three aims of the duty. It requires public bodies, in the exercise of their functions, to have due regard to the need to:

- Eliminate discrimination, harassment or victimisation, or any other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

The broad purpose of the equality duty is to integrate consideration of equality and good relations into the day-to-day business of public authorities. All three aims of the general equality duty require organisations to actively consider how they can eliminate discrimination and help to advance equality and promote good relations. Because the duty is a continuing one, it also requires organisations to keep decisions under regular review.

The general duty requires equality considerations to be built into the design and delivery of services. When carrying out its functions, (including internal and external policy-making), a public authority should actively consider how a proposed decision might affect different groups in different ways. Failing to do so may lead to unintended adverse impacts for



people sharing particular protected characteristics. This can contribute to greater inequality and poor outcomes.

The duty cannot be delegated; responsibility for complying with it falls on the decision-makers personally.

Where equality is relevant to one of its functions, public authorities need to make sure that they have sufficient equality evidence to meet the general duty in their decision making. In gathering evidence, they should take a proportionate approach. Evidence can be gathered and analysed in the following ways:

- involvement and consultation with groups affected by proposals
- gathering and publication of a range of equality information, as required by the specific duties (see below)
- setting priorities and objectives on key equality concerns (as required by the specific duties) and incorporating equality into business planning and reporting.
- analysis or assessment of evidence to understand the equality impact of proposal

These types of actions should provide evidence to help you consider if the equality dimensions of the fundamental standards are being met.

At CQC, we use [Equality Impact Analyses](#) to ensure that we meet the public sector general duty when making changes to policies and when making decisions about the way that we deliver our functions. For example, if we change an employment policy or when we were developing the new provider handbooks for how we regulate different types of services. Further information about equality impact assessments can be found on the [Equality and Human Rights Commission](#) website

Specific duties

The specific duties require public bodies to publish relevant, proportionate information demonstrating their compliance with the Equality Duty; and to set themselves specific, measurable equality objectives.

Publishing relevant equality information will make public bodies transparent about their decision-making processes, and accountable to their service users. It will give the public the information they need to hold public bodies to account for their performance on equality.

You can read our own equality information reports on our website [Equal Measures](#) - Annual report for 2014, [Equality Counts](#) – Annual report for 2013 2013 and [Equality Matters](#) - Annual report for 2012 which show how we have demonstrated our equality duty.

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Which health and social care providers does the public sector equality duty apply to?

Summary

Learn more about how the public sector duty applies to us and to providers across the health and social care sector

Which health and social care providers does the public sector equality duty apply to?

The General Equality Duty

Those bodies listed in Schedule 19 to the Equality Act 2010 will be subject to the general public sector equality duty ('the general equality duty'). This list includes key public authorities like local authorities, health trusts and central government departments and regulators such as CQC.

Multi-agency arrangements through partnerships are not subject to the general equality duty in their own right (because they are not legal entities), but most of their members will be. Members of any partnership such as councils, police forces or community trusts need to ensure they also apply the duty in all of their functions that are delivered through the partnership.

In addition, any organisation will be subject to the general equality duty when it is carrying out a public function. This means that the general equality duty applies to public bodies that are not listed in Schedule 19. The general equality duty also applies to private/voluntary sector organisations when they are carrying out a 'public function' on behalf of the state – but not when they are carrying out private activities. Organisations contracted to provide health and social care services – such as hospitals where patients are detained under the Mental Health Act – are very likely to be carrying out a public function in relation to that work.

Where private or voluntary sector bodies are under contract to deliver public functions, the contracting authority is subject to the general equality duty in tandem with the contractor. The authority always remains responsible for complying with the general equality duty because it is non-delegable.

Legal definition of 'public function'

The legal definition of 'public function' is the same for the general equality duty as it is for the Human Rights Act 1998. There has already been case law refining this



HRA definition, and whether or not an organisation is carrying out a public function is ultimately a matter for the courts.

More advice on what constitutes a public function is available in the services, public functions and associations' code of practice and the technical guidance on the public sector equality duty. This can be found on the [Equality and Human Rights Commission](#) website.

The Specific Duties

The specific duties are additional requirements, set out in regulations, which are designed to demonstrate compliance with the general equality duty. All the public bodies listed in the Schedules to the Regulations must comply with the regulations (this list is almost identical to the list in Schedule 19 to the Equality Act 2010).

The specific duties are different in England, Scotland and Wales. In England, there are two sets of requirements:

- First, listed authorities must publish equality information in an accessible manner to demonstrate compliance with the general duty. The published information must include, in particular, information relating to employees sharing a protected characteristic (if the authority has 150 or more staff) and to its service users.
- Second, list authorities must prepare and publish one or more specific and measurable equality objectives to help it achieve any of the aims of the general equality duty

It is the responsibility of listed public authorities to comply with the specific duties – this cannot be delegated. However, private or voluntary sector bodies under contract from a council or NHS trust may be asked to meet contract conditions such as information collection, to help the contracting body to meet its own obligations ,.

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What are the laws and organisations that deal with equality and human rights?

Summary

This FAQ provides you with an overview of the laws and organisations relevant to equality and human rights. Follow the links to the organisations for more in depth information.

The Universal Declaration of Human Rights

The Universal Declaration of Human Rights (Universal Declaration) is an international document that states basic rights and fundamental freedoms to which all human beings are entitled.

The Universal Declaration was adopted by the General Assembly of the United Nations on 10 December 1948. Motivated by the experiences of the preceding world wars, the Universal Declaration was the first time that countries agreed on a comprehensive statement of inalienable human rights.

The 30 articles of the Universal Declaration proclaim in clear and simple terms the rights that belong equally to every person on this earth. These rights are your rights. Familiarise yourself with them and help to promote and defend them for yourself as well as for your fellow human beings. These rights are enforceable in international law. Though these rights are not directly enforceable in UK law, they form the basis of various human rights treaties, which are enforceable in international law.

International treaties developed from the Universal Declaration include the International Covenant on Civil and Political Rights. See FAQ about the Universal Declaration for detail.

The European Convention on Human Rights

The Universal Declaration has also inspired regional treaties, including the Convention for the Protection of Human Rights and Fundamental Freedoms better known as the European Convention on Human Rights. The Convention was opened for signature in Rome on 4 November 1950; it entered into force on 3 September 1953.



The Convention gave effect to certain of the rights stated in the Universal Declaration of Human Rights, particularly those associated with the International Covenant on Civil and Political Rights.

The European Court of Human Rights

The European Court of Human Rights is an international court set up in 1959. It rules on individual or State applications alleging violations of the civil and political rights set out in the European Convention on Human Rights. Since 1998 it has sat as a full-time court and individuals can apply to it directly.

In almost fifty years the Court has delivered more than 10,000 judgments. These are binding on the countries concerned and have led governments to alter their legislation and administrative practice in a wide range of areas. The Court's case-law makes the Convention a powerful living instrument for meeting new challenges and consolidating the rule of law and democracy in Europe.

The Court is based in Strasbourg, in the Human Rights Building designed by the British architect Lord Richard Rogers in 1994 – a building whose image is known worldwide. From here, the Court monitors respect for the human rights of 800 million Europeans in the 47 Council of Europe member States that have ratified the Convention.

Human Rights Act 1998

The Human Rights Act 1998 brings most of the rights from the European Convention on Human Rights into UK law. The Human Rights Act is the main law protecting your human rights in the UK. It contains a list of 16 rights (called articles) which belong to all people in the UK, and it outlines several ways that these rights should be protected.

This law means that you can defend your rights in the UK courts and public organisations (including the Government, the Police and local councils) must comply with the rights protected by the Human Rights Act, treating everyone with fairness, dignity and respect.

The Equality Act 2010

The Equality Act 2010 brought together a number of previous laws into one place including the Race Relations Act 1976, the Sex Discrimination Act 1975, and the Disability Discrimination Act 1995. In total there were nine pieces of primary legislation and over 100 pieces of secondary legislation incorporated into the



Equality Act 2010. Bringing these laws into one piece of legislation made the law easier to understand and apply.

The Equality Act 2010 sets out the personal characteristics that are protected by the law and the behaviour that is unlawful. Simplifying legislation and harmonising protection for all of the protected characteristics covered will help Britain become a fairer society, improve public services, and help business perform well.

Everyone in Britain is protected by the Act. The protected characteristics under the Act are:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership (for employment only)
- Pregnancy and maternity
- Race
- Religion and belief
- Sex
- Sexual orientation

Also under the Equality Act 2010 is the Public Sector Equality Duty (the equality duty) which came into force in April 2011. It replaced the race, disability and gender equality duties. See our FAQ on Which health and social care providers does the public sector equality duty apply to?

The Equality and Human Rights Commission

The Equality and Human Rights Commission is a statutory body established under the Equality Act 2006 and is accredited by the United Nations as an 'A status' National Human Rights Institution. The Commission enforces equality legislation on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation, and it regulates the public sector equality duty.

CQC has a memorandum of understanding with the EHRC. If you want more information about how we work with the EHRC, including how we can refer issues to the EHRC in specific circumstances, this can be found in our FAQ What is the Memorandum of Understanding between CQC and the Equality and Human Rights Commission?

The British Institute of Human Rights



The British Institute of Human Rightsⁱ is an independent charity working to bring human rights to life in the UK. It provides people with authoritative and accessible information about human rights but does not give advice.

The British Institute of Human Rights is expert on human rights law and translating what this means for people in their everyday lives. As well as campaigning about human rights, it produces policy and legal documents to ensure people have access to the protections in the Human Rights Act and European Convention on Human Rights

Liberty

Liberty is also known as the National Council for Civil Liberties. Founded in 1934, it is a cross party, non-party not for profit membership organisation at the heart of the movement for fundamental rights and freedoms in the UK. It promotes the values of individual human dignity, equal treatment and fairness as the foundations of a democratic society.

Liberty campaigns to protect basic rights and freedoms through the courts, in Parliament and in the wider community. It does this through a combination of public campaigning, test case litigation, parliamentary work, policy analysis and the provision of free advice and information.

Amnesty International

Amnesty International UK is a charitable trust that works to protect men and women and children wherever justice, freedom, truth and dignity are denied.

Amnesty International is the world's largest grassroots human rights organisation. It investigates and exposes abuse, educates and mobilises the public, and helps transform societies to create a safer, more just world. It received the Nobel Peace Prize for their life saving work in 1977.

Human Rights Watch

Human Rights Watch is a non-profit, non- governmental human rights organisation and was established in 1978. It investigates human rights abuses and undertakes targeted advocacy, often in partnership with local human rights groups. It campaigns for changes in policy and practice that promote human rights and justice around the world.

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What rights protected by the Human Right Act 1998 are most relevant in health and social care services?

Summary

The rights in the European Convention of Human Rights will be of relevance to health and social care providers because the availability and organisation of health and social care services will be important factors in ensuring that people receiving health and social care are able to enjoy these rights. Here we describe the most relevant Articles and if they are absolute, limited or qualified rights.

What rights protected by the Human Right Act 1998 are most relevant in health and social care services?

The European Convention of Human Rights (ECHR) was incorporated into UK law through the Human Rights Act 1998 and applies to everyone (including children). Find more information at the [Equality and Human Rights Commission](#).

While all ECHR rights are of equal importance, the following rights are likely to be of direct relevance to individuals receiving health and social care.

Article 8 is considered first given that numerous aspects of the provision of health and social care will engage this right. Article 14 is not a freestanding right and must be used alongside other ECHR rights. It can be seen as providing an equality dimension to human rights law.

Before we describe the Articles, there are three broad categories of rights under the ECHR: 'absolute', 'limited' and 'qualified' that need to be looked at in order to fully understand the Articles:

The Categories of rights

- Absolute rights:** These rights cannot be limited or restricted in any circumstances. The right to life (Article 2), prohibition of torture, inhuman or degrading treatment or punishment (Article 3) and the prohibition of slavery and forced labour (Article 4) are examples of absolute rights.
- Limited rights:** These rights allow certain limitations to the particular right, but only to the extent specified in the right itself. For example, Article 5 of the ECHR provides for the right to liberty but sets out the circumstances in which individuals might be deprived of their liberty.



Qualified rights: These rights set out the general circumstances in which they may be limited or restricted. However any interference with such rights must be justified. In essence, interference will only be justified if the interference is lawful, its purpose is to address one of the aims specified in the right itself (for example, 'for the prevention of disorder or crime') and it is a proportionate response to the particular concern that is being addressed. Articles 8, 9(2), and Article 1 of Protocol 1 are all qualified rights.

There are also some important concepts relevant to the application of the ECHR. The key concepts of 'proportionality', 'positive obligations' and the ECHR as a 'living instrument' are summarised below:

Proportionality

This is a fundamental principle of the ECHR. It is particularly important when considering whether an interference with a qualified right (discussed above), is justified. It requires that any interference with a right under the ECHR must be no more than necessary to achieve its objective and it must not be arbitrary or unfair. A phrase often used to explain the need for 'proportionality' is 'Don't use a sledgehammer to crack a nut'. For example, if there is a choice between several courses of action that could be taken to meet the identified objective, the option that is likely to be the least intrusive for the individual concerned, should be taken.

Positive obligations

Although the wording of the rights under the ECHR focus on protecting individuals from arbitrary interferences with their rights (referred to as 'negative obligations'), the European Court of Human Rights considers that these rights can also give rise to positive obligations. This is because specific measures will sometimes be required to achieve the effective protection of individuals' rights. Thus it might be necessary to: introduce laws to prohibit individuals from infringing other people's rights, take specific action to ensure that people can exercise their rights (such as effective policing to allow people to demonstrate peacefully) and/or provide information to people whose rights are at risk. For example, a positive obligation will arise under Article 2 (the right to life) where a public authority is made aware that a third party poses a real or imminent danger to a person's life – in such cases, the public authority will be required to take action to protect that person.

The European Convention on Human Rights is a 'living instrument'

This term is used to illustrate that the European Court of Human Rights interprets the ECHR in the light of present day conditions and will be influenced by developments in



commonly accepted standards. This means that whereas a claim that an ECHR right had been breached may have failed in the past, it might be upheld in the future.

The Articles

Article 8: Everyone has the right to respect for private and family life, home and correspondence

Article 8 has a very wide scope. For example, it covers key issues relating to dignity and autonomy such as:

- the right of individuals to choose how to live their lives (where they live and who with, their sexual identity, how they dress);
- making decisions about health and personal welfare (including the right to refuse medical treatment)
- freedom from intrusion from the media, and the right to have personal information kept confidential.
- the right of a family to live together and enjoy each other's company, developing and maintaining relations with others (including one's own family)
- not being harassed or abused
- the right to continue occupying one's own home.

In addition to the right to protection from unjustified interferences, in some situations Article 8 may also require a public authority to take positive steps to protect a person's right to respect for private and family life. For example, in the context of health and social care, the right to respect for private and family life could include:

- providing support to enable people to maintain ordinary family relationships, such as supporting disabled parents and therefore protecting children from becoming their primary carers.
- ensuring that lesbian, gay or bisexual people living in residential care do not face discrimination in maintaining their relationships and friendships.

It is important to remember that the right to respect for private and family life under Article 8 of the ECHR is a qualified right. But interference in this right is only permitted if there is a law which allows the restriction, and there is a legitimate reason for it based on one of the aims set out under Article 8(2):

- in the interests of national security, public safety or the economic wellbeing of the country
- for the prevention of disorder or crime
- for the protection of health or morals
- for the protection of the rights and freedoms of others



The restriction must also be 'proportionate' – that is, the least restriction necessary to achieve one of these aims – and it must be non-discriminatory.

Thus, there may be circumstances in which an individual's right to respect for private and family life will need to be restricted in order to protect other people's rights.

For example, if a person living in a residential care home becomes distressed and agitated, staff may decide to lawfully restrain that person to prevent them from harming other residents and staff, as well as from harming themselves. But the restraint should be proportionate to the circumstances – for example, it should not be excessively restrictive or last any longer than necessary.

Article 2: Everyone has the right to life

Article 2 is an absolute right. It places a negative obligation on public authorities to refrain from intentionally or unlawfully interfering with an individual's right to life. Article 2 also requires positive steps to be taken by public authorities to safeguard the lives of people in their care. For example, hospitals and care homes must take action to ensure that all people using their services receive adequate hydration and nutrition and proper administration of medical care.

In certain circumstances the right to life will also require an official and impartial investigation into an individual's death, such as where an unexpected death may have resulted from a failure on the part of the public authority to protect the person's life.

Article 3: No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

This is an absolute right. There is no precise definition of what might amount to a violation of Article 3. The ill treatment must 'attain a minimum level of severity' to fall within the scope of Article 3 and the threshold of severity tends to be high (although the threshold for 'inhuman and degrading treatment or punishment' is lower than 'torture').

The question whether this right has been breached will depend on a range of factors such as:

- the nature, seriousness and duration of the treatment,
- its physical and mental impact
- the age and state of health of the individual concerned.

As well as having a 'negative' obligation not to cause serious harm or suffering, public authorities are under a positive obligation to safeguard individuals whose rights under Article 3 may be violated, such as children and adults who may be vulnerable to abuse. For



example, on becoming aware that an older person is being subjected to severe abuse or violence by an individual who purports to be providing that person with care in a care home or community service, social services would be required to take action to protect the older person and prevent further abuse.

A public authority must also carry out an effective and impartial investigation where there is credible evidence that a person suffered abuse while in its care. The failure to investigate an allegation of ill treatment may amount to a breach of Article 3.

Article 5: The right to liberty and security

This is a limited right. It provides that no one shall be deprived of their liberty save in one of the six specific circumstances set out in Article 5. These are too long to add in here so use the Equality and Human Rights Commission website to see them. Article 5 is often used in relation to criminal and immigration matters, for example. Any deprivation of liberty must be in accordance with the law. Those who are detained have the right to take legal proceedings to challenge the lawfulness of their detention.

Article 5 may also be relevant in health and social care settings. The circumstances in which individuals can be deprived of their liberty include 'the lawful detention of persons ... of unsound mind'ⁱ. This right will be relevant for those detained under the Mental Health Act 1983 and people who are deprived of their liberty while lacking mental capacity.

Article 6: Everyone has the right to a fair trial

This means that individuals have the right to a fair and public hearing before an independent and impartial tribunal and within a reasonable time.

This right relates to both criminal and civil proceedings. Not all civil cases are covered by this right, but it can include non-financial claims relating to ECHR rights such as the right to respect for private and family life, the right to liberty and freedom of association. For example, Article 6 has been held to be relevant to the decision to place a child into care and restricting the contact of prisoners with their families (both of which engage Article 8, the right to respect for private and family life).

Internal complaints procedures are not expected to satisfy Article 6. However, if the complainant is not satisfied with the outcome of the complaint, s/he must be able to pursue legal action through the court system; otherwise there may be a breach of Article 6.

Article 9: Everyone has the right to freedom of thought, conscience and religion

Article 9(1) gives an unqualified right that protects a person's freedom of thought, conscience and religion – including freedom to change one's religion. Article 9(2) sets out



the circumstances in which individuals' freedom to *manifest* their religion or beliefs can be limited (such as 'for the protection, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others'). There must be a law which permits any such limitation, and it must also be proportionate and non-discriminatory.

In relation to health and social care, Article 9(2) will be particularly relevant where individuals are being accommodated (including those who are detained). Policies and practices will need to be developed to ensure that they do not interfere with individuals' right to manifest their religion or beliefs, for example religious observance such as prayer, diet or the opportunity to participate in religious festivals.

Article 12 Right to marry and found a family

Men and women of marriageable age have the right to marry and to start a family. This Article is relevant in relation to the possible interference of the statutory authorities, care providers and relatives in the plans of disabled people, particularly people with a learning disability to marry and/or have children

The European Court of Human Rights ruled in 2002 that this right extends to transsexual people who are now able to marry or enter civil partnerships in their acquired gender because of the [Gender Recognition Act \(2004\)](#).

The [Civil Partnership Act 2004](#) means that gay men and lesbian women in the UK are now able to register civil partnerships. Couples who register a civil partnership have the same rights as heterosexual married couples in areas like tax, social security, inheritance and workplace benefits

Article 14: Protects individuals from discrimination in relation to the other rights

The areas of potential discrimination covered by Article 14 are broad: 'any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status'.

The final category 'other status' covers personal characteristics such as age and disability and could therefore potentially cover other protected characteristics: sexual orientation, gender reassignment, pregnancy/maternity and marriage/civil partnership status.

Because Article 14 is not a free-standing right, to rely on it individuals must show that another ECHR right has been engaged and that they have been discriminated against in respect of their enjoyment of this right. For example, if people from one faith were given access to a room for prayer while in hospital, but this access was denied to people from another faith, this could be in breach of Article 9(2) along with Article 14.



In relation to Article 14, those responsible for the management of the hospital would need to show that there was a good reason for this decision (that is, it was in order to achieve a 'legitimate aim') and that the action taken was proportionate to that aim.

In practice, many of the situations which give rise to a potential breach of Article 14 (which as stated above can only be considered if it engages another ECHR right) is covered by the Equality Act 2010. However, given the broad category of 'any other status' under Article 14, it has the potential to protect individuals who are not covered by the 'protected characteristics' as defined by the Equality Act 2010, such as people having a particular political opinion or another personal attribute. Article 14 can also apply to groups with multiple characteristics, such as women who are asylum seekers.

Article 1 of Protocol 1: provides that individuals have the right to peaceful enjoyment of their possessions, such as a house, car, book and pension. It can also include welfare benefits to which a person has an entitlement (but not discretionary benefits). As with other qualified rights, this right can be limited but only in specific circumstances (for example, in the public interest). The interference must also be set out in legal rules that are accessible and reasonably clear and must be proportionate to the aim it is designed to meet.

The ECHR rights, especially those rights summarised above, are at the core of what good care and support should mean at a day-to-day level. While they may sometimes appear abstract, they are really about such mundane things as eating a meal when you are hungry rather than when a service wants to provide it; having a bath in privacy and comfort; being able to play with your children or go to a place of worship or socialise freely in the pub in the same way as everyone else.

Are some articles more important than others?

No. There is no hierarchy between human rights. All human rights are indivisible, inter-related and interdependent – restricting one right has a negative impact on other rights, while taking steps to fulfil a right facilitates the enjoyment of other rights.

Sometimes the rights of one individual or a group of people have to be balanced against the rights of others. For example, if someone writes a hate speech inciting murder against an ethnic group, their freedom of expression may be limited to ensure the safety of others.

Here is an example of how different rights may need to be balanced. On the basis of evidence that a child is being abused by her parents, social services conclude that it is necessary to remove the child from her home and place her in care. Such action will interfere with the right of both the child and her parents to respect for family life under Article 8.

However, social services must also consider their duty to safeguard the child's right to respect for private life (which is also part of Article 8) and her right to freedom from torture



and inhuman or degrading treatment or punishment (Article 3). In some cases the child's right to life (Article 2) may also be relevant and social services would then have to take urgent action to protect her right to life.

In some cases a range of rights might be relevant. For example, where a person has been admitted to hospital on the basis that he is known to be at risk of taking his own life, the care plan will need to be developed to safeguard the person's life (the right to life, Article 2). However, consideration must be given on how to ensure that the steps taken to prevent the person's suicide only interfere with his right to respect for private and family life to the level necessary to achieve this aim (Article 8 – right to respect for private and family life). Where a person has been subjected to restraint, Article 8 (the right to respect for private and family life) will be engaged. Consideration will need to be given as to whether the action taken was lawful, and justified under Article 8 (that is that the reason for using the restraint falls within the grounds set out in Article 8, for example, for the protection of the person's health and that the action taken was necessary to achieve this aim and was proportionate to that particular situation; i.e. the restraint must not be excessive, and should not last longer than necessary.)

There may be cases where the restraint used does not comply with the requirements under Article 8. It may also amount to a deprivation of liberty, thereby engaging Article 5 (right to liberty). In some cases the circumstances in which the restraint was used (such as the level of force used, its duration and impact on the person concerned and the age, disability or state of health of the person) may give rise to a breach of Article 3 (freedom from torture and inhuman or degrading treatment or punishment).

ⁱ European Court of Human Rights - Guide on Article 5 of the Convention

Written with the assistance of the Equality and Human Rights Commission

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What must all health and social care providers do to comply with Equality Act 2010?

Summary

This FAQ provides an overview of what health and social care providers should be doing in practice to comply with the Equality Act 2010 and its links with the Health and Social Care Act 2008. It makes reference to reasonable adjustments, positive action and where exceptions apply.

What are the legal requirements?

Although the Health and Social Care Act 2008 is not primarily a piece of human rights or equality legislation, many of the regulations under which CQC has powers have equality and or human rights implications. In relation to the Equality Act 2010,, regulation 13 includes that providers must not discriminate unlawfully against people using their services, regulation 9 covers the requirement of providers to make 'reasonable adjustments' for disabled people and, more broadly still, regulation 10 states that providers must have "due regard" to the protected characteristics of each person using their service. The terms 'discrimination', 'reasonable adjustments' and 'protected characteristics' have specific meanings derived from the Equality Act 2010. This means that it is important that CQC staff have some understanding of the Equality Act 2010. Further information can be found in the FAQ:

[What is the relationship between Fundamental standards and the Equality Act 2010?](#)

In providing services and public functions it is unlawful to discriminate because of age, race, disability, sex, sexual orientation, religion or belief, gender reassignment, pregnancy and maternity. These are called 'protected characteristics' under the Equality Act 2010.

Protection from discrimination because of marriage and civil partnership does not apply to services and public functions, although a civil partner treated less favourably than a married person can bring a claim for sexual orientation discrimination.

Discrimination in providing services can include refusing to provide a service, providing a lower standard of service or offering a service on different terms than you would to other people. It can also mean terminating a service or subjecting the service user to any other detriment, however this is not an exhaustive list.



A service provider is any organisation that provides goods or services to the public, whether paid for or free, no matter how large or small the organisation is. The definition of 'service provider' is quite broad: it includes most organisations that deal directly with members of the public.

There are some circumstances in which a service provider may have additional responsibilities:

- If the service is a public authority listed under [Schedule 19 of the Equality Act](#), or carries out public functions, it will have to comply with additional legal responsibilities under the public sector equality duty. This means that in carrying out all their functions – including planning, delivering or monitoring their services – they must have 'due regard' to the three aims of the duty (the need to eliminate discrimination, advance equality of opportunity and foster good relations). Public authorities also have a duty to make sure that they comply with the public sector equality duty in the way that they commission services. If a service provider with a public authority contract is carrying out a 'public function' on behalf of the authority, it must deliver the services in a way that meets the aims of the public sector equality duty.
- Reasonable adjustments: service providers have a legal duty to make 'reasonable adjustments' to ensure that disabled people are not prevented from using their services, or are disadvantaged substantially in accessing a particular service. The duty is 'anticipatory' – it applies to disabled people at large, regardless of whether a service provider currently has disabled users. Adjustments can be in the form of physical changes to a building, providing extra services or providing services in a different way, or changing a policy or procedure that acts as a barrier to disabled people. When deciding whether an adjustment is reasonable, service providers can consider issues such as the cost of the adjustment, the practicality of making it, health and safety factors, the size of the organisation, and whether the adjustment will achieve the desired effect. Generally, more is expected of larger organisations. Disabled service users cannot be asked to bear the cost of making adjustments. If making reasonable adjustments for disabled people would involve the service provider seeking consent from a third party such as a landlord, they would not be required to make the adjustment before consent is given.



- It is also lawful to treat a disabled person more favourably than a non-disabled person. Therefore, service providers may provide services on more favourable terms to a disabled person compared to a non-disabled person.

Positive action

- There may be circumstances where it is good practice to provide a service differently, or provide a separate service, for certain groups of people who share a protected characteristic; this may be in order to overcome disadvantage, to meet particular needs or increase disproportionate low participation in a particular activity; the action must however be a proportionate means of achieving one of these legitimate aims.
- In such circumstances a service could be provided only for people with a shared protected characteristic (such as people of a particular religion or a particular ethnic group), examples would include, for instance, health centre sessions targeted at Somali women whose health needs are not otherwise being met. Another example is where a Jewish only care home may well not be considered a 'proportionate' approach to meeting needs. It is more likely that such a care home operates as a charity and is therefore exempt under different provisions of the Equality Act. Positive action could also involve providing training targeted at people with a particular characteristic, using outreach programmes or mentoring, or extending or changing locations for times when activities take place.

Are there any exceptions to these requirements?

There are a number of exceptions to these requirements about equality in service provision in the Equality Act 2010. For example, there is an exception allowing an individual's blood donation to be declined because of a clinical risk to the public, and an exception allowing the refusal of services to pregnant women for health and safety reasons. These are set out in [Schedule 3 of the Act](#).

Single-sex services are lawful in certain specified circumstances. The introduction of the public sector equality duty has not changed this. Sex discrimination does not apply where services are provided exclusively to one sex, as long as to do so is a proportionate means of achieving a legitimate aim, and at least one of the following conditions applies:



- Only people of that sex need the service. For example, post-natal exercise classes can be provided to women only, since only women need the service .
- Where the service is also provided jointly for both sexes, an additional service exclusively for one sex will be lawful if the joint provision would not be sufficiently effective. For example, a new fathers' support group is provided by a health trust as there is insufficient attendance by men at the new parents' support group.
- If a service was provided for men and women jointly it would not be as effective and the level of need for the services makes it not reasonably practicable to provide separate services for each sex. For example, a women-only support unit for women who have experienced domestic or sexual violence can be set up, even if there is no parallel men-only unit because of insufficient demand.
- The service is provided at a hospital or other place where people need special care, supervision or attention. For example, single-sex wards in hospitals and single-sex facilities in mental health units.
- The service is for, or is likely to be used by, more than one person at the same time and a woman might reasonably object to the presence of a man (or vice versa). For example, separate male and female changing rooms or any service involving intimate personal health or hygiene.
- The service is likely to involve physical contact between the service user and another person and that other person might reasonably object if the user is of the opposite sex.

The objections above must be 'reasonable'. So a low degree of physical contact is unlikely to justify separate provision. For example, the fact that in first aid training there may be some physical contact between women and men in the classes is unlikely to warrant the provision of single-sex sessions. Similarly, where an organisation exercising public functions does anything in relation to the provision of single-sex services this will be lawful provided that one of the above conditions is met, and that such provision is a proportionate means of achieving a legitimate aim.



For example, a primary care trust contracting with a voluntary sector organisation to provide counselling for women who have had a mastectomy.

How do people get redress if they think they have been discriminated against?

Individuals, or someone acting on their behalf, can take legal action against discrimination in relation to services and public functions, or employment, under the Equality Act 2010, and seek compensation by making a claim in the County Court. Individuals can get information and advice about their rights from EASS.

<http://www.equalityadvisoryservice.com/> The Equality and Human Rights Commission (EHRC) has power to support cases of strategic significance but individuals must first make contact with EASS.



What are the reasonable adjustments that providers should make for disabled staff to comply with equality law – and how does this affect CQC judgements about whether registered managers and staff are “physically and mentally” fit to carry out their role?

Summary

In the Health and Social Care Act regulations, there is a requirement that registered managers and staff are “physically and mentally fit to carry out their role, after reasonable adjustments have been made”. The term reasonable adjustments come from the Equality Act 2010.

It is imperative the recruitment and selection processes of providers are compliant with the regulations of the Health and Social Care Act and meet the requirements of the Equality Act 2010 and inspectors have an understanding of what is a minimum requirement of providers employing staff who have a disability.

What are the reasonable adjustments that providers should make for disabled staff to comply with equality law – and how does this affect CQC judgements about whether registered managers and staff are “physically and mentally” fit to carry out their role?

Reasonable adjustments

Employers have a duty under the Equality Act 2010 to make reasonable adjustments for disabled staff. If a disabled person would otherwise be put at a substantial disadvantage compared to people who are not disabled, an employer is required to take reasonable steps (a) to change a provision, criterion or practice (b) remove or alter a physical feature, or (c) provide an auxiliary aid,. Failure to make reasonable adjustments can lead to:

1. CQC taking action where the failure is a breach of Regulation
2. The staff member taking action for the breach of the employment disability discrimination provisions of the equality Act in the Employment Tribunal
3. EHRC taking action for breach of the Equality Act in the county court

The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 make the position on reasonable adjustments much clearer than the “old” regulations.



Reasonable adjustments must be taken into account when CQC is carrying out registration activities – and in inspection when considering whether providers are meeting fundamental standards relating to employing suitable people.

The following regulations are designed to ensure staff are fit:

- Regulation 4: Requirements where the service provider is an individual or partnership
- Regulation 5: Fit and proper persons: directors
- Regulation 6: Requirement where the service provider is a body other than a partnership
- Regulation 7: Requirements relating to registered managers
- Regulation 19: Fit and proper person employed

In all these regulations, we need to consider whether the person in question is able by reason of their health, **after reasonable adjustments are made**, of properly performing tasks which are intrinsic to their role in relation to carrying out the regulated activity.

Our [Guidance on the Fundamental standards](#): states:

- These regulations do not mean that people who have a long-term condition, a disability or mental illness cannot be appointed or hold such a role.
- When appointing a person to a role, providers must have processes for considering their physical and mental health in line with the requirements of the role. Section 60 of the Equality Act 2010 states that an employer must not ask about the health of the applicant:
 - a) Before offering work to the candidate
 - b) where the employer is not in a position to offer work to the candidate, before including the candidate in a pool of applicants from whom the employer intends to select a person to whom to offer work.
- All reasonable steps must be made to make adjustments for people to enable them to carry out their role. These must be in line with the Equality Act 2010 requirements on employers to make reasonable adjustments for employees.

Further information about what employers should do to comply with the duty to make reasonable adjustments for their staff is available in the [Equality Act 2010 statutory code of practice on employment](#) produced by the [Equality and Human Rights Commission](#).

Pre-employment health checks



The Equality Act 2010 requirements about pre-employment health checks are linked to the duty for an employer to make reasonable adjustments. Providers should be considering physical and mental health in line with the requirements of the role and making reasonable adjustments in order for staff to be able to carry out their role.

An employer is not normally allowed to ask any job applicant about their health or any disability as part of the application process or during an interview. Questions relating to previous sickness absence count as questions that relate to health or disability. These questions are not allowed until the person has been:

- offered a job, either outright or on conditions, or
- included in a pool of successful candidates to be offered a job when a position becomes available (for example, if an employer is opening a new workplace or expects to have multiple vacancies for the same role but doesn't want to recruit separately for each one).

After a job offer has been made, the employer can make disability or health-related enquiries about the successful candidate to make sure they can do the job. But as part of this process the employer must consider whether there are reasonable adjustments that would enable the candidate to do the job. The employer must not use the outcome of the enquiries to discriminate against the person.

Employers can only ask questions about health or disability before a job offer in certain limited circumstances:

- They are asking the questions to find out if any applicant needs reasonable adjustments for the recruitment process, such as for an assessment or an interview.
- They are asking the questions for monitoring purposes to check the diversity of applicants (in which case, they should consider whether the information could be provided anonymously).
- They want to make sure that an applicant who is a disabled person can benefit from any measures aimed at improving disabled people's employment rates; for example, the guaranteed interview scheme.
- They are asking the question because having a specific impairment is an occupational requirement for a particular job. (For example, an employer wants to recruit a deaf blind project worker who has personal experience of deaf blindness.)
- Where the questions relate to a requirement to vet applicants for the purposes of national security.



- Where the question relates to a person's ability to carry out a function that is intrinsic (or absolutely fundamental) to that job – for example, if the job is physically strenuous. Even if a function is intrinsic to the job, employers must always consider whether reasonable adjustments would enable a disabled candidate to carry out that function.

CQC takes the following view on how this relates to our regulations:

- Providers must comply with the Equality Act 2010 and only use pre-employment health checks where allowed under the Act.
- We should take account of the fact that providers must always consider making reasonable adjustments for disabled staff in relation to 'fitness' to carry out the role.
- The role of CQC is to look at how the provider ensures that staff are recruited lawfully and that those employed are able to carry out their role in relation to regulated activities.
- CQC can only take action in relation to Reg 19 which is the only Reg where we have power to assess employment procedures. Pre-employment health check questions are not a breach of Regs 4 -7.

It is very important that inspectors do not give advice to providers on recruitment decisions as this is not the CQC's role and could open CQC up to legal challenge from individuals. More information can be found from [ACAS](#) and from [Gov.UK](#)



If I arrive at a service on the day of a religious festival, should I continue with the inspection?

Summary

Having some knowledge of the range of religious festivals which are held at different times of the year may help your inspection planning.

Planning a comprehensive inspection

As part of your overall planning for the inspection visit, you will gather evidence, intelligence and information to form a judgement about the areas you will focus on during your inspection. Included in this information search, will be the service's registration with us and their statement of purpose.

The statement of purpose would identify the nature of the service and its cultural or religious identity.

If the cultural or religious practices of the service are clear from the cultural or religious identity in their statement of purpose, you will need to look to see if there are likely to be any festival or cultural dates that would mean avoiding a visit to the service during this period or on this date.

A list of key religious festivals is available from the [diversity calendar](#) – downloadable from the CQC links panel on the right hand side of the intranet homepage. It should be noted that;

- Not every date listed would mean that it would be inappropriate to carry out an inspection on that date, for example Christian saints' days are listed.
- Dates for some festivals vary within a religion between different branches of the religion.
- It is difficult to predict some dates accurately far in advance, e.g. Eid –al-Fitr, so it may be worth checking dates near the time

If your planned inspection date falls on a special day connected with a religion from the calendar - and you think this might have an impact on the inspection, it is worth investigating the potential impact in more detail by finding out more about the festival in question. Importantly, by having ongoing contact with the provider or, if the service



is new to you, making contact sometime in advance when planning a comprehensive inspection, will provide you with information about future dates in which undertaking an inspection would not be appropriate.

Inspection visit

If you arrive at the service to undertake a comprehensive inspection when a festival or religious or cultural day is taking place, you would be respectful of their beliefs, stop the inspection and leave the premises.

However, if you have concerns for people's safety and wellbeing and a responsive inspection was to be carried out, then you may consider continuing with this based on the seriousness of the concerns.

If you are unsure of the process to take, stop the inspection and make a phone call to your manager in order to seek clarity.



How do I gather people's experiences about equality and human rights issues on site visits?

Summary

The suggestions in this FAQ are about how to go about engaging with people and gathering their experiences about equality and human rights issues on site visits. This FAQ could be used in conjunction with the key questions. Some of these examples were given to us through a range of engagement events with people who use services and through feedback from inspectors.

- Refresh your memory about the FREDA principles (fairness, respect, equality, dignity, autonomy) as well as the two additional principles we have adopted - right to life and rights of staff. You will then have those fresh in your mind when travelling to your inspection. See our FAQ What is our Human rights approach and what is FREDA?
- Knowing the equality characteristics of people who use the service will enable you to plan your engagement with them. This will give you some time to plan your approach and consider your questions as well as to think about what you need from experts by experience or other support.

Try to find out in advance whether some people may need a language or sign language interpreter. You can book one through CQC Accessible Communications. (Add LINK) Three weeks' notice is preferred but in an emergency an interpreter can be found at shorter notice. We must ensure that people who need support to communicate are not excluded from direct communication with inspectors.

- If you need to acquire specific evidence about the service meeting people's diverse needs, you will need to talk with people differently. If you know their backgrounds and circumstances, it will help you do this. You will talk with an older Jewish person who was brought up in Germany during the war differently to someone from Pakistan in the maternity unit whose first language is not English and to a student who is at a residential college and who uses a piece of equipment to communicate with you. All are different and so the questions you ask will enable you to understand if their individual and diverse needs are being met.
- It is not necessary to know everything about someone's culture or background in order to communicate well and to ask questions in a sensitive way. Having an open approach and being aware of your own potential biases, and things you can do to



counteract these, is a really important starting point. This is why we have emphasised unconscious bias in our learning on equality and human rights.

- When you talk with, listen to and hear the experiences of people using a service, you will not know all the particular issues that may affect the different individuals that you meet. However, some knowledge of groups of people who share equality characteristics can be helpful – for example many refugees and asylum seekers have experienced war, conflict or torture which affects their health and wellbeing. Being aware of this will enable you to consider the style of questions you ask.
- This is a continuous learning process for everyone whose job involves communication – the most important point is being open to learning each time you communicate with others and then applying that learning in whatever setting or service you may be in.
- As part of your introductions, ask the manager about the people who are currently using the service. You want to know about the equality characteristics of people using the service, so note their room numbers or names so that you can follow them up in the inspection and maybe try to get to speak with them. An example “During my initial conversation with the home manager about the inspection, I ask them to tell me if there is anyone using the service from a different cultural or ethnic group other than white, if anyone is gay or a lesbian and what faiths are practiced in the home.” This provides an understanding of the diversity of the people using the service and how their different needs might be met
- How you dress may have an impact on people who use the service and whether they feel able to talk with you. In some services, for example, some mental health wards, if someone sees an inspector in a suit they will assume that the inspector is not there for them. In other services, such as some care homes for older people, people will expect an inspector to be dressed smartly and may not trust that someone casually dressed is an inspector.
- Some people with autism are very sensitive to particular patterns and bright colours on clothing and the smell of perfume, for example. Consider what you wear on the day of your inspection. An example, “I once went to a service with a white summer jacket on. I asked the manager if there was anyone with whom I should be aware in terms of sensory overload or triggers. She said that I would need to remove my jacket as it looked a bit like a doctor’s coat and this would upset one particular person who would think the doctor was coming to see him.”
- Experts by experience are also experts on what to observe. For example, when you have been a patient in a mental health hospital for a long time you have nothing to do but watch and observe - so you know what to look for. This includes not only the



physical environment but sometimes how individual people using the service are feeling, for example, whether someone appears distressed.

- Ask people what they like to be called – some people prefer their first name, others prefer a more formal approach using Mr/Mrs/Ms etc. Obviously never call people by endearments such as ‘love’ or ‘dear’ as many people find this patronising. Make sure you tell them who you are.
- Think about how you can encourage communication, for example, with people who find it difficult with verbal language and people with dementia. Giving non-verbal feedback such as nodding and smiling in agreement can be very reassuring. Make sure that your questions are short and clear and don’t require two answers at the same time. Ask the person if they wish to talk to you in private so it gives them an opportunity for privacy and individual time with you. Sitting at the same level as the person, making sure that the person can hear you well and you can see their face for non-verbal clues is very important to good communication.
- You could explore with people whether they have experienced any discrimination themselves or witnessed discrimination towards other people. Be aware that people may have low expectations and may say that they are OK using the service when they are, in fact, experiencing inappropriate support or actual discrimination.
- Possible questions to ask may be:
 - Is the food you eat, the food of your choice?
 - Have you asked for something that meets your specific needs and found that the staff did not give it to you?
 - Have you asked for female only staff to care for you and has this worked well?
 - Are you able to follow your faith in the way that you would like?
 - Do you feel that the staff are respectful of you as a gay man?
 - Do they provide you with the same level of service as others using the service?
- Let people know how they can find out about the outcome of the inspection. This might include ensuring that inspection reports are produced in a different format (for example, easy read, audio or large print) and are sent to people that request them.



How can I become more confident in asking questions about equality and human rights on inspection?

Summary

To have confidence in asking questions relating to equality and human rights you need to have sufficient knowledge and understanding of the CQC's approach to equality and human rights in regulation. This FAQ will help you to gain knowledge and understanding of some of the more generic elements of equality and human rights and how to develop questions based on the information you receive, so that it is clear on the relevance of the question being asked.

Becoming confident in asking equality and human rights questions

There is a combination of information that inspectors should know before, during and after the inspection to become more confident in addressing and articulating equality and human rights issues, these are listed below?:

1. Knowledge and understanding of the legal and statutory duties that the provider should comply with and how these relate to regulations in the Health and Social Care Act.
2. How to develop questions that will help to explain the data/information available before the inspection – such as Provider Information Returns – as preparation leads to confidence.
3. An understanding of the providers' equality and human rights approach/information/data that is not presented in their pre inspection data report (PIR), e.g. their Equality strategy, equality objectives, equality monitoring information, equality reports and policies. Some of these will only be relevant to public sector providers and where people using the service have their care paid for or arranged by a public body. A number of FAQs are available, in particular; ['Which Health and Social Care Provider does the public sector equality duty apply to?'](#) but other more generic information about their approach – e.g. how equality and human rights is expressed in their statement of purpose, their equality policy and plans for improving equality in their service will apply to all providers. This information should be on the providers' website, if they have one.
4. Knowledge and understanding of relevant equality and human rights frameworks such as contractual expectations by CCGs for PMS and EDS2



and WRES for NHS Trusts and whether the framework is being used as a performance measurement tool or not. For example, if they are an NHS Trust, they will use the Equality Delivery System 2 (EDS2); GP services may be monitored on equality by the funding CCG; local authorities or NHS commissioners may do the same for adult social care services.

5. Think about what to expect as evidence for equality and human rights related questions.

Applying knowledge and understanding of equality and human rights prior to the inspection

As mentioned above, there are many ways in which inspectors can access information on equality and human rights prior to an inspection. For example, Provider Information Returns (PIRs) contain some specific equality and human rights related questions.

However, you may want to look for additional information which is not always provided in the pre-inspection data. There can be other evidence published on providers' websites for example; what their equality objectives are and what trends are coming out of their equality monitoring reports and what their equality strategy looks like.

There are also national NHS equality frameworks such as Workforce Race Equality Standard (WRES) and the Equality Delivery System (EDS2) – both became mandatory for NHS-funded care from April 2015. Further information on these equality frameworks and how they work can be found here: [Equality Delivery System 2](#) and [Workforce Race Equality Standard](#). We will be inspecting workforce race equality in all NHS services from April 2016; further information on this can be found [here](#). We will be starting work to look at how we can make better use of EDS2 from April 2016.

Speaking up confidently on EDHR issues

It is important to be confident at asking equality and human rights questions during inspections. There are many relevant equality and human rights prompts that form part of the KLOE's (Our mandatory equality and human rights learning programme described how we integrated our [human rights approach](#) topics into the KLOEs).

But some questions may be interpreted as sensitive by both the inspector and individual being questioned. Inspectors can use the KLOE prompts as a guide to lead to more in-depth questions that provide further explanation and evidence.



Below are some points that can help in relation to areas where providers may feel uncomfortable, for example questions around sexual orientation or gender identity [here](#). It is worth reiterating that we ask questions to check that people's needs are being considered – in line with the Health and Social Care Act regulations which cover “due regard” to all the equality characteristics.

- We do not expect people who use services to disclose personal information to us but we want to give people who use the service an opportunity to disclose information about equality if they wish. Sometimes this means giving people “permission” by talking about equality in an open way.
- We expect providers to be able to talk to us in an open way about how they consider people's needs in relation to all equality characteristics, so we need to be able to speak confidently and openly too.
- Use information from the PIR or other sources to “open up” the discussion, for example in Adult Social care you could ask providers to give examples of work they have carried out in the past year and why they chose to work on specific equality characteristics rather than others. In NHS inspections, you could use EDS2 reports to have similar discussions.

It is also important to note that equality and human rights evidence can come up in many parts of the inspection. We will continue to support you with learning and development; the links above and our FAQs will help you build your confidence to identify equality and human rights issues and gather evidence on inspection.

Information and sources that can demonstrate EDHR

One fundamental area that can provide evidence on equality and human rights is complaints and the type of complaints received. This information can be analysed to ask specific and targeted equality and human rights related questions and there is a [tool](#) that can help you respond to concerns raised.

Also, there may be safeguarding concerns that relate to equality or human rights. For example, someone may experience disability related harassment or discrimination and abuse targeted at their religion or belief, or their sexual orientation.

What if there are differences of opinion in the inspection team?

It is good practice to have healthy debates on the issues being raised, however sufficient evidence should be used to make informed decisions and not based on personal biases or opinions. As with any other regulatory issue, our findings should be corroborated from a number of sources – e.g. information from the provider,



interviews with the staff of the provider, looking at care records, observations and the views of people using the service.

I don't know much about the Equality, Diversity and Human Rights, what can I do?

There are many [FAQs on equality and human rights law](#) on the intranet which provide inspectors with an overview of what the legal and statutory obligations are of the providers and how these relate to our regulations and key questions.

[A Cue article and interview about meeting the needs of lesbian, gay and bisexual people using adult social care](#) addresses some of the questions you may have about gathering equality evidence on inspection and how to write up issues in reports without breaching confidentiality.

Prior to inspecting an **acute hospital**; it is good practice to scan the equality and human rights information on the Trust's website. For **PMS and ASC**, the practice or service may publish their policies on their website, if they have one. Analyse the information received as part of pre-inspection data not only to identify gaps but to use the information. When looking at the information, even if it shows there are positive outcomes for patients and or staff in relation to equality and human rights think about what policies, procedures, and good practice might have been implemented to get such positive results.

Consider the organisational culture of the service under the well led question: how does that contribute to or hinder equality and human rights for people who use the service and for staff? There is an increasing evidence base showing the links between supporting staff equality and building good organisational cultures – for example recent work by the Kings Fund relating to NHS Trusts– see their report [“Making the difference”](#).

How can CQC support me in becoming more confident in equality and human rights?

There is an EDHR team that can support in understanding the data/information and interpret published information on provider's websites. Contact us equalityhumanrights@cqc.org.uk

There are training programmes that can help inspectors gain knowledge and understanding of the basic principles of equality and human rights. The 2015/2016 mandatory training is made up of an online and a face to face session for everyone to follow the online training. Further information on the training is available via ED.



Good practice examples to embed EDHR into report writing for all sectors

This document provides good practice examples when report writing. The examples under each key line of enquiry reflect Equality, Diversity and Human Rights principles, types of evidence that could be gathered to support your judgement and examples of how you can report on this in your inspection report. For the purpose of this document, where reference is made to the service, this means any sector and where it makes reference to patient, means the user of the service. These are generic examples that can be adapted by any sector.

You must make sure that the people you write about in your report cannot be identified from the details you include. The following examples will show you how examples can be re-worded to minimise the risk of the person being identified.

Person Identifiable evidence	Re-worded to eliminate the risk of identifying individuals
A room has been made available with a sink for a member of staff to carry out his prayers throughout the day as agreed with the manager.	A quiet space has been made available for all staff to access for their personal use throughout the day.
The service organised a trip to the local PRIDE event for one of the residents' with his partner and responds very well to meet his needs.	Where possible the service provides access to local events to enhance social activities for all residents to access and get involved with – taking into account their individual interests and links with different communities.
Someone using the service told us that staff had been very supportive of him maintaining contact with his same-sex partner	People were supported by staff to maintain their personal relationships. This was based on staff understanding who was important to the person, their life history, their cultural background and their sexual orientation.
The relative of one patient told us how they were	One person told us that their relative's communication needs were not met. This had an



<p>concerned about their relative's care because they did not speak English and staff did not organise an interpreter for consultations with medical staff</p>	<p>impact on their ability to access the care and treatment they needed.</p>
<p>A Christian chaplain regularly visits the care home to carry out services and to give support to individual people. One person living in the care home was a Muslim and we saw that her specific needs had been met in relation to diet, personal care and prayer.</p>	<p>A Christian chaplain regularly visits the care home to carry out services. In addition, staff were able to show us how they met individual needs of people with a range of religious beliefs, for example relating to individual spiritual support, dietary requirements and personal care.</p>
	<p>Note also that if staff are also asked about how they meet the diverse needs of people using their service, this can be used as good evidence and is less likely to be 'person identifiable' . For example:</p> <p>"Staff gave us examples of how they had provided support to meet the diverse needs of people using the service including those related to disability, gender, ethnicity, faith and sexual orientation. These needs were recorded in care plans and all staff we spoke to knew the needs of each person well. People using the service also commented on how well their individual needs were met.</p> <p>Sometimes this can be evidenced with more general comments that people using the service make, that are not person identifiable e.g.</p> <p><i>"They know what I like to spend my time doing and what help I need"</i></p> <p><i>"They respect my beliefs/practices/choices and treat me with dignity and respect"</i></p>



The following good practice examples- taken from published inspection reports give ideas of wording that could be adapted for use in different sectors:

Key lines of enquiry area	Good practice examples
Is the service safe?	<ul style="list-style-type: none"> • The service has a ‘zero tolerance of bullying and harassment policy’ in place for both staff and residents. The policy is communicated to all staff and people using the service in a variety of formats. • An alert system was in place to highlight vulnerable patients on the practice’s electronic records, including children subject to child protection plans. The system ensured that they were clearly identified and reviewed, and that staff were aware of any relevant issues when patients contacted the practice or attended appointments. • One of the GPs and a nurse lead in safeguarding adults and children, and worked closely with the local safeguarding team. One of the nurses was also responsible for overseeing vulnerable patients, specifically homeless people, asylum seekers and those living at probation hostels.
Is the service effective?	<ul style="list-style-type: none"> • Staff regularly monitors food and drink intake to ensure all residents receive enough nutrients in the day. Staff regularly consult with residents on what type of food they prefer and ensure foods are available to meet peoples’ diverse needs.. • We saw that the induction programme for new staff covered two full weeks and included fire procedures, staff handbook, safer working practice, safeguarding, infection prevention and control, moving and handling, equality and diversity, practical skills, medicines and record keeping. • Dietary requirements for health or culture were provided for and the catering team were trained to provide these. Specialist diets were prepared



	<p>under the supervision of the nurses.</p> <ul style="list-style-type: none"> • In the community learning disabilities teams a number of recognised multi-disciplinary assessment tools were used to plan and monitor care needs. • Staff gave examples of how a patient's best interests were taken into account if a patient lacked capacity to make a decision. For example, patients with learning disabilities were supported to make decisions through the use of care plans, with their involvement.
Is the service caring?	<ul style="list-style-type: none"> • Staff were respectful of people's cultural and spiritual needs • Patients said they were treated with compassion, dignity and respect and they were involved in their care and decisions about their treatment. • Information was provided, including in accessible formats, to help patients understand the care available to them. • Staff told us translation services were available for patients who did not have English as a first language. We saw notices in the reception areas informing patients this service was available.
Is the service responsive?	<ul style="list-style-type: none"> • Each person had a care plan that was tailored to meet their individual needs. • The provider had taken steps to meet people's cultural needs by ensuring there were staff available that was able to speak their first language and by supporting people to access local amenities that supported particular ethnic and cultural groups. • There was a designated key contact for each child and they completed the primary



assessment of the child's needs and developed a child-centred care plan in partnership with the child, the family, and medical professionals. The care plans we looked at included personal care preferences, specialised care needs, and any cultural or spiritual needs and wants.

- The practice had recognised the needs of different groups in the planning of its services. For example, flexible or longer appointment times were available for patients with chronic diseases, older persons and patients with a learning disability.
- The majority of the practice population were English speaking patients but access to online and telephone translation services were available if they were needed.
- Early morning appointments were available if patients requested. Urgent appointments were available daily and any children were always provided with an on the day appointment. Young people from any local practice could sit and wait to be seen. Telephone appointments were available twice daily. Dietician, chiropody and counselling appointments were available.
- Longer appointments were also available for older patients, those experiencing poor mental health, patients with learning disabilities and those with long-term conditions. This also included appointments with a named GP or nurse.
- High numbers of patients from hard to reach groups were registered with the practice. The practice was proactive in engaging with patients who were reluctant to attend the surgery, hospital appointments or community clinics. For example, they worked with support workers to facilitate patient's attendance, they had flexible systems for homeless patients or those living in caravans,



	<p>tents or boats, to collect prescriptions, letters or details or hospital appointments from the surgery. They also had a flexible approach if patients were late for appointments because of their chaotic lifestyles; they would be seen and attended to.</p>
Is the service well led?	<ul style="list-style-type: none"> • The provider was aware of the importance of forward planning to ensure the quality of service they provided could continue to develop. The provider's strategic plan for 2014 –2019 demonstrated service objectives reflected against known challenges such as an ageing population with changing needs at the end of their lives. • The practice encouraged and valued feedback from patients. It had gathered feedback from patients through the patient participation group (PPG), surveys, suggestion box and complaints received. It had an active PPG which included representatives from various population groups; for example a member who had caring responsibilities for a patient with dementia and patients of working age. • All staff received training in relation to the Equality Act and human rights over the last 12 months. The service was able to demonstrate in their service plan how they will build upon this learning to promote best practice. • The Trust complied with the duty on public bodies to publish equality objectives. The objectives were developed collaboratively with the community and other stakeholders. Good progress has been made on them and there is strong leadership and clear ownership for taking actions forward.



Why does CQC need to consider equality and human rights law?

Summary

Having knowledge, understanding and legal background of equality and human rights will help CQC staff make informed decisions during inspections.

Why does CQC need to consider equality and human rights law?

Many of the fundamental standards in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (HSCA) have equality and human rights dimensions. This means that CQC can take action when poor care is linked to inequality or a breach of human rights, using the HSCA, without using equality and human rights law.

Equality and human rights topics have also been integrated into the key lines of enquiry that we use on inspection so that ratings will also take account of these issues.

However, it is important for inspectors, registration inspectors and others working for CQC to consider equality and human rights law when carrying out inspections and making judgements, for the following reasons:

- Using equality and human rights law means that we are making judgements based on legal definitions rather than own 'moral compass'. This means we will have greater consistency around terms such as 'dignity' and 'equality' which are in the regulations and the key lines of enquiry.
- Looking at equality and human rights law strengthens the focus of the inspection on people who use services
- Whether people's rights are affected by a breach of regulations is a factor to be considered in enforcement decision-making. If a breach of a regulation also has a significant impact on people's rights, this moves a breach from minor to moderate impact. This means that unless there is only a "remote possibility" of the breach happening again, any HSCA breach which also has a significant impact on people's rights should be responded to by considering, as a minimum, a warning notice. It is important to assess whether there is a



breach of human rights or rights under equality law when making enforcement decisions. For more information – see the [Enforcement decision tree](#).

- Some aspects of equality law are specifically written into the fundamental standards such as ‘unlawful discrimination’ and ‘reasonable adjustments’. There is more information on this point in the FAQ: What is the relationship between the Fundamental standards and the Equality Act 2010.
- As a public authority CQC has duties to respect the rights prescribed in these laws. In relation to the Equality Act 2010 CQC staff have a duty not to unlawfully discriminate against people. Because of the public sector equality duty (part of the Equality Act 2010), CQC staff must also have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations between people with different protected characteristics when carrying out their functions. In relation to the Human Rights Act 1998 CQC staff have duties to “act compatibly with” the human rights contained in the Act.



Are children protected under the Human Rights Act 1998?

Summary

There are many pieces of legislation relevant for Children. It is important to understand the differences between them and to ascertain the knowledge of which articles of the Human Rights Act 1998 has an impact on children under the age of 18.

Are children protected under the Human Rights Act 1998?

Yes, they are. There are a number of international human rights treaties and domestic laws which protect children's rights. International human rights treaties are agreements between different states around the world. In an international human rights treaty, each state agrees to make sure that people have the rights in the treaty. See the [Children's Rights Alliance](#) website.

The Human Rights Act 1998

- [The Human Rights Act 1998](#) makes most of the rights in the European Convention on Human Rights part of domestic law. Domestic laws are those laws that are decided by UK Government. . The European Convention on Human Rights protects the rights of all people, including children and young people.
- As the Human Rights Act 1998 brings the European Convention on Human Rights into UK law, it means that children can bring cases in relation to their rights in the European Convention on Human Rights in UK courts. If the UK courts wrongly dismiss their claim, children can still seek protection through the European Court of Human Rights in Strasbourg, France.
- Under the Human Rights Act 1998, all public bodies, like local authorities, state schools and hospitals, are also required to act in accordance with the rights in the European Convention on Human Rights.
- When the UK courts are considering a claim by a child under the Human Rights Act 1998 they should if relevant also consider the [United Nations Convention on the Rights of the Child](#).
- Under the [Equality Act 2010](#), [age discrimination is unlawful](#). For services, including [health and social care](#), [only](#) people 18 aged and over are protected from discrimination because of their age In employment people of all ages including



under 18's are protected from age discrimination. However, the Equality Act 2010 makes it unlawful to discriminate against children because of other protected characteristics, for example, sex, disability, gender, race, sexual orientation and religion or belief.

The United Nations Convention on the Rights of the Child

- In November 1989, the United Nations Convention on the Rights of the Child was adopted by the United Nations General Assembly. The United Nations Convention on the Rights of the Child (known as the Convention on the Rights of the Child) protects the rights of all children. The UK has ratified this treaty. This means that the United Nations monitors how the UK implements the provisions in the Convention on the Rights of the Child, through the Committee on the Rights of the Child, and can make recommendations for change.
- Whilst it is not possible for individuals to make complaints to the United Nations if they feel that their rights under the Convention on the Rights of the Child have been breached, organisations can submit evidence into the United Nations monitoring process. **The Office of the Children's Commissioner for England** promotes and protects children's rights in England and children can go to the Commissioner directly.
- Children and young people also have protection from other international human rights treaties, such as the United Nations Convention on the Rights of Persons with Disabilitiesⁱ and the United Nations Convention on the Elimination of Discrimination against Womenⁱⁱ, both of which expressly mention the rights of children/girls.

Articles in the Convention on the Rights of the Child

The Convention on the Rights of the Child consists of 54 articles that address the basic human rights of children everywhere to which they are entitled. The four core principles of the Convention on the Rights of the Child are:

- non-discrimination
- devotion to the best interests of the child
- the right to life, survival and development
- respect for the views of the child.

Under the Convention on the Rights of the Child, a child is defined as "... every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier."

You can look at all the articles by going to **UNICEF** website. We list here the key articles that are relevant to our regulatory role include the following:



Article 3: Best interests of the child

- This provides that the best interests of children shall be a 'primary consideration' in all actions concerning them. This is one of the general principles of the Convention on the Rights of the Child.
- Governments are required to take appropriate measures to protect children and must ensure that all agencies responsible for the care or protection of children conform to established standards 'particularly in the areas of safety, health, in the number and suitability of staff, as well as competent supervision'.

Article 12: Respect for the views of the child

- This provides that children who are capable of forming their own views have the right to express those views freely in all matters affecting them and that their views are given 'due weight in accordance with the age and maturity of the child'.
- Paragraph 12(2) of the Convention on the Rights of the Child refers to the rights of children to be heard in any judicial or administrative proceedings affecting them. The Committee on the Rights of the Child considers that there is no age limit on the right of the child to express their views.

Article 37: Torture, degrading treatment and deprivation of liberty

- This provides that children shall be protected from torture or other cruel, inhuman or degrading treatment or punishment, capital punishment and arbitrary detention.
- Article 37(c) of the Convention on the Rights of the Child also provides that children deprived of their liberty shall be treated with humanity and respect. Children in these circumstances shall be separated from adults unless it is not in their best interests to do so. They shall also have the right to maintain contact with their family (save in exceptional circumstances).

Articles 43 to 54

- These articles (too long to mention here) are about how organisations must work together, locally, and nationally and internationally to make sure children can enjoy all their rights. See links to websites for more information.

Whilst we cannot take regulatory action directly against providers using the Convention on the Rights of the Child we should bear it in mind when, for example, setting policy or making judgements about any action we might take using the provisions in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014



The Children Act 1989

The Children Act 1989 legislates for children in England and Wales. The intention of the legislation is that children's welfare and developmental needs are met, including the need to be protected from harm. The Act states that, in any court decision concerning a child, the welfare of that child is the central consideration.

Key principles of the Act reflect certain aspects of the Convention on the Rights of the Child; protection from harm, respect for a child's race, culture and ethnicity, parents' responsibility for bringing up children and, for the first time, the duty to take account of a child's wishes and feelings in decisions taken that affects them.

ⁱ United Nations Convention on the Rights of Persons with Disabilities

ⁱⁱ United Nations Convention on the Elimination of Discrimination against Women



How to communicate with people who are neurodiverse?

Summary

This FAQ explains neurodiversity and associated conditions, including neurological conditions, and the strengths of neurodiverse people. It gives guidance and top tips on communication methods and approaches when communicating with people who are neurodiverse.

What is neurodiversity?

The term is a relatively new one but describes different ways of 'processing'. This could be how people:

- organise their thoughts to put them into words,
- understand body language, facial expression or tone of voice,
- interpret and makes sense of visual and spatial information.

Definition by: [Equality and Human Rights Commission \(EHRC\)](#).

Embracing neurodiversity

The deficit-focused view of autistic people has largely ignored their cognitive strengths, their diverse way of being, and their gifts and talents. The neurodiversity movement is supported by scientific research about the strengths of those with a wide variety of disability diagnoses. People with a neurological disability often possess a strength associated with their condition. For instance, people with ADHD can be innovative, curious, and dynamic. See information and examples of strengths in Table 1 below.

Neurodiverse conditions

Conditions can include:

- autism
- Asperger's Syndrome – (This has now merged with autism, although some may still prefer it)
- Tourette's Syndrome
- ADHD or ADD



- dyspraxia
- dyscalculia
- dyslexia
- some forms of mental ill health and mental distress which are undiagnosed.

What is neurological disability?

Neurological conditions are caused by damage to the nervous system (including the brain and spinal cord) so the person loses some bodily or mental functions.

Acquired neurological and degenerative¹ impairments include:

- Acquired brain Injury
- Epilepsy
- Stroke
- Parkinson's Disease
- Multiple Sclerosis
- dementia

Heart attacks, infections, genetic disorders and lack of oxygen to the brain may also cause a neurological disability.

These conditions are often known as 'hidden disabilities', a useful term for gaining and securing disability discrimination rights under the Equality Act 2010.

What are the implications of neurodiversity on individuals?

Particular issues affect neurodiverse people, and especially those who are autistic, such as

- the environment,
- sensory sensitivities,
- diet,
- interaction and socialisation,
- behaviour and medication.

See [Adult Autism Strategy – Statutory Guidance \(2015\)](#).

¹



What are the implications of neurological conditions on individuals?

People with a neurological condition may struggle to express themselves clearly, either, spoken, written or both. They may experience challenges with:

- severe fatigue and/or weakness
- impaired hand dexterity
- tremor of hands or other body parts
- controlled use of the hands
- other motor-control impairments such as loss of balance or coordination and difficulty walking, visual impairment or seizures
- psychological and social functioning such as speech difficulties, including slurring and other losses of communication skills, memory deficits and mood disturbance
- the way they process information or how they tolerate and express feelings may also be significantly changed.

The effects of many neurological conditions can vary greatly from person to person as well as at different times for that person.

See also common strengths of neurodiverse people in Table 1.

Communication methods and approach

Neurodiverse people using services may have many forms of communication. This is especially true for people on the autism spectrum and who may require residential or specialist provision. Inspectors will meet neurodiverse people, many of whom may be undiagnosed, on inspections in different services. Those with complex communication needs are more likely to be people who are autistic.

If a person who is neurodiverse wants to give us information, they may have different communication needs.

We have a legal duty to make reasonable adjustments for disabled people to participate in our work as non-disabled people do. All inspectors should consider offering an opportunity to a neurodiverse person to meet face to face rather than over the phone.

Staff protocol

We are developing a protocol for staff for when people with communication barriers contact the NCSC. Based on the individuals' needs, NCSC staff may refer the



person to the local inspection team for a face-to-face meeting to discuss information about a service they use, if the person wants this. As with all requests for face-to-face meetings from an unknown person, staff should follow personal safety guidance when setting up and carrying out the meeting. In face-to-face meetings, consider the bullet points below, in the section “During an inspection”.

The most important point when communicating with a person with a neurological disability, is to acknowledge each person as an individual and listen to them when they explain their preferred ways to communicate.

Planning inspection

- Consider people’s communication needs. Consider any tools or gather particular information to support your inspection.
- Where possible arrange individual meetings with people rather than group sessions as some people will be unable to participate.
- People may be **hypersensitive** in various ways. For example, perfume or aftershave, or clothes with busy patterns may trigger anxiety and distress, affecting their interaction with you. Consider this before your visit.
- Jewellery and other distracting aspects of your appearance may become the focus of attention so consider this before your visit.
- Check the person’s care plan and with staff for potential triggers for introducing yourself. For example, people who may not want to shake hands, personal space issues, trigger words, ‘special interests’ and personal safety issues.
- Take pictorial information (such as the communication tool kit) or symbols and have a pen and paper to draw or write things down. Working with people this way can be non-threatening and reduce anxiety.

During inspection

- **Use names** - When speaking to people as they may not pick up the non-verbal cues that you are talking to them and try to make eye contact once the person has turned their head to you to acknowledge them.



- **Explain your visit** - Tell people why you are visiting and explain the structure of the meeting before it begins and when it will end.
- **Talk to the person** - If there is a support person, still address the disabled person and not the support person.
- **Communicate in the right ways** - Use information and language that meets the person's needs and communicate in ways that suit them (for example written or spoken). Use short, straightforward and direct questions, speak clearly, using plain English and use appropriate volume and tone in your voice and avoid shouting or speaking slowly.
- **Keep it simple** - Break up new information into small chunks and rephrase information if people do not understand, or present the information in another way. You can also ask the person to repeat something you do not understand.
- **Check understanding** - Tell the person how you have understood what they have told you. It is important to check this, so both parties understand what is said, heard and understood.
- **Be patient** - Wait for people to finish what they are saying. Give people time to process the meaning of the information regardless of apparent ability as some people with autism can take 10 to 15 seconds to process the sentence/question. For instance, people may struggle to look at you when you are speaking as well as focus on what you are saying. This could cause sensory overload.
- **Body language** - When meeting a small group or individuals, keep your body language simple. If spoken to directly, some people may not answer immediately. Some people will not make eye contact with you, and you should avoid making physical contact with people.
- **Choose your language** - Avoid complex terms or those with double meanings as this can cause confusion (such as 'please take a seat' or 'eyes in the back of your head' – as people may take these literally).
- **Comment cards or assistive technology** - Comment cards and questionnaires can help people to give their views if they cannot interact with you. Some people are most comfortable using computers. Others may need assistive technology.



Table 1- Neurodiverse conditions – difficulties and common strengths

Note that many neurodiverse people will have a number of conditions – for example people with ASD will often have ADD as well. Also, that people are individuals – not everyone with the same diagnostic label will have all the difficulties or all the strengths associated with that condition.

Extracted from ['CINNABAR – Support for Dyslexia & Specific Learning Difficulties'](#)

Condition	Difficulties/symptoms	Common strengths
Dyslexia	A language processing difficulty, which affects more than reading and writing abilities. Areas of challenges can include listening, speaking and expressing thoughts in writing, sequencing abilities and working memory.	<ul style="list-style-type: none"> • Creative flair and high aptitude in creative/artistic design • Innovative and entrepreneurial thinking style and original ideas • Strong visual memory, making links and associations in a visual, creative way • Great practical aptitudes – being 'hands on' and fully involved as part of a team • Lateral thinking and problem solving • Empathy and ability to build rapport with
Dyspraxia (sometimes known as developmental coordination disorder (DCD))	Affects organising or coordinating movement. Can also affect speech and language, commonly referred to as speech dyspraxia, or verbal dyspraxia.	<ul style="list-style-type: none"> • High levels of motivation • Practical problem solving • Creative thinking • Retaining and recalling knowledge once embedded • Patience • Empathy with others • Persistence with tenacity • Curiosity and desire to learn
Autism spectrum disorder (ASD) including Asperger's Syndrome	Affects social interaction, communication, interests and behaviour.	<ul style="list-style-type: none"> • Strong interest, enthusiasm, knowledge and innovation in particular subjects • Seeing patterns and detail, embedding and recalling information • Bringing dedicated concentration



		and focus to sole activities <ul style="list-style-type: none"> • Highly productive within defined structures or routines
Dyscalculia	A condition that makes it difficult to gain number skills, tackles mental arithmetic, and grasps number sequences and procedures.	<ul style="list-style-type: none"> • Creative and innovative thinking • Problem solving and lateral thinking • High aptitude in creative careers, such as art, design, engineering, architecture • Good practical skills • Verbal communication • Able to take a holistic view of work goals and objectives – seeing the ‘bigger picture’
Attention deficit hyperactivity disorder (ADHD) and attention deficit disorder (ADD)	A condition that makes it challenging to maintain attention and regulate impulsive behaviours. A diagnosis is given when certain characteristic behaviours are excessive, pervasive (creating difficulties in everyday life) and displayed over a long-term period of time.	<ul style="list-style-type: none"> • Creativity and novel thinking • Entrepreneurial skills – a willingness to take some risks • Problem solving – seeing the bigger picture • Energy and determination • Being able to accept change and variability in routine • Enthusiasm and motivation
Tourette’s Syndrome	Verbal and physical ‘tics’ (rapid, repetitive, involuntary contractions of a group of muscles). Though rarely harmful, some tics can severely interfere with daily life. Tics may be: <ol style="list-style-type: none"> 1. motor tics (bodily movements) – such as facial twitching or shrugging the shoulders 2. phonic or vocal tics (sounds) – such as grunting, clearing the throat or sniffing 	<ul style="list-style-type: none"> • Athletic • Academic gifts • Strong problem-solving abilities • Sustained areas of interest • Musical and artistic



Useful links and information

AD(H)D - www.adhd.org.uk/

Asperger's Syndrome - www.aspergerfoundation.org.uk/

Autism - www.nas.org.uk/

Dyscalculia - www.dyscalculia.me.uk/

Dyslexia - www.bdadyslexia.org.uk/

Dyspraxia - www.dyspraxiafoundation.org.uk/

Head injury - www.headway.org.uk/

Mental Health www.mind.org.uk/

Neurodiversity www.danda.org.uk/

Parkinson's Disease www.parkinsons.org.uk/

Social model of disability - http://en.wikipedia.org/wiki/Social_model_of_disability

Stroke - www.stroke.org.uk/



What is our regulatory response where services are physically inaccessible to people with mobility impairments?

Summary

In some locations, for example some dentists and independent healthcare services, all or some of their regulated activities are delivered from the upper floor of premises, accessible only by stairs. Often, if someone with mobility impairment wishes to use the service, they will be referred elsewhere.

If this is the case, we need to check whether providers have met the requirements in the Health and Social Care Act regulations relating to reasonable adjustments and “due regard” to the protected characteristics of people using their services.

What is our regulatory response where services are physically inaccessible to people with mobility impairments?

This FAQ applies to any location where some or all of the regulated activities are delivered from the upper floor of premises, accessible only by stairs with no lift provided as an alternative. Where this is the case, it is often because the location is an older building. Examples include a dentist or GP practice, an independent health care facility or a care home for people experiencing mental ill health.

1. What are the relevant regulations and key lines of enquiry?

Regulation 9 states that the provider must make reasonable adjustments to enable the service user to receive their care or treatment. The law on reasonable adjustments (defined within the Equality Act 2010) includes physical alterations to premises.

Regulation 10 states that service users must be treated with dignity and respect and that this includes having due regard to any relevant protected characteristics (as defined in section 149(7) of the Equality Act 2010) of the service user. Disability is a protected characteristic.

In health services, these regulations relate to key line of enquiry R2 and in Adult Social Care R1. In these KLOEs, there are specific prompts that cover reasonable adjustments.



2. How do we make a decision about whether the provider is meeting the regulations?

The term “reasonable adjustments” is taken from the Equality Act 2010. Only a court can make a legal decision on whether an adjustment to premises would be reasonable.

If there *has* been a legal finding that a service provider has not made a reasonable adjustment to their premises, then they would be in breach of regulation 9.

If the provider has not considered whether or not they need to alter their premises to comply with the law on reasonable adjustments, they may be in breach of regulation 10, in relation to “due regard” to the protected characteristic of disability for people who use their service. Whilst the Equality Act reasonable adjustments duty is “anticipatory” ie it applies regardless of whether someone with a mobility impairment has tried to use the service, regulation 10 relates only to “service users” therefore this needs to be considered when making a decision on whether the provider is in breach or not.

3. What is the ‘test’ for reasonable adjustments to premises?

The duty under the Equality Act 2010 is anticipatory which means that service providers must think in advance on an ongoing basis about what people with a range of impairments might reasonably need.

Where a physical feature, puts disabled people using a service at a substantial disadvantage the service provider must take reasonable steps to:

1. Remove the feature , or
2. Alter it so that it no longer has that effect, or
3. Provide a reasonable means of avoiding the feature or
4. Provide a reasonable alternative method of making the service available to disabled people.

What is deemed reasonable depends on the circumstances of each individual case. The Equality Act does not specify particular factors to be taken into account. [Statutory Guidance](#) produced by the Equality and Human Rights Commission says what is reasonable will vary according to:

- the type of serviced provided ;
- the nature of the service provider and its size and resources; and
- the effect of the disability on the individual disabled person.



4. How can I decide whether the provider has had “due regard” to disability?

You need to check whether the provider has considered each of the 4 steps in the “test” above. Our role is not to decide whether a particular solution is a reasonable adjustment, it is to see whether the provider has had “due regard” to the law around reasonable adjustments and physical alterations to premises. Here are some relevant questions if there is a service on an upper floor, only accessible by stairs:

- Are there any structural features in your premises that makes it impossible or very difficult when disabled people want to come here?
- Have people contacted the service who would have difficulty using the services upstairs, because of a mobility impairment?
- What has been the service response to these people?

1 and 2: Removing the feature or altering it so that it no longer has that effect:

Clearly, removing stairs is not a valid option and altering stairs is unlikely to make them accessible to some disabled people, for example wheelchair users.

3: Providing a reasonable means of avoiding the feature:

- Has the provider had a professional assessment of the viability and cost of installing different types of lift? If so, how did they then assess reasonability of the options?
- Has the provider considered how they could deliver a wider range of services from the ground floor? For example, if some of the ground floor is currently used as offices, would it be possible to move these to the first floor and provide a treatment room downstairs? If so, how did they then assess reasonability of the options?

4. Providing a reasonable alternative method of making the service available to disabled people:

- Has the provider considered whether they could provide home visits?
- Has the provider considered whether they could use a ground floor room for care and treatment, on an ad hoc basis when required?

There may be other questions that are relevant depending on the type of service and the physical layout of the premises. Some of the questions above may not be feasible for some types of services, for example inpatient services. There are two additional points which are important:

Listed buildings: Whilst the Equality Act does not over-ride other planning law, planning guidance states that *"it should normally be possible to plan suitable access for disabled people without compromising a building's special interest"*



In other words, listed building status may affect the aesthetic way that reasonable adjustments are made but should not preclude making alterations to premises to make reasonable adjustments. A professional assessment e.g. by an architect should take into account both planning law and building regulations about the technical aspects of physical accessibility for disabled people.

Referring to an alternative service, as a reasonable adjustment: either run by the same provider, or a different provider. Case law has established that referring to an alternative service is not a reasonable adjustment where premises are inaccessible. The Royal Bank of Scotland argued that a wheelchair user could use an alternative branch in the same city. This was not found to be reasonable. *Royal Bank of Scotland Group Plc v David Allen (20 November 2009)*

So, if a provider refers people to an alternative service, this should be only if they are unable to make a reasonable adjustment to their premises, i.e. they have considered the requirements listed in the 4 step test above and have concluded that it is not possible to make a reasonable adjustment.

5. How can we word this in inspection reports?

All our findings should refer to our KLOEs and regulations, i.e. regulations 9 and 10, not to compliance or non-compliance under the Equality Act. Whilst the wording should depend on the exact circumstances, here are a couple of examples for how to phrase “provider should” and “provider must” statements.

“The provider should review their approach to referring patients with mobility impairments to other services, seeking advice if necessary, to ensure that they are meeting the reasonable adjustments requirements under regulation 9 “

“The provider must carry out an assessment of whether they could make alterations to their premises, taking into account the need to make reasonable adjustments. This is in order to meet requirements in regulation 10 relating to due regard to the needs of disabled people using the service”

Note that the provider “should” statement relates to regulation 9 – we are not making a judgement about whether any potential adjustments are reasonable but we are saying that the provider should assure themselves that they have met this regulation. The provider “must” statement is in relation to “due regard” in regulation 10, as failure to adequately consider reasonable adjustments could constitute a breach of this regulation.

It is very important that inspectors do not give advice to providers on whether any particular solution would constitute a reasonable adjustment as this is not



the CQC's role and could open CQC up to legal challenge – our role is to assess whether providers have made their own assessment of reasonability.

Version 2 February 2017



What are our human rights duties as a National Preventative Mechanism (NPM)?

Summary

This FAQ outlines what inspectors should be looking out for within their role in a national preventative mechanism.

Key points for inspectors

- A national preventative mechanism aims to prevent torture and other cruel, inhumane and degrading treatment taking place in places of detention
- The mandate for an NPM comes from a UN treaty called OPCAT which the UK has ratified
- The UK NPM consists of 18 bodies which visit places of detention – including CQC as we inspect places where people may be deprived of their liberty through the Mental Health Act or the Mental Capacity Act Deprivation of Liberty safeguards.
- NPM powers include ability to inspect all places of detention, access all information relating to detainees, interview detainees in private and to make recommendations to relevant authorities and proposals about changes to national law.
- NPMs produce a national annual report
- CQC's role in the NPM means that we have to ensure that all our visits to places where people may be detained comply with OPCAT standards
- Being in the NPM does not mean that inspectors need to do their work differently – as human rights are integrated into our inspection practice. However, it does mean that inspectors should be alert to where people's human rights are being breached, for example rights under Article 3 or 5 of the European Convention on Human Rights and take appropriate regulatory action – e.g. under regulation 10 (Dignity and respect) and regulation 13 (Safeguarding) when this is the case.



What is a National Preventative Mechanism?

A National Preventive Mechanism (NPM) is one or more designated bodies that monitor the treatment and conditions of those people who have been deprived of their liberty. The aim of an NPM is to prevent torture and other cruel, inhuman or degrading treatment or punishment from taking place.

The mandate for an NPM comes from the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), a human rights treaty to ensure stronger protections for detainees. Central to OPCAT is the idea that a system of regular, independent visits to places of detention can serve as an important safeguard against abuses, and prevent torture and ill-treatment in places that by their very nature fall outside the public gaze. States that ratify OPCAT must establish an NPM. There are now 64 NPMs formally in existence around the world¹.

What is OPCAT?

The UN Convention against Torture was ratified in 1984. It aims to establish, as a tool of international law, substantive protection against torture, inhuman, cruel or degrading treatment or punishment.

The Convention is supplemented by the ***Optional Protocol to the Convention against Torture and Inhuman or Degrading Treatment*** (commonly known as ***OPCAT***), which came into force in 2006. OPCAT does not establish any substantive rights, but it does establish an international monitoring body of places of detention known as the UN Sub-Committee for the Prevention of Torture (SPT), and obliges States to establish or designate national preventive mechanism(s) (NPMs) which should monitor the rights of people in places of detention.

The UK ratified OPCAT in 2007 and, the following year, designated as its NPM 18 existing UK bodies that visit places of detention, including prisons, immigration centres, children's homes, police stations and psychiatric facilities in England, Scotland, Wales and Northern Ireland. The UK NPM's co-ordinating body is HM Inspector of Prisons: the Ministry of Justice provides limited funding for co-ordinating work. The NPM is therefore an umbrella-body to which CQC belongs, and CQC is responsible for monitoring all detention in psychiatric facilities and care homes across England.

¹ <http://www.apt.ch/en/opcat-database/> accessed 09/02/2016



The annual reports from the UK OPCAT are available on the webpage <http://www.nationalpreventivemechanism.org.uk/publications-resources/>

What are the powers and duties of a National Preventive Mechanism?

To comply with OPCAT, NPMs must have certain powers. These include the power to:

- inspect all places of detention
- access all information relating to detainees
- interview detainees in private
- choose where to visit and who to speak to
- make recommendations based on human rights norms to relevant authorities
- make proposals and observations on existing or draft legislation.

What human rights are most relevant to the work of the National Preventative Mechanism?

NPM bodies are explicitly required to conduct visits to places of detention as a means of preventing torture and ill-treatment of detainees. This preventive mandate means that all the rights in the European Convention of Human Rights will be of relevance to the work of the NPM, because the aim is to develop a forward looking and continuous process to identify elements that lead, or might lead in future, to conditions amounting to ill-treatment². Any issue that compromises or may compromise 'the provision of a safe and respectful environment'³ may be relevant and have human rights implications in the context of detention.

However, the most immediately relevant ECHR rights are:

Article 3: No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

This is an absolute right. There is no precise definition of what might amount to a violation of Article 3. The ill treatment must 'attain a minimum level of severity' to fall within the scope of Article 3 and the threshold of severity tends to be high (although the threshold for 'inhuman and degrading treatment or punishment' is lower than 'torture').

² Association for the Prevention of Torture (2006) *Establishment and Designation of National Preventive Mechanisms*, p.14

³ Equality and Human Rights Commission (2015) *Human Rights Framework for Adults in Detention*



The question whether this right has been breached will depend on a range of factors such as:

- the nature, seriousness and duration of the treatment,
- its physical and mental impact
- the age and state of health of the individual concerned.

As well as having a 'negative' obligation not to cause serious harm or suffering, public authorities are under a positive obligation to safeguard individuals whose rights under Article 3 may be violated, such as children and adults who may be vulnerable to abuse. For example, on becoming aware that an older person is being subjected to severe abuse or violence by an individual who purports to be providing that person with care in a care home or community service, social services would be required to take action to protect the older person and prevent further abuse.

Article 5: The right to liberty and security

This is a limited right. It provides that no one shall be deprived of their liberty save in one of the six specific circumstances set out in Article 5. These are too long to add in here so use the Equality and Human Rights Commission website to see them. Article 5 is often used in relation to criminal and immigration matters, for example. Any deprivation of liberty must be in accordance with the law. Those who are detained have the right to take legal proceedings to challenge the lawfulness of their detention.

Article 5 may also be relevant in health and social care settings. The circumstances in which individuals can be deprived of their liberty include 'the lawful detention of persons ... of unsound mind'. This right will be relevant for those detained under the Mental Health Act 1983 and people who are deprived of their liberty while lacking mental capacity.

The [Human Rights Framework for Adults in Detention](#), developed by the Equality and Human Rights Commission provides checklists that translate these rights into practical outcomes for inspectors to consider.

What is the relevant domestic law?

The powers and duties required by an NPM are provided, in the case of CQC, through existing domestic law, under the Mental Health Act 1983 (MHA) and the Health and Social Care Act 2008 (HSCA).



The MHA requires CQC to keep under review the powers and duties of that Act in relation to the detention of patients, in part through visits and meeting with patients in private. The HSCA provides similar visiting powers.

The most relevant regulations for inspectors under the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 are:

- **Regulation 10 Dignity and Respect:**

The intention of this regulation is to make sure that people using the service are treated with respect and dignity at all times while they are receiving care and treatment. To meet this regulation, providers must make sure that they provide care and treatment in a way that ensures people's dignity and treats them with respect at all times.

- **Regulation 13 Safeguarding service users from abuse and improper treatment:**

The intention of this regulation is to safeguard people who use services from suffering any form of abuse or improper treatment while receiving care and treatment. Improper treatment includes discrimination or unlawful restraint, which includes inappropriate deprivation of liberty under the terms of the Mental Capacity Act 2005.

To meet the requirements of this regulation, providers must have a zero tolerance approach to abuse, unlawful discrimination and restraint. This includes:

- neglect
- subjecting people to degrading treatment
- unnecessary or disproportionate restraint
- deprivation of liberty.

What difference does NPM make to my visit?

Being part of the NPM brings both recognition and responsibilities. NPM members' powers to inspect, monitor and visit places of detention are formally recognised as part of the UK's efforts to prevent torture and ill-treatment. CQC has a responsibility to ensure that working practices for visits to places where people may be detained are consistent with standards for preventive monitoring established by OPCAT.

In addition to individual members' preventive monitoring, the UK NPM as a coordinated body focuses attention on crucial detention-related issues, promoting



coherent analysis and responses to them. The NPM produces an annual report of its activities. It is scrutinised by official UN human rights bodies and non-governmental organisations to ensure that it is fulfilling its OPCAT mandate.

CQC's designation as NPM provide it with duties for which it is accountable, firstly to the rest of the UK NPM structure, and ultimately to the Home Office as the Department responsible. The role can be viewed in a positive light as providing focus and authority to a human-rights focus in visiting detainees across the health and social care structures of England.

How can I raise issues of concern or potential for issues to arise?

It is important for inspectors to understand relevant human rights of CQC's role as a NPM and how this is integrated into regulation.

The CQC plays a role when visiting places where people are detained and for inspectors to look out for breaches of human rights. Inspectors should take on this role but not do anything different as the NPM role is to remind providers of what we do and to inform providers where there may be potential breach of human rights.

This applies to any provider where people are detained. CQC has a preventative role and can pick up on the small concerns as well as the big ones.

Useful links

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

<https://www.equalityhumanrights.com/en/publication-download/human-rights-framework-adults-detention>

<http://www.ap.t.ch/> (The Association for the Prevention of Torture: contains resources on OPCAT and international NPM bodies)

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