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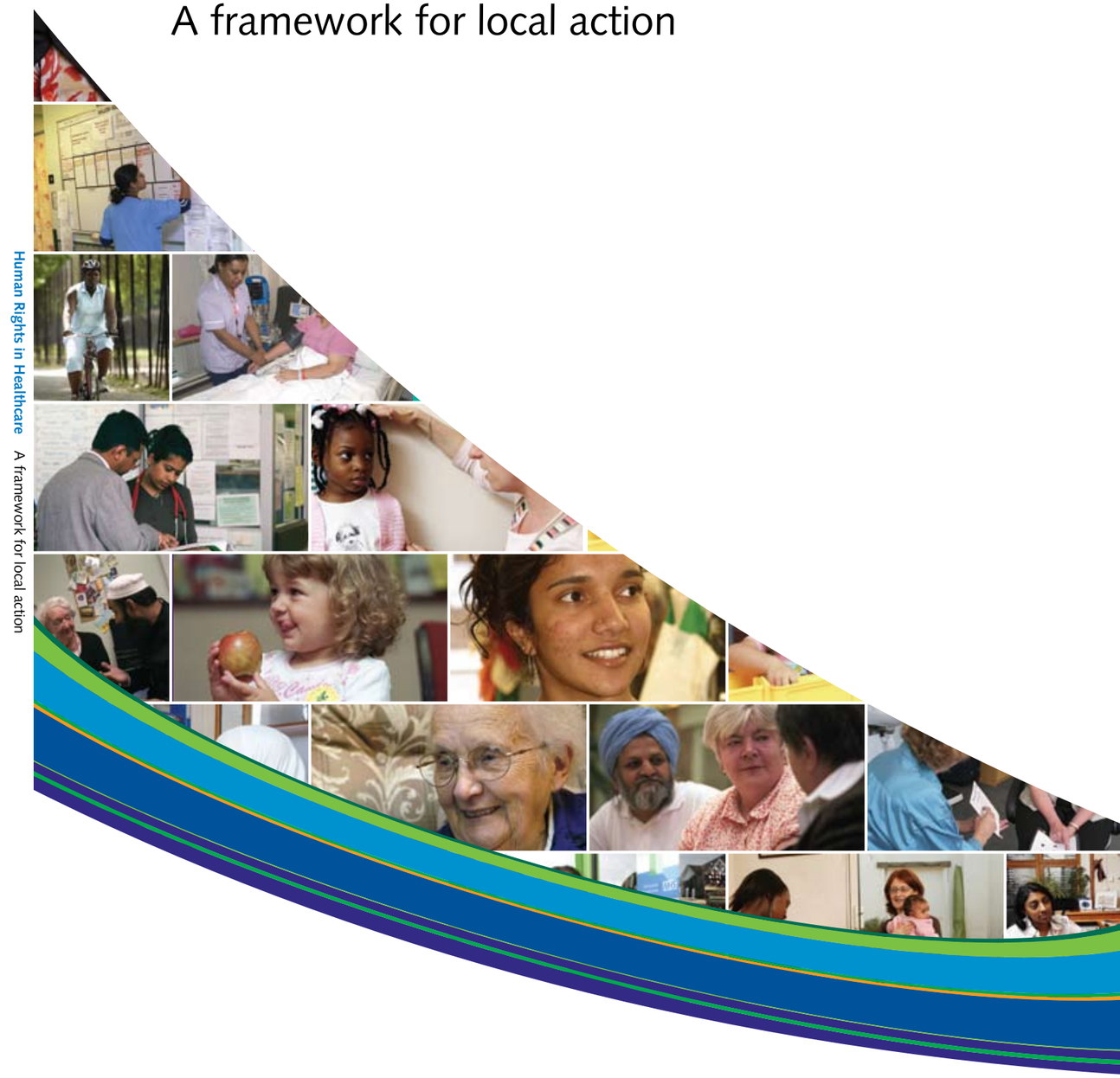
Human Rights in Healthcare
A framework for local action



Human Rights in Healthcare A framework for local action

2nd edition
October 2008

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Human Rights in Healthcare

A framework for local action

2nd edition
October 2008

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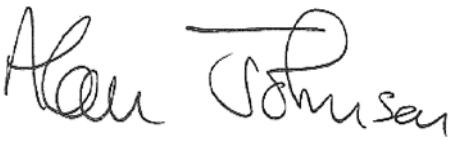
Foreword

This year, we celebrate the 60th anniversary of both the National Health Service and the Universal Declaration of Human Rights. These two important historical landmarks are based on the common values of fairness, respect, equality, dignity and autonomy (FREDA) for all. This is because healthcare and human rights are dependent upon each other. Quite simply, we cannot provide good care without respect for human rights. Currently, we are looking to the future with the Next Stage Review setting the direction for the NHS and a new NHS Constitution. It is essential that, as we move forward, we have these values at the heart of everything we do.

The Human Rights Act incorporated these values into our law, in order to embed them into all public services. Sometimes however, human rights in public services are seen as an issue for the legal department. In the Human Rights in Healthcare project, we have shown that taking a human rights based approach can provide a way for everyone in an organisation to make real improvements in people's lives. The project has been a collaboration between five NHS organisations, the British Institute of Human Rights and the Department of Health. The learning from this project has been incorporated into this new edition of *Human Rights in Healthcare – A framework for local action*, which aims to show how a human rights based approach can be of practical value to organisations and individuals providing better services for patients and service users.

I would like to thank the five organisations who have worked on showing how a human rights based approach can improve the design and delivery of services: Surrey and Borders Partnership NHS Foundation Trust, Southwark Health and Social Care, Heart of Birmingham Teaching PCT, Mersey Care NHS Trust and Tees, Esk and Wear Valleys NHS Trust. In addition, I would like thank the British Institute of Human Rights, ROI Operations and Ipsos MORI for their work on this project.

I hope that you are able to use and build upon the learning in this document in your own organisation to use human rights to help make the values of the NHS a reality.



Alan Johnson
Secretary of State for Health

Executive summary

Neglecting people's human rights is bad for their health. In contrast, the protection and promotion of their human rights is not only good for individuals' health, it also makes for better services for everyone. In this context, the Department of Health, the British Institute of Human Rights and five NHS organisations have worked in conjunction to produce this framework to assist NHS organisations in developing and applying human rights based approaches (HRBAs) in their organisations.

Framework overview

Section 1: WHY are human rights important for NHS organisations?	Section 2: WHAT does the UK Human Rights Act mean for NHS organisations in everyday work?	Section 3: HOW can NHS organisations develop human rights based approaches in practice?
Introducing human rights Reasons for putting human rights at the heart of your organisation: • it helps improve experience and outcomes for patients, service users and staff by approaching services and decisions in a person centred way; • it supports delivery of wider priorities such as the Next Stage Review and commissioning; • it improves compliance with the Human Rights Act and reduces complaints/litigation.	Some key rights in the Human Rights Act are relevant to healthcare, e.g. right to life, prohibition of torture, right to liberty, right to fair trial and right to respect for private and family life. Some examples of human rights issues in practice include: Do Not Resuscitate orders, unsanitary conditions, excessive force in restraint, staff disciplinary procedures, privacy on wards and family visits.	Suggested actions for taking a human rights based approach which are about: • putting human rights at the heart of policy and planning; • ensuring accountability; • empowerment; • participation and involvement; • non-discrimination and attention to vulnerable groups.

Case studies				
A	B	C	D	E
Mersey Care NHS Trust – A human rights based approach to risk assessment in the Learning Disabilities Directorate	**Southwark Health and Social Care –** Developing a human rights based commissioning framework	**Surrey and Borders Partnership NHS Foundation Trust –** An integrated human rights and equality strategy and training linked to Key Skills Framework	**Heart of Birmingham Teaching PCT –** An integrated human rights and equality strategy, scheme and programme of training	**Tees, Esk and Wear Valleys NHS Trust –** Developing a business case for a human rights based approach

In essence, this framework will help NHS organisations to put human rights values – such as fairness, respect, equality, dignity and autonomy – into practice. It is not a source of legal advice **but a starting point for NHS organisations planning to improve their practice**.

Introduction – about this framework

→ Overview

- What is the **purpose** of this framework?
- **Why** and how has it been produced?
- **Who** is it for?
- **Scope** – what it does and does not cover

0.1 What is the purpose of this framework?

The purpose of this framework is to assist NHS organisations to develop and use **human rights based approaches (HRBAs)** to support their core business of planning and delivering high quality and accessible health services for all. As such, it is a starting point for NHS organisations seeking to:

- put NHS values such as dignity, respect and equality into practice;
- shape services and procedures that put the human at the heart of healthcare;
- effectively support their staff and commissioned providers to fulfil their specific duties under the Human Rights Act 1998, as well as progressing Care Quality Commission standards on human rights and patient treatment;[i]
- support and add value to their work on related duties and priorities such as:
  - Next Stage Review;
  - Commissioning a Patient-Led NHS;[ii]
  - ensuring equality;
  - Dignity in Care;[iii]
  - delivering patient choice;[iv]
  - providing more personalised services and ensuring that people have a stronger voice;[v]
  - protecting the most vulnerable people.

→ Key benefits of an HRBA

- It helps improve experience and outcomes for patients, service users and staff by approaching services and decisions in a person centred way
- It supports delivery of wider priorities such as the Next Stage Review and commissioning
- It improves compliance with the Human Rights Act and reduces complaints/litigation.

0.2 Why and how has it been produced?

The Department of Health currently has a human rights work programme with the overall aim of championing human rights in health and social care. The programme is supporting NHS organisations to develop and apply HRBAs in their work. This is being taken forward by the Human Rights in Healthcare project, led by the Department in conjunction with five NHS organisations and with the support of the British Institute of Human Rights and ROI Operations.

As part of the project the five participating NHS organisations and other key stakeholders, including the Health and Social Care Advisory Group and delegates at the Human Rights in Healthcare learning events, have identified a need for information resources. In particular, they identified a need for guidance on:

- what human rights are;
- how they are relevant to the day-to-day work of NHS organisations; and
- practical ideas of how to apply human rights in NHS organisations.

The framework has been produced by drawing on the experience of people and organisations with expertise in both human rights and the health and social care sector. This is the second edition of this framework. It benefits from input from NHS staff and some service users who have used the first edition and the results of the independent evaluation of the participating NHS organisations.

Human Rights in Healthcare project

→ **Aim:** To support the NHS in using human rights based approaches to improve service design and delivery for everyone.

→ **Main activities:**

- Developing human rights good practice by working with five NHS organisations that are piloting HRBAs. Each Trust has produced one or more human rights products that are available to other organisations (see page 46 for Trust case studies and attached CD for Trust products).
- A series of three learning events for a wide range of healthcare stakeholders on key issues relating to developing HRBAs in NHS organisations (see attached CD for learning event reports).
- A Human Rights and Healthcare Advisory Group.
- Independent evaluation of pilot NHS organisation HRBAs by Ipsos MORI (see attached CD for evaluation report).
- Producing and revising *Human Rights in Healthcare – A framework for local action* and *Human Rights in Healthcare – A short introduction.*

0.3 Who is it for?

Human Rights in Healthcare – A framework for local action is relevant for a broad range of people who make up NHS organisations but it is primarily targeted at decision makers and those who have a responsibility for taking forward human rights and linked projects, including directors, managers, policy officers and planners.

It may also be of interest to a number of key stakeholders such as the voluntary and community sector or private organisations which are commissioned by NHS organisations to provide services, and patient advocacy groups. The framework is not designed to advise patients or their families in relation to specific human rights issues. The further resources section on pages 67–68 provides a range of additional resources.

We have also produced a shortened version, *Human Rights in Healthcare – A short introduction*, which aims to make the key information in the framework more accessible and provide an easy 'way in' to human rights and healthcare for a wide range of stakeholders, including frontline staff and service users. You can find this at www.dh.gov.uk/equalityandhumanrights.

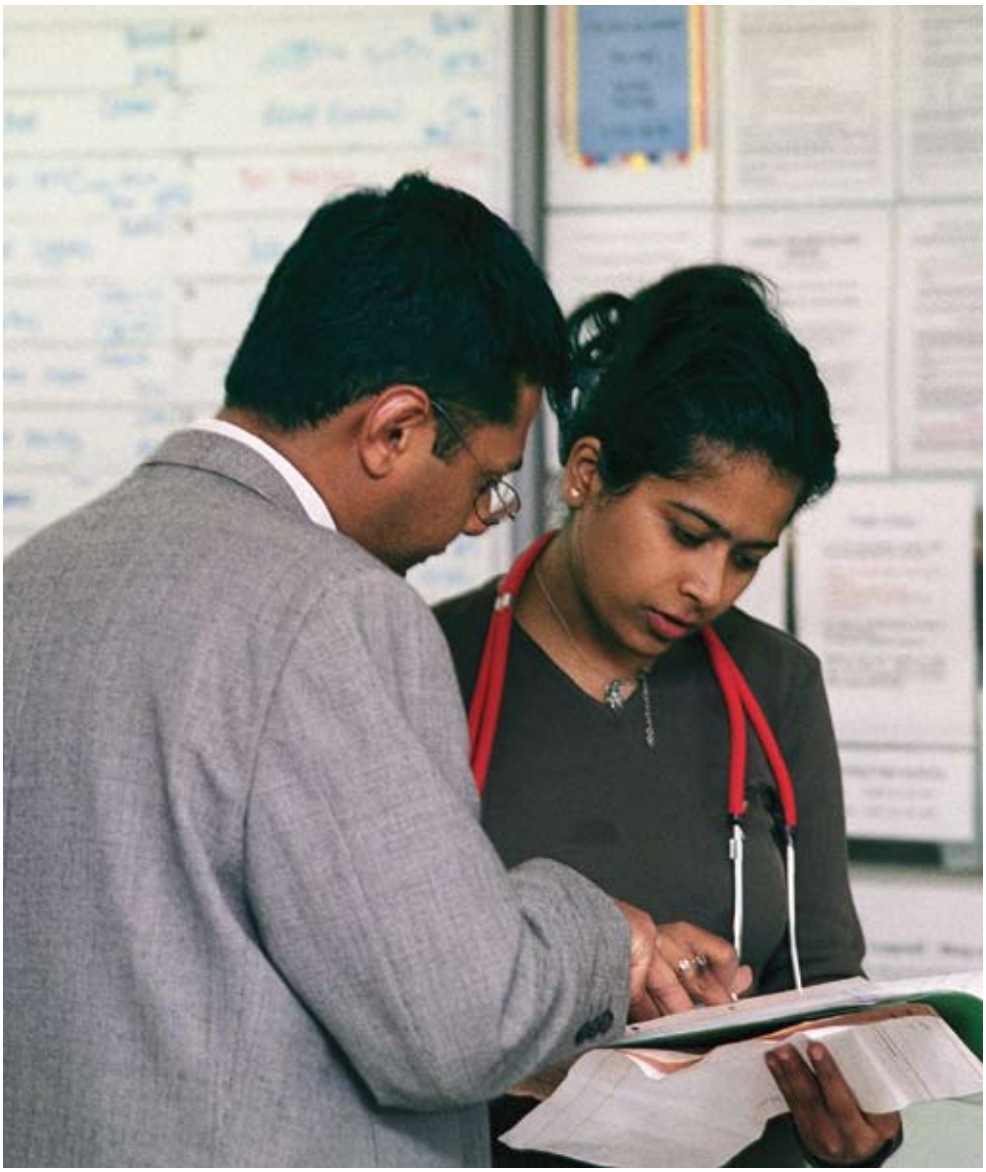
0.4 Scope – what it does and does not cover

The framework is an introduction to human rights and HRBAs, rather than a detailed guide or a toolkit. It is designed to be used as a starting point for NHS organisations that are considering why and how to develop work in this area.

The **first section** introduces human rights and shows how they are relevant in healthcare.

The **second section** explains NHS organisations' legal duties. It looks at how the Human Rights Act works and what it means for NHS organisations in everyday work.

The **third section** demonstrates how NHS organisations can take an HRBA. It covers a number of practical ideas with case studies based on pilot projects at five NHS organisations.[vi]



→ **Nothing in this framework constitutes legal advice**. However, it may help NHS organisations to identify where they need further guidance or support including legal advice. Sources of further information are provided on pages 67–68. First and foremost, the framework should be used as a launch pad for NHS organisations and others to kick-start more of this critical work and develop further NHS-led good practice in this area.

Section 1

Introducing human rights and links to healthcare

→ **Overview**

- What are human rights and why do they matter?
- Human rights – the core values
- How are human rights made real?
- How do human rights relate to health and well-being?
- **Why should NHS organisations put human rights at the heart of their work?**
- The full range of human rights and where to find them

→ **Key things for NHS organisations to know about human rights**

- They belong to everyone – they are universal.
- They cannot be 'taken away' from us, only limited or restricted in some circumstances *(see* pages 24–25*)*.
- They are primarily about how the state (including public authorities) must treat everyone.
- Sometimes they require NHS organisations to take steps to protect human rights when they are put at risk by organisations or other individuals.
- They give expression to a set of core values including **fairness, respect, equality, dignity and autonomy.**

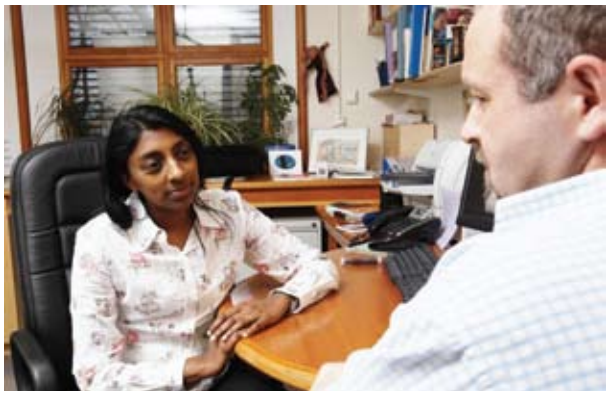
1.1 What are human rights and why do they matter?

Human rights are about our basic needs as human beings. They capture the core rights we are all entitled to so that we may develop our potential and live our lives with dignity and respect.

Human rights are…

'basic rights to humane dignified treatment and things I should have access to simply because of the fact I am a human being'.

Mental Health Service User[vii]



Human rights act as a set of minimum legal standards that need to be met if we are to build communities and a wider society based on fairness, dignity and respect.

They were first defined by the international community in the Universal Declaration of Human Rights[viii] adopted in 1948 as a response to the Holocaust. These events were a stark reminder of what may happen when states treat, or allow others to treat, some people as **less human than others**.

There are many different human rights reflecting our basic needs across different areas of our lives. For example, our need for physical and mental well-being is reflected in our right to life and our right not to be tortured or degraded. Our need for social well-being in our families, communities and wider society is reflected in our right to respect for private and family life, our right to hold and express our beliefs, and our right to participate in the cultural life of the community.

The more our human rights are respected, protected and fulfilled, the more of our humanity or 'what makes us human' is fulfilled. On the flip side, the less they are respected, protected or fulfilled, the more difficult it is for us to develop our personalities and contribute meaningfully to society.

→ Human rights are **not** about the protection of any one group or individual in society. They are about providing a practical framework to protect the rights of **everyone**.

1.2 Human rights – the core values

A good way to understand human rights is to see them as a vehicle for making fairness, respect, equality, dignity and autonomy (FREDA) central to our lived experience as human beings. These core values are brought to life by a range of different human rights that make them real. For example, the principle of dignity is what lies beneath the right not to be tortured or treated in an inhuman or degrading way, while the principle of autonomy informs the right to respect for private and family life.

This means that obligations placed on NHS organisations and other public bodies to respect human rights can give these principles real meaning in people's lives.

This is illustrated by the following diagram which shows how changing a policy or practice to respect, protect or fulfil a particular human right also supports a core value.

> *'Human rights are a set of recognisable principles on which NHS organisations can base their everyday work.'*
>
> **Legal Adviser, NHS Trust**

Value	Human right	Example policy or practice change
Fairness	Right to fair trial	Ensuring that there is a robust and fair process for dealing with concerns about the professional conduct or performance of a healthcare professional.
Respect	Right to respect for family and private life, home and correspondence	Respecting all diverse families, e.g. same-sex couples with children. Avoid denying those detained or in residential care access to family without good reason.
Equality	Right not to be discriminated against in the enjoyment of other human rights	Commitment to improving mental health services for people from black and minority ethnic groups. Ensuring that people are not denied treatment solely on the basis of their age.
Dignity	Right not to be tortured or treated in an inhuman or degrading way	Ensuring that there are sufficient staff to promptly change wet sheets to reduce the risk of people suffering degrading treatment.
Autonomy	Right to respect for private life	Involving people in decisions made about their treatment and care.

These core human rights values are simple and resonate strongly with the personal values of both providers and users of public services. They are also of enormous practical use, for example as 'flags' that help people to identify when human rights may have been violated or as 'prompts' when solutions to human rights issues are being sought, whether in an individual case or at the policy level.

1.3 How are rights made real?

There are two main ways in which human rights are made real in people's lives.

a) The state respecting, protecting and fulfilling human rights

The state is the core 'duty bearer' in relation to human rights. This means it must respect, protect and fulfil the human rights of all those within its jurisdiction.

This means that state bodies, such as NHS organisations, must respect people's human rights and refrain from interfering with them without good reason. For example, a person's right to freedom of speech may be interfered with where this is necessary to protect the rights of others or the interests of the wider community. However, this needs to be properly justified. The circumstances in which human rights can be 'balanced' in this way are discussed on pages 24–25.

Public authorities must also take proactive steps to protect and fulfil people's human rights. Systems must exist to protect people from human rights breaches caused by other individuals or groups. For example, we have criminal justice and child protection systems in place for this reason, and authorities must respond when they have reason to believe that a person's human rights may be at risk.

'The Human Rights Act and the European Convention don't grant rights to anyone. They protect rights we all have simply by virtue of being human.'

Secretary of State for Constitutional Affairs and Lord Chancellor[ix]

NHS organisation check point

NHS organisations have a role as 'duty bearers' under the Human Rights Act 1998. They need to work out which rights their services engage, who these rights belong to and how they should be responding or delivering a service in this context. More information on how to approach this can be found on pages 21–31.

b) People claiming or raising their human rights

Human rights belong to all of us all of the time, regardless of whether we are aware of our rights and regardless of whether we are actively invoking or claiming them. In other words, we are all 'rights holders'.

In this way, at the minimum, human rights serve as a safety net for us all. When they are not being respected, protected or fulfilled, we should be able to activate or claim them. For example, we all have the right not to be treated in an inhuman and degrading way, but for most of us, most of the time, we do not need to raise this. However, at some stage in our life we may become more dependent on the actions or care of others, for example staff in hospital or carers at home.

NHS organisation check point

Human rights are not given or awarded on the basis of need. Each person involved in an NHS organisation is a permanent 'rights holder' capable of claiming their human rights. This includes staff as well as service users, their carers or families.

It is important to remember that those people most at risk of human rights abuses, for example because they are socially excluded, are less likely to have access to information and resources about their human rights, and therefore are less likely to claim or raise their rights. NHS organisations, with assistance from voluntary and community organisations, should take active steps to support and facilitate those in need to claim or raise their human rights.

See case study A (Mersey Care NHS Trust) for an exploration of service user and care involvement in practice.

'Promoting and protecting health and respecting, promoting and fulfilling human rights are inextricably linked.'

World Health Organization

1.4 How do human rights relate to health and well-being?

Human rights relate to our health and well-being and to the core functions of NHS organisations and how they perform them in three main ways.

→ **Abuse and/or lack of respect or protection of human rights can actually cause or worsen poor health –** *in particular for those already more vulnerable due to poverty, inequality or social exclusion.*

For example, violence towards and/or abuse of adults and children in their own homes, in hospitals or in residential care may violate their human right to be free from inhuman or degrading treatment. This can and does have a serious impact on a victim's physical and mental health. The World Health Organization[x] and others have identified a number of human rights issues or breaches that can detrimentally impact on health in this way, such as sub-standard conditions in care homes because of inadequate procedures and training of staff.

This reflects the existing recognition by the World Health Organization and in UK Government health policy that: 'Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.'[xi]

→ **The way that NHS organisations and other NHS bodies deliver healthcare services to those in poor health can impact both positively and negatively on people's human rights.**

NHS organisations that respect, protect and fulfil human rights will support better health outcomes than those who do not. NHS organisations that do not can actually add to or worsen poor health outcomes.

→ **Bodies undertaking 'public functions', such as NHS organisations, have a key role in respecting, protecting and fulfilling human rights.**

How NHS organisations undertake this work has a direct impact not only on the individuals that NHS organisations are dealing with on a day-to-day basis, but also on the UK's wider culture and values. This is reflected in the Human Rights Act, which gives all bodies undertaking 'functions of a public nature' an obligation to **respect and protect human rights in all that they do**. More details can be found in Section 2 on pages 19–31.

1.5 Why should NHS organisations put human rights at the heart of their work ?

Put simply, a lack of understanding and respect for people's human rights is bad for their health. On the flip side, the use of an HRBA by NHS organisations can significantly improve people's health outcomes by directly supporting the delivery of more effective, better quality, 'person centred' healthcare.

Human rights provide a practical tool for NHS organisations to improve service delivery

Unfortunately there is continuing evidence of poor human rights practice in the NHS, as highlighted by the recent Healthcare Commission report finding neglect of people with learning disabilities at Sutton and Merton Primary Care Trust and recent reports of the Joint Committee on Human Rights into the human rights of older people in healthcare and adults with learning disabilities.

The Human Rights Act offers a practical tool to help support NHS organisations to put the individual at the heart of the decision making process and make decisions that better protect the interests of service users, staff and carers. It provides a helpful framework which covers the key elements that are important to us all as human beings such as life, dignity and privacy. This can help NHS organisations to ensure that individuals receive fair, dignified and equitable treatment within our healthcare system and to improve patient outcomes.

Understanding human rights and why they are important to healthcare can also inspire and enthuse staff. It reconnects people with why they entered the NHS in the first place, to support and care for others. Also it can help to improve staff engagement in linked agendas, such as equality and diversity, that share common values.

Human rights support existing national healthcare drivers and targets

An HRBA provides an umbrella for other initiatives within the NHS. It is a starting point for NHS organisations seeking to:

- put NHS values such as dignity, respect and equality into practice;
- shape services and procedures that put the human at the heart of healthcare;
- effectively support their staff and commissioned providers to fulfil their specific duties under the Human Rights Act 1998, as well as progressing Care Quality Commission requirements on human rights and patient treatment;[xii]
- support and add value to their work on related duties and priorities such as:
  - Next Stage Review;
  - Commissioning a Patient-Led NHS;[xiii]
  - ensuring equality;
  - Dignity in Care;[xiv]
  - delivering patient choice;[xv]
  - providing more personalised services and ensuring that people have a stronger voice;[xvi]
  - Protecting the most vulnerable people.

NHS organisations have human rights legal duties

As public authorities, NHS organisations have a legal duty to act compatibly with the human rights enshrined in UK law in the Human Rights Act and have related duties in relation to equality under anti-discrimination legislation. Putting human rights principles and standards at the heart of their organisation is a good way for NHS organisations to ensure reduced risk of complaints and litigation.

There is also increased monitoring of human rights policy and practice by inspectorates, including the Care Quality Commission. The Equality and Human Rights Commission, which began operating in October 2007, has a mandate to eliminate discrimination, reduce inequality, protect human rights and to build good relations, ensuring that everyone has a fair chance to participate in society. It will play a key role in monitoring the performance of public authorities, including NHS organisations, in terms of human rights.

However, the Human Rights Act is also about more than mere compliance with the law. One of the main purposes of the Act is to develop a human rights culture in the UK, where human rights become part and parcel of public service delivery. NHS organisations have a significant role to play in contributing to building a wider culture of respect for human rights within the UK.

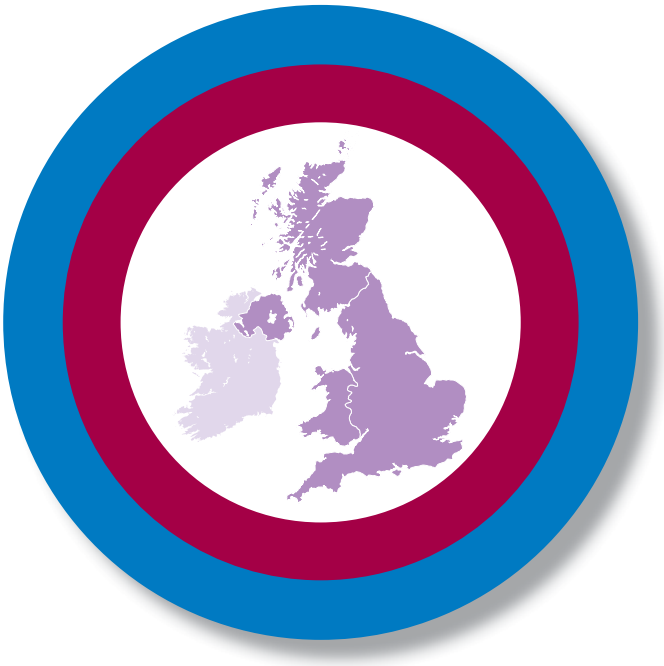
Summary

- **The quality of health services is improved**, with patient experience reflecting the principles of fairness, respect, equality, dignity and autonomy.
- **Health services are designed and delivered in a person centred way.**
- **Human rights are used proactively as a common sense tool for better practice.**
- **There is a reduced risk of complaints and litigation** under the Human Rights Act and equalities legislation.
- **There is improved decision making overall** with better reasoned and properly recorded decisions that can be presented to service users and those involved in internal and external scrutiny.
- **Uncomfortable or complex issues** involving people's rights are handled more effectively and with greater patient satisfaction.
- A broader range of **marginalised and disadvantaged people and groups are involved** and considered in the design and delivery of health services.
- **There is more meaningful engagement** of patients and their carers and families in the development of policy and practice.
- **A tool for pioneering good practice** is used, particularly in new areas where guidance does not yet exist.
- Underpinning work is carried out to meet indicators in the **Equality and Human Rights** agenda such as Healthcare Commission Core Standards as well as guidelines set out by the National Institute for Health and Clinical Excellence.

1.6 The full range of human rights and where to find them

As noted above, human rights reflect our basic needs in a wide range of areas. The main areas covered by human rights are reflected in the main categories of rights – civil, political, economic, social, cultural and environmental rights.

These rights can be found in and are defined by law at three different levels – international, European and domestic – **all of which impact on NHS organisations in different ways as outlined below.**



United Nations
e.g. International Covenant on Economic, Social and Cultural Rights; Convention on the Rights of Persons with Disabilities

Council of Europe
European Convention on Human Rights 1950

UK Government
Human Rights Act 1998

a) International law

The international community has agreed a range of human rights treaties (also known as conventions and covenants) that cover the full spectrum of **civil and political rights and economic, social, cultural and environmental rights**. Civil and political rights include the right to liberty and the right to free elections, while economic, social and cultural rights include the right to food, the right to social security and the right to **the highest attainable standard of health**.[xvii]

Specific international treaties have also been created to protect the human rights of diverse groups including women, children and migrant workers.[xviii] The existence of these treaties recognises the particular discrimination some groups face in having their human rights respected and protected and reflects a central role for human rights in tackling inequality.

'A human rights based approach is about applying internationally agreed standards across the whole of healthcare. It's a way of thinking and seeing that should underpin everything that we do.'

Director, Service Users and Carers, Mersey Care NHS Trust

NHS organisation check point

The responsibility to comply with these treaties lies with the UK Government, not with NHS organisations.

However, the rights set out in these treaties can be used by NHS organisations to define and achieve good practice and contribute to the achievement of Better Standards for Health. They are also a useful point of reference when contributing to government health policy and programmes which are monitored by the United Nations.

b) The European Convention on Human Rights

The European Convention on Human Rights[xix] (the 'European Convention') was adopted by the Council of Europe (not to be confused with the European Union) in 1950. It is the main source of our legal human rights protection here in the UK. The European Convention focuses on civil and political rights. However, the broad ways in which these rights have been defined mean it is still of immense importance in the health context (see pages 19–31).

NHS organisation check point

NHS organisations have a legal obligation to respect and protect the rights in the European Convention in all that they do (see page 20 for a list of these rights). This is because, unlike the international human rights treaties discussed above, the UK has taken steps to incorporate most of the human rights that it contains into domestic law through the Human Rights Act.

c) The Human Rights Act

The UK has incorporated into UK law most of the rights defined in the European Convention through the Human Rights Act 1998. **Section 2** explains the Human Rights Act in more detail and explores what it means for NHS organisations.

Time line of key human rights legal developments

1948	1951	1966	1998	2000
United Nations adopts and proclaims **Universal Declaration of Human Rights**	UK is first country to sign up to **European Convention on Human Rights**	UK citizens can take human rights cases to **European Court of Human Rights** in Strasbourg	UK Parliament passes **Human Rights Act 1998**	**Human Rights Act** comes into force

(Note: The UK has signed up to a number of other international human rights treaties.)

Section 2

Bringing rights home – the Human Rights Act 1998

→ **Overview**

- What is the purpose of the Human Rights Act?
- What does the Human Rights Act mean in practice for NHS organisations?
- Which rights are particularly relevant to healthcare and how do they work in practice?

2.1 Introduction

This section focuses on a key source of human rights standards for NHS organisations – the Human Rights Act. It looks at the direct duties and accountabilities it places on NHS organisations. It also shows how the framework of the Human Rights Act can be very useful for decision making at policy and day-to-day levels by staff.

[A culture of respect for human rights would exist when]… there is a widely shared sense of entitlement to these rights, of personal responsibility and of respect for the rights of others, and when this influence[s] all our institutional policies and practices.'

Joint Committee on Human Rights [xx]

The rights contained in the Human Rights Act are:

- the right to life;
- the right not to be tortured or treated in an inhuman or degrading way;
- the right to be free from slavery or forced labour;
- the right to liberty and security;
- the right to a fair trial;
- the right to no punishment without law;
- the right to respect for private and family life, home and correspondence;
- the right to freedom of thought, conscience and religion;
- the right to freedom of expression;
- the right to freedom of assembly and association;
- the right to marry and found a family;
- the right not to be discriminated against in relation to the enjoyment of any of the rights contained in the European Convention;
- the right to peaceful enjoyment of possessions;
- the right to education; and
- the right to free elections.

2.2 What is the Human Rights Act trying to achieve?

The Human Rights Act came into force in the UK in October 2000. The Act has two main aims:

- **To bring most of the human rights contained in the European Convention on Human Rights into UK law**. In other words, to make it possible for people to directly raise or claim their human rights within complaints and legal systems here in the UK. It also means that human rights issues are now interpreted by British courts, in addition to the European Court of Human Rights, giving greater domestic ownership to the Convention.
- **To bring about a new culture of respect for human rights in the UK**. The Human Rights Act is about much more than compliance with the law by public authorities. The Act was intended to place human rights at the heart of public service delivery, and through this to make rights a reality for all people in the UK.

2.3 What does the Human Rights Act mean in practice for NHS organisations?

To achieve its aims, the Human Rights Act impacts on practice in four main ways.

a) All public authorities in the UK must act compatibly with the rights contained in the Human Rights Act in everything that they do. This is explored in more detail later in this section by looking at the practical impact of human rights on the work of NHS organisations.

→ **What is meant by a 'public authority'?**

The term 'public authority' is not fully defined in the Human Rights Act, but it should be interpreted broadly. It includes any person or organisation 'whose functions are of a public nature' such as NHS organisations and other statutory bodies.

The term can also cover private organisations such as companies or charities, but only when carrying out a public function. Whether a body exercises a public function needs to be assessed on a case-by-case basis.

For more information, see governmental guidance on this issue, listed in the further resources section on pages 67–68.

'We decided that to ensure we valued the principles of human rights as an organisation we needed to demonstrate our intentions… by including references to human rights in our service contracts and commissioning process.'

Senior Manager, Primary Care Trust

NHS organisation check point

- As public authorities, NHS organisations need to ensure that all their actions are compatible with the human rights in the Human Rights Act. This should include planning, reporting, policy, day-to-day decision making and practice. It is the organisation itself, not individual staff members, that will be held to account for human rights breaches. This is the case regardless of whether or not the Trust is aware of potential or actual breaches by its staff or commissioned providers.
- When commissioning services, NHS organisations should write terms of compliance with human rights into their contracts. This will help to ensure that human rights remain an identified priority for service providers. Please see case study B (Southwark Health and Social Care) for a practical exploration of this issue.

b) Anyone who is a 'victim' under the Human Rights Act can bring a claim against a public authority. This can be in the ordinary UK courts, and in a range of other systems and processes including tribunals, hearings and complaints procedures. To be a victim, a person must be directly affected by the act or omission which is the subject of the complaint. Anyone in the UK can be a victim – the Act is not limited to UK citizens.

NHS organisation check point

'Victims' under the Human Rights Act could include patients, carers or staff. They can bring a human rights claim against an NHS Trust through the courts. Relatives can also make a claim on behalf of a victim if the victim has died, or if the victim lacks the capacity to bring the claim in their own name (for example, a child).

c) Wherever possible, existing laws that NHS bodies as public authorities deal with on a day-to-day basis must be interpreted and applied in a way that fits with the human rights in the Human Rights Act. All other laws should be compatible with the Act. If it is impossible to interpret an existing law in this way, the courts will issue what is known as a 'declaration of incompatibility'. This sends a clear message to legislators that they should change the law to make it fit with human rights.

For example, prior to 2001, if a mental health patient was detained under the Mental Health Act and wanted to be discharged, the patient used to have to prove that they were no longer suffering from a mental health problem that required further detention. In 2001, the UK Court of Appeal said that this did not fit with the human right to liberty and made a 'declaration of incompatibility'. The UK Government then amended the law so that now it is the hospital which has to prove that a patient should remain in detention. If they cannot do this, then the Mental Health Review Tribunal will release the patient.[xxi]

NHS organisation check point
NHS organisations need to be aware that, when applying legislation such as the Mental Health Act, they should interpret it in a way that is compatible with the Human Rights Act as far as possible.

d) When certain new laws (Bills, regulations which amend primary legislation and affirmative regulations) are made, the Minister responsible for the law must make a statement confirming that it is compatible with the Human Rights Act (or explain clearly why it is not).

NHS organisation check point
Remember that the Government attempts to ensure that new legislation is compatible with human rights. This is a useful tool for NHS organisations when engaging in the development of new policy. For example, many of the provisions in proposals for mental health legislation were looked at again by the Government after human rights concerns were raised.

2.4 More about human rights duties and obligations for NHS organisations

NHS organisations have to respect the different rights in the Human Rights Act, but what does this mean in practice? When answering this question, there are three key things to remember:

- Not all human rights are of the same type.
- Different rights need to be applied in different ways.
- You need to understand what each right actually **means** or entitles someone to.

Introducing different types of rights

It is very important to realise that not all of these rights are of the same type. Some rights are absolute rights, which means they can never be interfered with. However, some rights are non-absolute – they can be interfered with in certain circumstances. This has very important implications for the work of NHS organisations, as is shown below.

Three main types of rights

- **Absolute rights** cannot be limited or interfered with in any way, by NHS organisations or any other public authorities. An example of an absolute right that may be engaged in a healthcare setting is the right not to be tortured or treated in an inhuman or degrading way. This is looked at further on page 27.
- **Limited rights** can be limited only in specific and finite circumstances. These circumstances are set out in full in the Human Rights Act. An example of a limited right is the right to liberty, often of relevance in mental health or residential care facilities. This is looked at further on page 28. One of the circumstances where the right to liberty can be limited is the legal detention of someone with mental health problems.
- The majority of the rights in the Human Rights Act are **qualified rights**. NHS organisations can take action that interferes with these rights when a number of general conditions are met. Any interference with a qualified right must be:
  - in pursuit of a legitimate aim that is set out in the Human Rights Act, e.g. to protect the rights of others or for the protection of health;
  - prescribed by law, i.e. be allowed within existing legislation;
  - necessary; and
  - **proportionate**.

  An example of a **qualified right** that NHS organisations will commonly need to consider is the right to respect for private and family life, home and correspondence (see page 27).

What is meant by a proportionate action?

In short, a proportionate response to a problem is one that is **appropriate and not excessive** in the circumstances.

Applying the principle of proportionality is central to considering and respecting human rights in the day-to-day work of NHS organisations. It provides a very important mechanism to ensure that the infringement of rights is kept to a minimum and is always reasonable. Proportionality also allows NHS organisations to balance competing interests, e.g. the rights of individuals with the rights or needs of others (such as patients, staff or the wider community).

Certain questions can be asked to help decide if an action is proportionate, such as:

- What is left of the person's rights if we take this action or adopt this policy?
- Is there an alternative approach to the problem that is less drastic?

A straightforward way of thinking about proportionality is you must not use a sledgehammer to crack a nut.

Explaining proportionality – a scenario

A care home takes a decision to have a blanket policy of placing CCTV in the bedrooms of all residents, for safety reasons.

→ **Outcome**

This interferes with the right to respect for private life of all residents.

→ **Alternative**

A decision is made that only residents who pose a risk to themselves and/or others will have CCTV placed in their rooms. This decision will be made on a case-by-case basis.

→ **Outcome**

Some residents have their right to respect for private life interfered with for their own safety or the safety of others; other residents do not have their right to respect for private life interfered with.

NHS organisation check point

Proportionality is a key consideration for NHS organisations when making decisions that may have an impact on people's rights. By following this principle, NHS organisations will ensure that their decisions and actions follow a straightforward, common sense approach that staff and patients can understand, and which complies with the Human Rights Act.

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

Mental Health Service Provider

Balancing different people's rights

When qualified rights appear to conflict with each other, judgements have to be made about the priorities or boundaries. There are many instances in NHS organisations where rights have to be balanced to protect the safety or rights of others, or in the interests of good order. For example, ensuring that staff are protected from violent or abusive patients while also having regard to the interests of the patient. Faced with a dilemma, it is unlikely that every organisation will come to the same conclusion as each situation will have its own particular circumstances. Human rights can be a very useful and practical framework for making a decision in difficult situations as all of the rights of everyone concerned are fully considered.

What positive duties or obligations do NHS organisations have to protect people's rights?

NHS organisations are not just under a duty to refrain from breaching people's human rights. In some situations, NHS organisations have a **positive obligation** to take proactive steps in order to ensure that human rights are respected, protected and fulfilled.

They may require public authorities to protect people from human rights abuses even if the harm is caused by private individuals rather than directly by the public authority, e.g. in child protection or domestic violence cases.

Some examples of what this may require in practice are outlined below:

Action	Example
Building a system to protect rights (such as freedom from inhuman and degrading treatment)	NHS organisations should make sure that there is a framework in place to protect patients and staff from abuse. They should have procedures to respond effectively when abuse does occur.
Informing people of dangers that may lead to the loss of their life or future ability to consent	NHS organisations should ensure that patients are informed of possible harmful side effects that might result from certain medication.
Responding to breaches of human rights	If someone dies in a hospital in suspicious circumstances, NHS organisations should ensure that a thorough investigation is carried out.
Taking action to prevent breaches of rights	If there is evidence that a patient is being abused by relatives, NHS organisations should investigate this and where necessary take steps to prevent it. Providing staff with training and information to undertake this role is also important.

2.5 Rights in reality – some key rights to consider in the everyday work of NHS organisations

The Human Rights Act contains 15 rights, all of which NHS organisations have a duty to act compatibly with which means that NHS organisations will need to respect, protect and fulfil these rights. However, some of these rights are particularly relevant to the day-to-day work of NHS organisations. Here we introduce six rights that raise a number of important issues for NHS organisations. For a fuller explanation of the content of these rights and the other rights in the Human Rights Act, please refer to the further resources section on pages 67–68.

Human Right	Some relevant issues in healthcare	Example
The right not to be tortured or treated in an inhuman or degrading way • Inhuman treatment means treatment causing severe mental or physical suffering. • Degrading treatment means treatment that is grossly humiliating and undignified. This is an absolute right. Inhuman or degrading treatment does not have to be inflicted deliberately.	• Physical or mental abuse • Soiled, unchanged sheets • Leaving trays of food without helping patients to eat, when they are too frail to feed themselves • Excessive force used to restrain patients • Staff not being protected from violent or abusive patients	A man with learning disabilities was living in a residential care home. He was regularly tied to a bed or his wheelchair for 16 hours at a time, to prevent him from hitting his head and face, causing him physical pain and mental anguish. This kind of situation could breach the right not to be treated in an inhuman or degrading way.
The right to respect for private and family life, home and correspondence This right is very wide ranging. It protects four broad categories of interests: • **Family life** is interpreted broadly. It does not just cover blood or formalised relationships. • **Private life** is also interpreted broadly. It covers more than just privacy, including issues such as personal choices, relationships, physical and mental well-being, access to personal information and participation in community life. • The right to respect for **home** is not a right to housing, but a right to respect for the home someone already has. • **Correspondence** covers all forms of communication including phone calls, letters, faxes, emails etc. This right is a qualified right and may be interfered with if the interference has a basis in law, pursues a legitimate aim as set out in the Human Rights Act and is necessary and proportionate. One of the legitimate aims is the protection of the rights of others.	• Privacy on wards and in care homes • Family visits • Sexual and other relationships • Participation in social and recreational activities • Personal records – including medical, financial • Independent living • Closure of residential care homes or hospitals • Separation of families due to residential care placements	A hospital had a mixed ward and promised to re-order it so that men were at one end, with women at the other. It did not do this, and an Orthodox Jewish woman was highly distressed about sharing a ward with men. This kind of situation could be a breach of the right to respect for private life.

Human Right	Some relevant issues in healthcare	Example
The right to liberty The right to liberty is not a right to be free to do whatever you want. The right to liberty is a right not to be deprived of liberty in an arbitrary fashion. The right to liberty is a limited right. It can be limited in a number of specific circumstances, for example the lawful detention of someone who has mental health issues.	• Informal detention of patients who do not have the capacity to decide whether they would like to be admitted into hospital, e.g. those patients with learning disabilities or Alzheimer's disease • Delays in reviewing whether mental health patients who are detained under the Mental Health Act should still be detained • Delays in releasing mental health patients once they have been discharged by the Mental Health Review Tribunal • Excessive restraint of patients, e.g. tying them to their beds or chairs for long periods	A large number of patients throughout the UK who do not have capacity to make their own decisions but are not in a position to be detained under mental health legislation are informally admitted to and detained for treatment in hospital. This kind of admission and detention has been ruled to breach the right to liberty, as there are no clear rules and procedures governing who decides that someone should be detained, and for what reasons.
The right to a fair trial The right to a fair trial contains a number of principles that need to be considered **at some stage** during the decision making process when a person's civil rights or obligations or a criminal charge against a person comes to be decided upon. The person whose rights will be affected has the right to: • an independent and impartial tribunal; • be given notice of the time and place of any proceedings; • a real opportunity to present their case before the decision is made; • disclosure of all relevant documents; • have their hearing take place within a reasonable time; and • be given reasons to enable them to understand the decision that has been made.	• Staff disciplinary proceedings • Compensation claims • Independence of tribunals, e.g. the Mental Health Review Tribunal	Ensure that there is a robust and fair process for dealing with any concerns about the professional conduct or performance of a healthcare professional.

Human Right	Some relevant issues in healthcare	Example
The right to life Public authorities must: • not take away a person's life, except in a few very specific and very limited circumstances, such as lawfully, and using no more force than is absolutely necessary, defending someone from violence; • take appropriate steps to protect a person's life in nearly all circumstances. Although the right to life is fundamental, there is no corresponding right to medical treatment in all circumstances. The protection of the right to life requires that there should be an effective official investigation into deaths resulting from the state's use of force or the state's failure to protect life.	• Do Not Resuscitate orders • Refusal of life saving medical treatment • Active or passive euthanasia • Advance directives • Deaths through negligence • Investigations, including inquests, where a death is suspicious	A disabled woman was admitted to hospital with a chest infection. While there, she discovered that a 'Do Not Resuscitate' order had been placed on her file, because medical staff considered that she had a low quality of life which should not be prolonged. This kind of situation could be a breach of the right to life.
The right not to be discriminated against This right is a right not to be discriminated against in the enjoyment of the other human rights contained in the Human Rights Act. It is not a free standing right, so if no other right in the Human Rights Act is engaged, then this right will not come into play. Discrimination takes place when someone is treated in a different way compared with someone else in a similar situation. Indirect discrimination happens when someone is treated in the same way as others that does not take into account that person's different situation. However, an action or decision will only be considered discriminatory if the distinction in treatment cannot be reasonably and objectively justified.	• Refusal of medical treatment to an older person solely because of their age • Non-English speakers being presented with health options without the use of an interpreter • Discrimination against NHS Trust staff on the basis of their caring responsibilities at home	A hospital had a practice of sectioning asylum seekers with little or no English without the use of an interpreter. This practice could breach the right not to be discriminated against (on the basis of language or race) in conjunction with the right to liberty.

NHS organisation check point

The right not to be discriminated against

The human rights definition of discrimination allows for certain circumstances when it is actually appropriate or will lessen inequality to treat people differently, e.g. a targeted leadership scheme for employees with disability to improve representation of this group at a senior level. Indirect discrimination happens when someone is treated in the same way as others without taking into account that person's different situation.

This kind of discrimination is prohibited on a non-exhaustive list of grounds, including but not limited to 'sex, race, colour, religion, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status'. Other status has been interpreted very broadly to include grounds such as disability, sexual orientation and caring status.

The following flowchart brings together a number of the key considerations and questions discussed and is a good starting point for NHS organisations when considering the likely impact of a policy or decision on people's human rights.

1.1 What is the policy/decision?

1.2 What is the objective of the policy/decision?

1.3 Who will be affected by the policy/decision?

2.1 Will the policy/decision engage with anyone's rights as set out in the Human Rights Act?

NO →

Flowchart exit

- There is no need to continue with this checklist. However…
  - be alert to any possibility that your policy may discriminate against anyone in the exercise of a Convention right
  - legal advice may still be necessary – if in any doubt, contact your lawyer
  - things may change, and you may need to reassess the situation

YES

2.2 Will the policy/decision result in the restriction of a right?

NO →

Flowchart exit (as above)

YES

3.1 Is the right an absolute right?

YES →

Policy/decision is likely to be human rights compliant

NO

3.2 Is the right a limited right?

NO →

The right is a qualified right

4.1 Does the restriction have a legitimate aim? (e.g. to protect the rights of others)

and…

4.2 Is the restriction prescribed by law? (i.e. is it allowed within existing legislation?)

and…

4.3 Is the restriction necessary in a democratic society? *and…*

4.4 Is it proportionate? (i.e. are you sure you are not using a sledgehammer to crack a nut?)

NO

Policy/decision is not likely to be human rights compliant

YES

3.3 Will the right be limited only to the extent set out in the relevant Article of the Convention?

YES

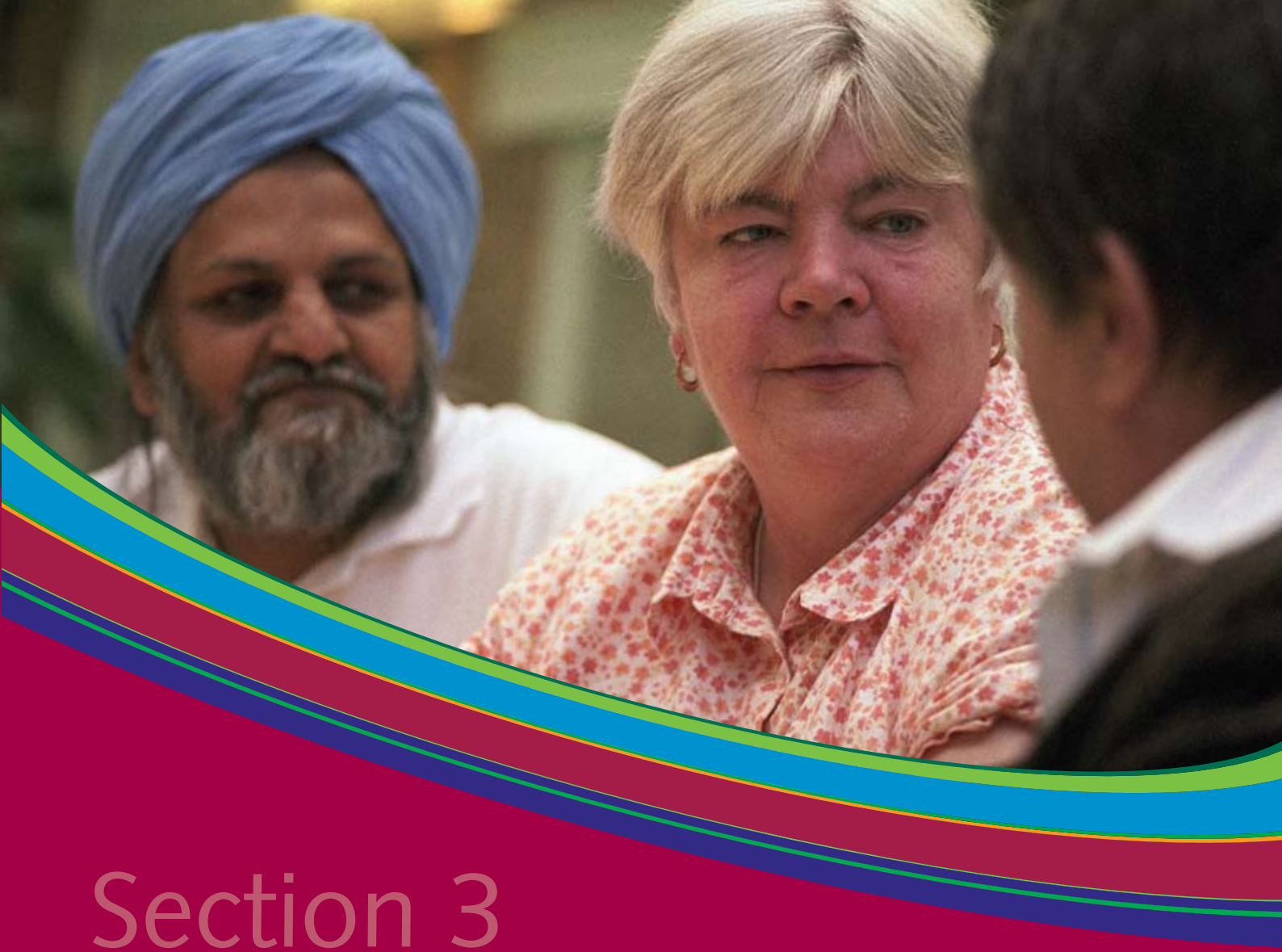
Policy/decision is likely to be human rights compliant

BUT

Get legal advice

Regardless of the answers to these questions, once human rights are being interfered with in a restrictive manner you should obtain legal advice. And you should always seek legal advice if your policy is likely to discriminate against anyone in the exercise of a Convention right.

Adapted from: *Human Rights: Human Lives – A handbook for public authorities*, Ministry of Justice, October 2006



Section 3

From principles to practice – human rights based approaches in action

→ **Overview**

- What is meant by a human rights based approach?
- What are some examples of a human rights based approach in action?
- A summary of key learning from the project to date
- Overview of five Trusts' human rights projects in action

3

3.1 Introduction

Sections 1 and 2 have given an outline of what human rights are, why they are relevant to NHS organisations and how they are protected by the Human Rights Act. But how do we begin to make human rights a reality across the work of NHS organisations? The process by which NHS organisations can put human rights principles into practice is known as a human rights based approach (HRBA).

This section explains what is meant by an HRBA and gives some example actions and/or indicators of implementing an HRBA in an NHS organisation. It also provides a summary of the key learning from the project to date and provides an overview of each of the five participating Trusts' human rights pilot projects.

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

Equality and Human Rights Adviser, NHS Trust

3.2 What is meant by a human rights based approach?

An HRBA is a way of ensuring that human rights principles and standards are made real in practice. HRBAs are based on five core principles. These principles have been developed at the international level by international development agencies and the United Nations. Together, these principles support a wide range of benefits for NHS staff, patients and carers.

The five key HRBA principles

- **PRINCIPLE 1:** Putting human rights principles and standards at the heart of policy and planning
- **PRINCIPLE 2:** Ensuring accountability
- **PRINCIPLE 3:** Empowerment
- **PRINCIPLE 4:** Participation and involvement
- **PRINCIPLE 5:** Non-discrimination and attention to vulnerable groups

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

Chief Executive, NHS Trust

Many NHS organisations may already have a number of processes in place which support these principles. Using an HRBA does not automatically mean that lots of new processes are required – often it is about improving what is already in place. See below for a further exploration of these principles and what they can mean for processes in NHS organisations.

PRINCIPLE 1

Putting human rights principles and standards at the heart of policy and planning (in other words, looking at issues, decisions and practice through a 'human rights lens')

NHS organisations and staff deal in both policy and practice areas that engage people's human rights. In this context, it is important that this work is seen in terms of either its positive or negative impact on human rights principles. This means ensuring that in planning, policy and delivery there has been an analysis of which human rights are relevant, who the rights holders are and who is responsible for ensuring that rights are protected, promoted or fulfilled. Using human rights principles of fairness, respect, equality, dignity and autonomy as flags or areas to consider is often useful in identifying whether human rights are a concern. It also means ensuring that goals and plans are expressly linked to and compatible with NHS organisations' obligations as set out in human rights law and that those with decision making and delivery responsibilities have the capacity to apply human rights principles in their work.

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

Senior Manager, NHS Trust

NHS organisation check point

To apply this first principle in practice, NHS organisations need to know about the key provisions of the Human Rights Act. Section 2 looks at the Human Rights Act in more detail.

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

Head of Inclusion and Diversity, Primary Care Trust

→ PRINCIPLE 2

Ensuring accountability

Once an NHS organisation is clear which principles and articles it is seeking to adhere to in its work, it must ensure that it is clear that there is proper accountability for meeting these. This involves:

- clearly identifying who are 'claim holders' and the corresponding 'duty bearers' in the work of the organisation;
- identifying which human rights patients and staff may claim or require protection for;
- ensuring that organisation plans, policies and procedures have been assessed in terms of human rights impact;
- identifying whether the organisation has any positive obligations (to protect and/or fulfil rights) or negative obligations (to abstain from breaching rights);
- ensuring that there are appropriate mechanisms and procedures of complaint or redress in place to ensure accountability.

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

Project Lead, NHS Trust

→ PRINCIPLE 3
Empowerment

Having clarity on what principles an NHS organisation is adhering to and accountability for ensuring this is not enough on its own. NHS organisations must also ask:

- Do rights holders (e.g. patients) and duty bearers (e.g. NHS organisations and their staff) share a common understanding of human rights goals and how to respect, protect and fulfil these?
- Are systems in place to educate and raise awareness of all relevant stakeholders? This includes not only ensuring that staff have skills and capacity in human rights, but also ensuring that patients and communities have the power, capacity and access to influence their own situations through participation and involvement.

'Human rights queries are now routinely raised by staff, carers and service users as a result of the training they have received… These queries mean that care decisions are changing to become more human rights based which, in turn, means that service users are receiving a better quality of care.'

page 28 MORI report – Mersey Care NHS Trust

'[learning about human rights] made me feel brave and confident… it made me become like a new person. There is more to learn now and maybe I can help other [service users]'

page 52 MORI report – Mersey Care NHS Trust – Service User

→ PRINCIPLE 4
Participation and involvement

People have a right to participate in decisions that directly affect their lives. Moreover it is common sense, and an accepted aspiration within the NHS, that many services, policies and programmes will be more effective if the people and communities they are meant to benefit are involved in their design and, where appropriate, delivery. In this context, people who are vulnerable to discrimination – or marginalised because of location, lifestyle or group – should be involved in an active, free and meaningful way. This could mean engaging with a geographical catchment area or a specific community of interest such as an ethnic or faith group, or those on low incomes.

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

Staff Member, NHS Trust

'We expect [by using human rights based approaches] that our users and their carers will notice a positive change in the way services are delivered.'

Director, Primary Care Trust

→ PRINCIPLE 5

Non-discrimination and attention to vulnerable groups

Using an HRBA recognises that some groups and people in society, at different times and in different circumstances, are more vulnerable to abuses or poor protection of their human rights. This applies in particular to those who are already facing discrimination or social exclusion. In this context, an HRBA looks as a priority at:

- whether people or groups vulnerable to human rights infringements have been identified;
- the impact of policies and practice on these people or groups; and
- whether actual or potential discrimination has been addressed.

'By linking the human rights framework to other local equality and diversity strategies we hope to tackle some of the key health inequalities.'

Equality and Diversity Manager, Primary Care Trust

3.3 Examples of human rights based approaches in action

Some examples of actions and/or indicators of an HRBA are outlined in the table below. The table includes links to case studies of NHS organisations who are undertaking this work, and/or links to the relevance guidance in this framework.

For further information please see the report of the Ipsos MORI independent evaluation of the human rights projects of the five participating NHS organisations.

Key to case studies

Case study A – Mersey Care NHS Trust

Case study B – Southwark Health and Social Care

Case study C – Surrey and Borders Partnership NHS Foundation Trust

Case study D – Heart of Birmingham Teaching PCT

Case study E – Tees, Esk and Wear Valleys NHS Trust

Some good practice actions			
HRBA Principle	**Leadership and Governance**	**Strategy and Policy**	**Processes and Practice**
Putting human rights principles and standards at the heart of policy and planning	Organisation vision and values explicitly reflect core human rights principles and outcomes (case studies A and C) Define organisation's key goals or objectives in terms of relevant human rights commitments Develop a human rights communication plan for staff, service users and carers (case study D) Key human rights communication messages are agreed and promoted internally and externally Establish a dedicated strategic level team (case study D) Identify and allocate resources to implement an HRBA (case studies A and B) Develop human rights key performance indicators in organisation's forward/ business plan	Mainstream human rights into new policy development via a human rights strategy (case studies A and D) Audit existing strategies, policies, budgets and programmes in terms of human rights impact (case study B) Use a human rights 'proofing' process or checklist (similar to the one on page 31) to assess the human rights impact of all new policies Ensure 'human rights relevant' baseline data is gathered to inform policy and strategy and to monitor impact (case study A)	Ensure complaints are recorded and responded to Incorporate human rights based quality criteria – indicators into organisation's services and commissioned services (case study B) Use human rights based decision making checklists and keep systematic records of potential human rights issues and related actions Collect evidence of human rights impact of policies and decisions

Some good practice actions			
HRBA Principle	**Leadership and Governance**	**Strategy and Policy**	**Processes and Practice**
Ensuring accountability	Appoint executive and non-executive board lead or champion on human rights (case study D) Governance committees, e.g. board sub-committees such as clinical governance, ethics and risk assessment, are given clear human rights remit Identify organisation's key required actions and positive obligations and ensure reporting to the board as part of regular cycles Organisation reporting on progress must show how human rights goals/standards are being progressed	Human rights policy and strategy leads are assigned Clear goals (related to above principles) are set and monitored across different departments/ policy areas Commissioning policy explicitly requires human rights accountability from providers and sets out what this means (case study B)	Job descriptions should clarify relevant human rights responsibility Staff supervision/ management performance includes human rights monitoring Appoint dedicated human rights post (case study D) New commissioning contracts issued make explicit reference to human rights Patients and service users are aware of the organisation's commitment to human rights and what that means for them Ensure there are effective complaints mechanisms where human rights issues can be addressed for staff, patients and service users

Some good practice actions			
HRBA Principle	**Leadership and Governance**	**Strategy and Policy**	**Processes and Practice**
Empowerment – staff, patients, carers and other key stakeholders are aware of and share common understanding of duties, rights and responsibilities	Skills audit and ensure human rights training provision to board, senior team and key advisory sub-groups Provide access to internal and external specialist advice Raise awareness of the human rights agenda in the organisation Human rights is a core component of the organisation-wide induction process (case study C)	Include human rights as a mandatory competency in organisation's key learning and skills frameworks (case study C) Train those with policy making role to human rights 'proof' or impact assess (case studies B, C and D) Ensure that commissioners and commissioned organisations are aware of human rights obligations (case study B) Allocate resources in overall staff and organisational development budget (case study D)	Provide job specific human rights training and related guidance and information (case study C) Provide access to human rights advice (case study D) Human rights promotional/ communications materials are available and distributed (case study D) Patients and service user groups are given human rights information, and routinely given a chance to raise issues (case study E) Human rights training has been evaluated, reviewed and feedback incorporated into improving the training module (case study B)

Some good practice actions			
HRBA Principle	**Leadership and Governance**	**Strategy and Policy**	**Processes and Practice**
Participation and involvement – all relevant stakeholders are enabled to participate in an active and meaningful way	Existing participation initiatives incorporate human rights as appropriate (case study E) Resource and provide staff support to independent and internal mechanisms that support patient and stakeholder participation, e.g. service user-led projects (case study E)	Involve patients in assessment of policies (case study A) Ensure all policy staff (not just equalities and human rights leads) have awareness on human rights (case study C) Timely and transparent proposals are given out for consultation with clear information on human rights impact Staff, service users and carers are involved in the development of human rights training programmes (case study C) Staff, patients and service users collaborate in producing human rights assessment tools such as questionnaires (case study A)	Human rights issues are part of patient discussion in routine processes e.g. one-to-one care planning or patient forums Space is given in staff meetings and separately for staff to discuss human rights issues and feedback Engage with the voluntary and community sector, particularly service user-led groups (case study E) Patients and service users complete human rights questionnaires Hold human rights events such as conferences, workshops and learning events. (case studies A, B and D) Service users take part in design of their care plans (case study A)
Non-discrimination and attention to vulnerable groups Those most vulnerable to human rights breaches identified and targeted measures in place to address and prevent this	Include clear commitments and goals to tackle discrimination in all organisation policy and planning and link this directly to human rights principles (case study C) Initiate and support 'cross interest' human rights projects or initiatives that engage a range of groups vulnerable to discrimination	Integrate human rights into equality strategies and impact assessment processes, e.g. produce a single equality and human rights scheme (case studies B, C and D) Ensure baseline data is disaggregated by categories where there are human rights concerns, e.g. disability, gender, race, age, sexuality, religion, or caring status Identify vulnerable groups in local area	Issue staff and patients with clear guidance/ checklists on when differential treatment can be discriminatory Establish links with vulnerable groups Support and resource patient advocates for vulnerable groups

3.4 A summary of learning from the project to date

These key learning points have been identified by:

- the five NHS organisations participating in the Human Rights in Healthcare project;
- the independent evaluation of the five organisations' human rights projects carried out by Ipsos MORI;
- the series of three learning events held as part of this project.

Getting started

- Before getting started, NHS organisations needed to 'make the case' for themselves and colleagues, by challenging common myths such as rights being a hindrance for staff or human rights not being an issue for people in the UK.
- Securing senior level buy-in and commitment to the project was an important first step to giving credibility and momentum to the project, and making resourcing easier.
- Commitment from leaders at the top of the organisation was crucial, but it was equally important to involve staff from all levels. NHS organisations found real appetite and motivation among staff once they could see the benefits of putting human rights principles into practice.
- A basic understanding of human rights ideas, the legal framework, implications for practice and specifically for healthcare was essential to progress the work. Otherwise project planning would be based on a limited or flawed understanding of rights.

'The final learning is that human rights have a very real place in the consideration and delivery of care to vulnerable people such as those with learning disabilities. In a relatively short time the pilot has benefited staff, service users and carers and there is much recognition and support of this project now and looking to the future.'

Director, NHS Trust

Project planning and development

- Developing a human rights strategy is a good way of ensuring that there is a structured and organised view of how an HRBA is implemented, and can assist the progress of the project from the outset. An HRBA requires strong foundations across the organisation, e.g. it should be embedded in the Trust's strategic plan and communications strategy and given sufficient allocation of resources and management support.
- Taking forward an HRBA within a project environment that has a designated person with responsibility for delivery, clear timescales for actions and senior management oversight can help to ensure the successful implementation of an HRBA.
- While the five core principles of a generic HRBA are key, there is no one 'correct' HRBA. NHS organisations need to develop something that reflects the nature and context of their organisation.
- Participation and consultation are absolutely vital and must involve the engagement of service users and carers as well as staff. Voluntary and community sector organisations can be a key partner in supporting participation. They have a great deal of expertise and are a very useful resource on the needs of particular groups.
- It is important to share learning and communicate with other NHS organisations as well as with public sector organisations undertaking similar work.
- It is important not to be overambitious and to keep the project simple to start with. It is then possible to see how an HRBA fits a particular area and later on to apply the learning more broadly.
- An evaluation and monitoring framework must be built in from the start of the project. It must show how the project will support existing targets. Overall, the project must focus on the practical ways in which human rights can make a difference.
- Incorporate a system of collecting useful quantitative data into project plans. Explicit identification of relevant data will ensure that any specific impacts that result from taking an HRBA can be tracked.
- Try to avoid the project relying on one or two key individuals so that implementation can continue and goals can be achieved even when these people are unable to be involved for whatever reason.
- There must be a system in place for dealing with challenges to care decisions when staff, service users and carers are empowered (e.g. through training or other tools) to challenge care decisions.
- There are real benefits in having those with the appropriate experience and skill set to lead and deliver the pilot. For instance, where the project focuses on training, responsibility is better placed with the learning and development team rather than the equality and diversity team.

Enthusing and engaging key stakeholders

- It is vital that staff receive good quality training and information on human rights and why human rights are relevant to them – human rights only seem complex when they are not understood.
- Training needs to take an interactive approach, and care should be taken to ensure that training is consistent from one training session to the next. In addition, it is important to link the objectives of training with the competencies that have to be fulfilled by staff within their roles, as set out in job descriptions and person specifications.

- Raise staff and service user awareness with accessible, plain English information on human rights that challenges common myths/misunderstandings and relates directly to the job that they are doing or the service they are accessing.
- Staff need to be aware that they have human rights themselves; human rights are not just about how they are treating others.
- Service users, carers and families need awareness of what their human rights are and how they relate to their healthcare in order for good practice to be developed.
- Service users feel very positive about being involved in helping develop materials to support human rights work.
- It is important to build strong relationships between key players, and ensure that there is alignment between the goals of the organisations involved and the project objectives.
- Participating organisations found human rights to be a way to support existing work rather than being an 'add on' or just another initiative. For example human rights should centrally underpin work such as equality and diversity policy and practice or patient choice initiatives. They provide an additional tool for working more effectively in these areas as well as filling gaps – see case studies B, C and D.

Ten top tips for developing a human rights based approach in your NHS organisation

1. Create a bold vision of an HRBA that sets out where the organisation needs to go and why.
2. Be ambitious, with a clear plan that includes quick wins and longer term goals.
3. Secure senior level commitment and engagement.
4. Ensure that there are resources allocated to do this work – particularly staff capacity and financial resources.
5. Don't reinvent the wheel – look at what the organisation already has in place and see how that can be used in an HRBA, e.g. existing initiatives such as equality and diversity or processes such as induction.
6. Raise awareness and engage staff by using practical human rights training that is clearly relevant to people's day-to-day work.
7. Make sure that staff, service users and patients have accessible information and resources on human rights and why the organisation is taking an HRBA.
8. Don't do it alone – seek expert advice, find out what others are doing and work with partners.
9. Involve staff, patients and service users.
10. Make sure you can measure progress to keep improving and don't forget to celebrate success!

'An HRBA helps to achieve good practice… but it [also] goes above and beyond good practice in providing renewed quality of care for service users, and staff are empowered to challenge care decisions… a HRBA defines a common shared value base more effectively than other guidelines about standards of care.'

Senior Manager, NHS Trust

3.5 Case studies

These case studies provide a picture of how five NHS organisations, acting as pilots in the Human Rights in Healthcare project, are developing and using HRBAs in their work. They bring together the learning so far from projects that the five Trusts have been developing. They have helped to shape the framework overall and provide illustrative examples to other NHS organisations interested in developing HRBAs.

These case studies are not the 'full story', but a first step on a longer journey. They are not designed to evidence impact. Rather, they provide an initial snapshot of how the pilot Trusts have taken HRBAs forward in their work so far, and what kinds of resources and information are needed to kick start this process. These case studies have been updated from the first edition of *Human Rights in Healthcare – A framework for local action* to reflect the work the Trusts have done since March 2007.

→ Overview

A. **Mersey Care NHS Trust** – An HRBA to risk assessment in the Learning Disabilities Directorate

B. **Southwark Health and Social Care** – Developing a human rights based commissioning framework

C. **Surrey and Borders Partnership NHS Foundation Trust** – An integrated human rights and equality strategy and training linked to the Key Skills Framework

D. **Heart of Birmingham Teaching PCT** – An integrated human rights and equality strategy, scheme and programme of training

E. **Tees, Esk and Wear Valleys NHS Trust** – Developing a business case for an HRBA

Case study A

Mersey Care NHS Trust

1. Who – overview of Trust

Mersey Care NHS Trust provides specialist mental health and learning disability services for the people of Sefton, Liverpool and Kirkby. The Trust serves a local population of 763,000, including areas of high deprivation and high levels of mental health need. Overall, 96.4% of the North Mersey population is white. In the Liverpool area this figure is 91.8%.

Mersey Care is one of only three Trusts providing the entire range of mental health services and provides medium secure services to Merseyside and high secure services for the North West, the Midlands and Wales.

Mersey Care takes a rights based approach, and invests in leadership to ensure that service users and carers have the right to be involved in decisions that affect their lives and to ensure that equality and human rights are promoted throughout the Trust.

2. Why – reason for involvement

Mersey Care was keen to get involved in this project as we believe in a human rights based approach to the provision of mental health and learning disability services. The Trust has a national reputation for its work on involving service users and carers, and the learning disability service has created a wide range of innovative opportunities for clients to be involved in decision making.

The Trust sees this project as a great opportunity to learn more about human rights and how they can be applied in healthcare. The Trust wanted to develop its existing work on involvement and diversity and equality into a wider strategic framework for human rights. The Trust also wanted to work from the 'bottom up' and develop some practical tools for applying a human rights based approach to the work we do with people with learning disabilities – people with learning disabilities are one of the groups that are most at risk of having their human rights infringed.

It was also a great chance to work with the Department of Health on a pioneering initiative and to learn from the British Institute of Human Rights and other like-minded NHS organisations.

3. How – the approach

In the first phase of the project we developed an explicit human rights based questionnaire to test the quality of the inpatient service for those with learning disabilities. In the second phase, we began using the questionnaire to see how it works/what changes it needed. As a result, we have been able to make some recommendations for change, which the Directorate is taking forward in a move to a new inpatient service in new premises (autumn 2008).

We took the learning from the first phase and applied it more widely to develop a human rights way of thinking and practising within the Learning Disabilities Directorate and also to inform a Trust-wide approach to developing a human rights strategy and action plan. This had the aim of developing a culture of human rights across the whole organisation.

Human Rights team:
Pictured going over the human rights strategy at Mersey Care NHS Trust are, from left to right: Amy Lee, Ged Carney, Richard Whitehead, Meryl Cuzak, Beth Greenhill, George Sullivan and Emma Ward.

4. Products

Mersey Care has produced the following:

1. A Human Rights Strategy and Action Plan for the Trust, which was approved by the Trust Board (January 2008).
2. The 'Keeping Me Safe and Well Risk Screen', which is designed to ensure that staff in the Trust's Learning Disability Service look at risk through a human rights 'lens'. The aim was to create a risk screen that embeds a human rights based approach in the assessment process and would also maximise service users' participation and empowerment.
3. Guidelines for using the 'Keeping Me Safe and Well Risk Screen' and for personalising it for people with learning disabilities. The Guidelines also contain information about human rights articles that may be relevant to each risk.
4. A 'Human Rights in Complex Care Pathways Benchmarking Tool', which evaluates the extent to which human rights are incorporated into the lives of people with learning disabilities who have complex needs. It highlights the extent to which a human rights based approach is used by the agencies that support service users. It sets year one, year two and year three human rights standards, against which complex care packages can be assessed.
5. HR-JRAMP. The aim was to develop a human rights risk assessment tool for individuals with complex needs. This was developed from the JRAMP (Williams et al, 1999), which was a formal joint Liverpool Health and Social Services assessment of the risks associated with a relatively small group of adults with learning disabilities who present a likely and serious risk of harm to themselves or others. The HR-JRAMP was developed to embed human rights, positive risk taking and person centred approaches into risk assessment and management of this client group.

5. Key impact and learning

The key learning messages from Mersey Care's experience are:

- It is essential to have board level commitment to a human rights based approach, including some dedicated resources.
- High quality human rights training is essential for staff. It needs to focus on the basic concepts and ideas of human rights and use everyday examples and case studies to help staff to understand what human rights mean for them in their particular roles.
- In developing tools to embed a human rights based approach, it is important to balance the need to do something different with the need to build on processes and ways of working that staff are already familiar with. It may sometimes be better to adapt existing tools rather than develop something entirely new.
- A human rights based approach has to be grounded on and make a difference to the experiences of service users.
- It is important to have access to specialist advice. Some human rights concepts are difficult for staff to grasp. External, expert support from the British Institute of Human Rights was invaluable in providing the level of detail that is required to interpret the Human Rights Act and understand how to make human rights concepts work in practice.

6. Future plans

The next steps in developing a human rights based approach in Mersey Care will be:

- the implementation of the Trust-wide Action Plan. Progress will be reported annually to the Trust Board;
- providing training for the Learning Disabilities health and social care staff on the use of the Human Rights Toolkit in August, September and October 2008;
- road testing the 'Keeping Me Safe and Well Risk Screen' with people with learning disabilities and revising the documents by September 2009;
- road testing the Benchmarking Tool with some voluntary agencies that provide supported accommodation for people with learning disabilities and revising the documents by September 2009; and
- road testing the HR-JRAMP with individuals with Learning Disabilities and complex needs and revising the document by September 2009.

7. Contacts

For further information on Mersey Care's work on human rights based approaches please contact:

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Human rights training day with (from left): Meryl Cuzak, Ceri Goddard (BIHR), Christos Pishas (ROI Operations Ltd), Sonya Sceats (BIHR), George Sullivan, Anne Lofthouse and Lindsey Dyer

Case study B

Southwark Health and Social Care

1. Who – overview of Trust

Southwark Health and Social Care is an integrated structure between Southwark PCT (Health) and the London Borough of Southwark (Social Services department). Southwark PCT currently employs around 920 people, and another 1,100 are employed by Social Care. We commission and deliver services to approximately 260,000 residents in Southwark – one of the most ethnically and socially diverse populations in the country. The population demonstrates a rich ethnic and cultural diversity, with nearly 40% of the Borough's population from a black or minority ethnic community. 18% of the population is under 14 years of age and around 12% are of pensionable age.

We recognise that diversity is not static, and Southwark is a prime example of diversity being ever changing. To meet these challenges, we have put in place a comprehensive programme to deliver equality in employment practice and service access/delivery. We have established an Equality and Human Rights Steering Group (EHRSG), with director level representation to agree strategy, activities and priorities to integrate equality and human rights across all health and social care functions, employment practice and service access/delivery. The EHRSG is chaired by a non-executive director. We also have an Equality and Human Rights Team that provides training and ongoing expert support and advice to staff, service providers and the voluntary and community sector.

Our vision of promoting and respecting human rights is shared by Southwark Council, which has been at the forefront of promoting human rights across all of its services since 2001. With its vigour and passion, the Equality and Human Rights Team has made good progress in driving forward our equality and human rights agenda across health and social care.

2. Why – reason for involvement

Southwark Council as a whole has carried out significant previous work on human rights. Getting involved in the Human Rights in Healthcare pilot project was an easy decision because it supported our vision of making Southwark a better place for people of all ages and backgrounds to live, work and enjoy equal access to first rate health and social care services. To achieve this, we have been working hard to eliminate all forms of unlawful discrimination on the grounds of age, disability, gender, race, religion or belief and sexual orientation.

Another compelling reason for involvement was simply that, as citizens, employees, parents, carers and service users, we are all stakeholders in the NHS and in social care. This means that we all have a duty to make sure that health and social care outcomes are of the highest standard. The pilot project allowed us to build on our existing equality and diversity strategies to make Human Rights (dignity and respect) central to the way in which we commission and deliver health and social care services and protect vulnerable people from abuse.

3. How – the approach

We decided to focus on commissioning for our project. This was partly to help ensure that the commissioning and procurement processes undergo an Equality Impact Assessment. Following an induction day with the British Institute of Human Rights (BIHR), we realised that this was a very broad and complex area, particularly as there was lack of clarity at that time about the status of some commissioned bodies under the Human Rights Act 1998 (HRA). We took the view that regardless of whether some commissioned service providers were covered by the HRA or not, Southwark Health and Social Care had a duty to promote and protect the human rights of its local population.

Our key objectives for the pilot are to:

- develop a 'human rights' mindset across the whole of Southwark; and
- make a first step towards ensuring that the protection of human rights becomes part of organisational thinking in the way we commission, deliver and monitor the quality of services across health and social care.

It was clear that in order to build human rights outcomes into our commissioning process, all our staff would need a baseline understanding about human rights in the context of health and social care. So the starting point was to develop our Human Rights learning and development programme.

In our view, there is no substitute to building in-house expertise on equality, diversity and human rights. We already had the benefit of a successful equality and diversity training programme developed by our Equality and Human Rights Team. In September 2007, with input from BIHR, we piloted our equality and human rights training programme. By July 2008, more than 600 staff had attended an equality and human rights learning and development day. The programme has been highly successful, with 98% of the delegates rating it as 'good' or 'excellent'.

4. Products

Our two key products from the Human Rights in Healthcare project are:

- a human rights and equality learning and development programme; and
- a human rights commissioning framework.

The latter is currently in development and will be a key priority over the next 12 months. In addition to these products, Southwark Health and Social Care is integrating Human Rights across all of its functions, services, strategies, policies and Equality Impact Assessments.

5. Key impact and learning

Southwark Health and Social Care has made excellent progress on a number of key targets as set out in the evaluation framework. Some of the overall objectives in relation to commissioning are well under way, but given the short timescale of this evaluation, concrete outcomes in some areas cannot reasonably be expected until next year.

The motivation and dedication of the project leads have been vital to maintaining the momentum of the pilot, and to the continued implementation of the pilot's objectives. Senior level buy-in across the Trust is also crucial to its success. Human Rights issues are regularly raised by the EHRSG, and the Group itself incorporates key senior people from across the Trust. The fact that the pilot is aligned with the broader goals of the Trust has been positive in ensuring that the work has fitted in more generally with the Trust's general goal of delivering better health and social care.

Training is a key area of success, and can be seen not only as a tool with which to educate staff about Human Rights, but also as a means of affecting cultural change more generally. As people network and share their experiences, so the language and practice of using Human Rights principles will become embedded across the organisation.

Small successes are as important as long term objectives, helping to keep the momentum going, reassure people that they are on the right track and help to keep the project moving forward. Overall, the project is viewed extremely positively at a time when commissioning of services and personalisation are high on the healthcare agenda.

6. Future plans

There is little doubt that taking a human rights based approach has played a crucial role in shaping our vision of delivering a more inclusive and personalised health and social care service. In this respect, Southwark Health and Social Care will continue to make Human Rights central to the way we develop policies and strategies and commission and deliver health and social care services.

Over the next 12 months, the most challenging phase for us will be to take the outcomes from the pilot and the human rights and commissioning learning event to inform and integrate Human Rights into our commissioning framework, including World Class Commissioning.

7. Contacts

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Case study C

Surrey and Borders Partnership NHS Foundation Trust

1. Who – overview of Trust

Surrey and Borders Partnership NHS Foundation Trust is a specialist Trust providing mental health and learning disability services to the people of Surrey, Croydon and North East Hampshire. The NHS Trust (which was subsequently authorised as a Foundation Trust) was formed in 2005 after a merger between three former Trusts, and currently employs in excess of 3,500 staff.

The Trust serves a population of around 1.3 million, and is the largest provider of services to a mix of urban and rural areas. There are high levels of affluence, especially in Surrey, resulting in a significant inequality gap between pockets of deprivation and areas of affluence. Surrey is one of the 10 local authorities with the highest proportion of healthy people in the country.

Following its formation, the Trust, defined a 'Diversity – Yes, Stigma – No' Equality and Human Rights Strategy. This strategy is a key part of the organisation's five year strategic direction, and aims to place human rights principles at the heart of its business. As part of its strategy, which is underpinned by its Vision and Values (developed in our first year as a Trust) the organisation has defined an action plan that addresses six key priorities:

1. Ensure that services are accessible, appropriate, inclusive and responsive to people who use services, their families and carers, taking into account equitable spread across all groups and backgrounds.
2. Ensure that the Trust is responsive and proactive in meeting current and emerging legislative duties between now and 2012.
3. Ensure that the Trust develops its staff to deliver the Trust's Vision and Values.
4. Achieve a Trust that reflects the diversity of its local population in its composition and leadership group.
5. Ensure that the Trust is effective in communicating and working in partnership with local community groups, significant individuals and marginalised or disengaged groups.
6. Ensure that the Trust sends out a clear message of its determination to identify and work proactively towards reducing and eliminating stigma associated with mental health and learning disability through practical and measurable activities.

Our organisation has already taken forward work addressing our key priorities through our involvement in the Human Rights in Healthcare project and other work on equality, diversity and human rights. We hope that our commitment to this project and the development of a human rights based approach to our work will result in significant improvements to the way we operate in the short, medium and long term.

2. Why – reason for involvement

We decided to participate in the Human Rights in Healthcare project for three key reasons. Firstly, our high proportion of affluent residents is combined with pockets of significant deprivation. The social difference between residents in these areas results in a significant inequality gap. To ensure that our services

"It's great for the Trust to think about the way they engage with people. This is a framework that unifies people and leads to better care."
Mario – Gay Surrey

are provided in a fair and equal manner to all, we decided to base our service design and service provision on the human rights principles of fairness, respect, equality, dignity and autonomy. As a result, we saw that early involvement in this human rights project would allow us to understand the meaning and application of these principles in our work. The support in terms of the human rights expertise provided by BIHR and the project management expertise offered by the Department of Health also contributed to our decision to get involved.

Secondly, at the start of the Human Rights in Healthcare project, we were already in the process of finalising our Equality, Diversity and Inclusion Strategy. The project provided us with an opportunity to gain – and contribute towards – a better understanding of how current work on equality, diversity and human rights based approaches can be integrated. As a result, we revised our existing strategy and obtained approval for a revised strategic plan that addressed equality and diversity in the context of human rights principles.

Finally, we saw that joint work with the four other NHS organisations involved in the project, the Department of Health and BIHR would allow us to understand the processes involved in embedding human rights in our work. This collaboration also enabled us to draw on our project partners' learning, and therefore reduce duplication and associated risks.

3. How – the approach

FIRST PHASE

A workshop was held and supported by BIHR to introduce human rights to a diverse population of staff, people who use services and carers. The workshop had the additional task of introducing these people to the Knowledge and Skills Framework and had the task of considering what should be the minimum standards taught at each level.

This workshop identified several key personnel, who formed a working group that looked at the development of the training material that would be used at induction level within the organisation to raise new staff members' awareness of the Human Rights Act and its implications for them in the workplace.

This group subsequently worked with the project support team and the Learning and Development Team to rationalise the products and map it directly to the Knowledge and Skills Framework. Levels 2 and 3 training was also developed.

SECOND PHASE

The material was tested and improved and is currently being delivered.

4. Products

- A Level 1 Induction Pack was produced and implemented to all new staff.
- Level 2 training has been developed to be delivered in a team meeting or a handover period. It is important that the training is not simply awareness raising but has a practical element – mini projects will be developed within teams, in consultation with their client groups, to improve workplace practices. These mini projects will be reported to Learning and Development and periodically audited to measure impact.
- Level 3 training has been developed for managers. This is designed as a self/peer evaluation programme, so that senior staff can look at their own

attitudes and behaviours, provide evidence of good practice and share that good practice with colleagues. In this way, encouragement can be given to staff who have achieved excellence, and best practice can be shared across the organisation with those who had difficulties in this area. This evidence can also be used as part of appraisal and supervision with managers, as staff members progress through their careers within the organisation.

- Level 4 training is currently part of the Leadership and Management programme of the Trust and delivered by BIHR. Events have also been undertaken at Leadership Forum level for the Senior Management Team. These have been targeted at decision making level so that a human rights based approach is key to all major decisions within the organisation.

5. Key impact and learning

It is clear that the impact on the people who use services could not be measured at this stage, but any learning that has been undertaken has been enjoyed by the persons involved. All evaluations have come back positive and supportive of the process to date.

It would have been beneficial to begin at the top of the organisation at the same time as the induction training was rolled out, so that new staff and senior management were receiving information within a similar timeframe. Using a phased roll-out, however, means that the timing fits with the Trust's overall Organisational Development programme for its Leadership, strengthens mainstream objectives and means that we have a continued programme of emphasising its importance.

6. Future plans

As the training is rolled out and the projects are audited it is expected that there will be a significant impact on people who use services and on those services that are delivered. The necessity of auditing the mini projects is paramount to measuring the success of this training.

The use of self/peer evaluation at Level 3 is expected to bring both a more reflective approach to human rights at management level and support for junior staff to deliver more effective care to people who use services. It is hoped that this reflective practice will support managers as they deal with staff and will also identify further training needs for these staff in order to understand their own supportive roles within the structure in which they work.

Future developments will involve auditing projects, developing supporting training, incorporating additional support mechanisms, improving Equality Impact Assessment training and creating a group of trainers and champions to progress this through the organisation.

7. Contacts

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Case study D

Heart of Birmingham Teaching Primary Care Trust

1. Who – overview of Trust

Heart of Birmingham tPCT serves one of Birmingham's most deprived and culturally diverse communities at the heart of the inner city. The tPCT has a budget of approximately £560 million. It operates 20 health centres and commissions services from more than 150 GPs based in nearly 80 practices. Over 70% of these are single handed practices providing services to one of the most challenging areas of the country.

The Trust covers a population of approximately 310,000. There are high levels of deprivation across the majority of communities, combined with high levels of affluence in the city centre. Approximately 70% of the population is Black or Asian. There are high rates of poor health, premature death, long-term chronic illness and disability.

The number of staff employed by the Trust at the end of July 2008 was 1,180. It is a very diverse workforce, with Black and Minority Ethnic (BME) representatives populating up to 47% of staff posts. The diversity of the patient population and the current workforce makes work on human rights and equalities a very high priority for the tPCT. There is a high incidence of health inequality and deprivation in the area to which the tPCT provides services. Human rights and equalities are therefore seen as essential to providing better quality services.

2. Why – reason for involvement

The tPCT has found that continued involvement in the Human Rights in Healthcare project has created a firm commitment by the organisation that a human rights based approach to healthcare is the right one. This is a positive approach to improving the healthcare outcomes for our service users by considering equality and human rights in planning and delivering services that are sensitive to the principles of the human rights of the service user. The approach also includes the tPCT's accountability for the equality and human rights of the service user and our staff.

We believe in a human rights based approach for the following reasons:

- It fits with the healthcare objectives of the tPCT, which includes the diverse patient population of the Heart of Birmingham, and the health inequalities that have been identified in the tPCT's geographical area.
- It supports the strategy of a patient led NHS and the movement towards a provider/commissioning culture that provides choice for the patient.
- It supports the commitment by the tPCT to the 'World Class Commissioning programme'. This requires a responsible and accountable process for commissioning and monitoring of patient services that are fit for purpose and deliver quality healthcare outcomes.
- It will help to ensure that our provider services are fit for purpose and are able to respond to improvements in healthcare. For example, the 'Out of Hospital Programme' will consider each patient's needs and will make this

organisation a provider of choice. Being a provider of choice enables the Provider services to be able to respond to commissioning expectations and to offer a choice as a provider of health services to other local commissioners.

- The organisation as a whole provides a commitment to the human rights principles that shows a value in the work that we do. The concept that by valuing the human rights principles in relation to our staff and service users will demonstrate our effective commitment to quality outcomes which will improve the patient experience and provide satisfaction to our staff that they are undertaking a job that is valued.

3. How – the approach

With top level commitment, the tPCT decided to commence a long term process that looked at both the strategic/planning and operational levels of the organisation. We identified that the approach to this project should be a 'small steps' approach, which has helped the tPCT to be realistic in its approach and manage the expectations of both the staff and service users.

Our first step was to form the Chief Executive's Reference Group, which would act as the strategic planning and monitoring group for the project.

We found as we developed our project that we needed to re-identify our objectives and as a result we entered into a partnership to support our project with 'BRAP', a local voluntary sector organisation. The experience of this organisation with the equality and human rights agenda helped the tPCT to examine its position and identify the real objectives that it faced. This was achieved through BRAP undertaking a baseline exercise that identified the learning outcomes. The decision to form this partnership has benefited the tPCT in achieving a successful pathway in meeting our early objectives, and it has proved invaluable.

The BRAP report identified a need for a development programme for our staff. There was a need to provide a knowledge base in equality and human rights and to evaluate how this impacted on our approach to the project. The report underlined the need for strong leadership, a strategic approach and a communication strategy to staff and service users to underpin the project.

As a result of this baseline report, the tPCT has worked in partnership with the Department of Health, BRAP, and the British Institute of Human Rights in phase 2. The objective the tPCT identified was to try to build an infrastructure that would support the integration of the Human Rights in Healthcare project. The formation of the Chief Executive's Reference Group from the previous phase of the project had given the tPCT a strong forum that could support the project and a route of direct accountability to the Trust Board through the Chief Executive. The Group believed that a strategic approach to this project was essential and there was a requirement for a number of tools to support the integration of a human rights approach.

4. Products

On the basis of this strategic approach, the tPCT, in partnership with BRAP and with support from BIHR, has produced:

- An Equality and Human Rights Based Strategy – to inform the Equality Agenda for the tPCT and provide guiding principles that support the overall objectives of the tPCT as a healthcare provider and commissioner of healthcare services to the service users of the Heart of Birmingham. To give guidance and support to our staff in helping them deliver our services in a way that is sensitive to Equality and Human Rights.
- An Equality and Human Rights Based Impact Assessment tool – to provide a monitoring tool for the tPCT to measure equality impacts, which includes any new or existing policy, organisational change, premises and facilities, commissioning and tendering processes. The assessment tool is also available to ensure that managers are aware of their responsibility and also to provide a thought process that takes into account the patient experience and any impacts on their equality and human rights.
- A Human Rights Training and Development Programme – to provide a knowledge base for staff and also to stimulate a professional approach for staff that will directly benefit the patient experience and help them to respect the beliefs and cultures of their colleagues at work.
- Human Rights Based Single Equality Scheme – to provide a working document that informs staff and service users of the legal requirements and health inequality targets of the tPCT. This incorporates the equality impacts already responded to by the tPCT equality schemes currently in existence for race, disability and gender. The tPCT has produced a template that may be used by other NHS organisations, which includes a generic profile for the scheme and a blank action plan.

These products are now in the process of completion and are expected to be adopted by the tPCT through the normal process of governance, Staffside and Trust Board approval.

In preparing these products we considered that 'reinventing the wheel' was counterproductive. We reviewed our current tools for equality and applied a human rights based approach to them. The only exception to this was the training programme, which was developed taking account of the learning we had received from BIHR and the experience of BRAP. Examining real life case studies through our pilot training sessions with staff, we were able to identify how our service providers could make a difference. Staff engagement proved to be a vital factor in developing the final product. The training programme will be integrated as mandatory within the tPCT in the near future.

5. Key impact and learning

The tPCT has realised that the commitment to this programme of cultural change has provided an organic process. We have also realised that as our knowledge base grows we will need to respond to the changes. In addition to implementing the products provided for the infrastructure, the tPCT has also considered the next steps.

To ensure that we make best use of the human rights project, the tPCT has adopted current schemes within healthcare that are directly linked to the equality and human rights agenda. This has included the Dignity in Care and Essence of Care programmes.

By using these programmes we have been able to demonstrate to our staff that this is not just another expectation of them. The human rights based approach encourages practitioners to identify in the care planning stages the rights and expectations of the service user in their healthcare programme. This has been particularly identified in the Essence of Care programme. An example of this is the standard where the service user's privacy and dignity have been measured and monitored. It is believed that valuing this approach to healthcare creates improvements in the fundamental standards of care, and improvements and changes in healthcare are being effected.

We have expanded the tPCT Dignity in Care programme to also be inclusive of all the age ranges of service users. The tPCT has created 'Dignity Champions', which now number 120, to support the human rights project. The Dignity Champions include staff and service users of all age ranges (including a child champion). The Dignity Champions are undertaking a development programme that includes human rights, so that they are informed of their rights and responsibilities and can challenge issues should they be confronted. This approach also engenders learning through the Dignity Champions for other service users and staff. This programme is further being enhanced by the development of an interactive website and email address system for patients and staff to share experiences. The objective of this is a learning process to help improve and change the delivery of care.

6. Future plans

Communication will be a major component for the development of this programme. Therefore the equality and human rights communication strategy for the tPCT will be a major objective for the next phase.

With the need to provide performance management and help, support and advice within this project, the tPCT is considering the resources required to manage this. There is a current proposal within the tPCT to consider expanding the manpower through the creation of an Equalities Unit.

7. Contacts

For further information on Heart of Birmingham Teaching PCT's work on human rights based approaches please contact:

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Case study E

Tees, Esk and Wear Valleys NHS Trust/developing partners

1. Who – overview of Trust

Tees, Esk and Wear Valleys (TEWV) NHS Trust was formed on 1 April 2006 following the Merger of County Durham and Darlington Priority Services NHS Trust and Tees and North East Yorkshire NHS Trust. The new Trust provides mental health and learning disabilities services as well as addictive behaviour services. It cares for a population of more than 1.4 million living across County Durham, the Tees, Esk and Wear Valleys and North East Yorkshire. TEWV NHS Trust employs approximately 5,000 staff.

The Trust's Research and Development Department collaborated on the ARISE (Accessible Research Involvement for Service Evaluation) Project with service users and the people who care for them. This was a research and personal/professional development programme to increase the diversity and meaningful involvement in the research and evaluation process of people who have long term mental health needs and the people who care for them. Members of the ARISE Project devised their research questions directly from their lived experience, through their stories (narrative accounts), which were shared with other members when they felt comfortable and safe enough to do so.

The narratives and subsequent research from which our interest in Human Rights developed were told by two members of the ARISE Project: Dawn Owen, when she related her experience of being compulsorily detained under the Mental Health Act; and Elaine Randall, who related her experience of being assessed on her capacity to parent when she developed mental health needs.

Members of the ARISE Project applied for and were subsequently granted funding from the Department of Health's Social Enterprise Fund and established 'developing partners' – a service user-led social enterprise – in 2007.

2. Why – reason for involvement

With the research in mind, members of the ARISE Project contacted the British Institute of Human Rights (BIHR) to request Human Rights Training prior to undertaking the research. Having signed up to their newsletters we were aware of the plan to establish the Commission for Equality and Human Rights, and were told about the prospect of BIHR working in partnership with the Department of Health to develop a Framework for Human Rights within Healthcare. BIHR asked if the then Tees and North Yorkshire NHS Trust would be willing to participate in this process.

Senior members of the organisation were contacted and after meetings and discussions the Lead for Patient and Public Involvement at that time, Harry Cronin, was supportive of the project as were other members of the Board, and permission was granted to proceed. This came at an opportune time for the organisation given the recent merger and the commitment to work towards Foundation Trust status.

Following the achievement of this status, the NHS Trust and developing partners intend to continue their human rights based work. The project team has already engaged with the Trust's newly appointed Chief Executive, who has actively supported the team's efforts to date, as they are in line with future plans to create two single, Trust-wide, human rights based charters for people who use services and the people who care for them.

3. How – the approach

Following the first round table meeting, a decision was made to review and rewrite both Charters currently in existence in each locality of the Trust from a human rights perspective. This would form one charter, with the people who use services and the people who care for them effectively leading this work in accordance with a human rights based approach and its emphasis on participation and on targeting the most socially excluded people first.

The objectives of the second phase of the project were to:

- Engage with and develop the diverse groups that would contribute to the creation of the TEWV charter (and out of these, establish Writing and Reference Groups);
- Support the Trust to engage widely with people who use services and the people who care for them in all aspects of decision making; and
- Contribute to the promotion of Human Rights both locally and nationally.

Members of both Groups would receive experiential Human Rights Training focusing on issues relevant to people who have mental health needs and/or a learning disability. The Writing Group would undertake the rewrite, with the Reference Groups reviewing the work and feeding back any concerns or recommendations. This would ensure that the needs and/or wants of a broad range of socially excluded people and groups would be taken account of in the development of the Charter.

Human rights identified by group members as relevant to this project include:

- the right to respect for family and private life;
- the right to liberty;
- the right not to be tortured or treated in an inhuman or degrading way; and
- the right to freedom of expression.

To achieve this, developing partners, in collaboration with the Trust's Research and Development team, achieved the following:

- Contacted and established relationships with all individuals and groups identified as key project stakeholders. Groups with whom the project team has established contact with include:
  - people who have a physical disability and long term physical health needs;
  - women who have young children;
  - people who have long term mental health needs;
  - people who have a learning disability;
  - people from rural locations;
  - people who are members of Black and Minority Ethnic (BME) Groups;
  - people who are seeking asylum and/or are refugees;
  - people who are members of the Lesbian, Gay, Bisexual and Trans-gendered Community;
  - people who have experienced sexual abuse and violence;
  - people who have committed offences;
  - people who have spent time in prison;
  - people who have used illicit substances/drugs;
  - people who define themselves as Travellers/Gypsies; and
  - children and young people.
- They developed the capacity of groups and project members by:
  - continuing experiential, user-led research and training;
  - providing active developmental support (e.g. assistance in the drafting of business cases and funding bids) to reference groups such as people who are refugees and/or asylum seekers and people who are members of BME groups; and
  - entering into partnerships with other local organisations, such as Groundwork, to formulate effective networks supporting the aspirations of people who experience social exclusion.

Practical examples of this work include the development of a business case by developing partners for and with people who are refugees and asylum seekers to apply for funding to establish a community garden. People would be supported to build and develop the facility for themselves. By doing so they would develop their social and working relationships, improving their communication and interpersonal skills and their mental health and well-being in the process.

In addition, the project team has worked with people from BME groups such as members of the Chinese community, to develop a business case for the provision of holistic mental health services in partnership with Newcastle's Chinese Healthy Living Centre. This would include the formation of a tele-counselling service delivered in Mandarin and Cantonese and embedded within the local community.

To develop a better understanding of human rights and their applications to decision making and service delivery, developing partners and the TEWV NHS Trust research team are currently planning the delivery of an experiential human rights based training module in partnership with the Playback Theatre Company based in York and the British Institute of Human Rights. Training will be offered to the Writing and Reference groups and to employees of the NHS Trust.

Completion of both phases of the Human Rights Framework project has enabled the NHS Trust and developing partners to promote Human Rights locally and also to increase the participation of diverse groups in the decision making processes of their organisations.

4. Products

The TEWV NHS Trust and developing partners' key deliverable from this project (the TEWV Charter) has a completion timeline beyond the end of the second phase of the Human Rights in Healthcare project. However, sub-products, such as the business justification approach for community groups and the generic business case for the development of a Charter, have been completed locally and will form the basis of future project plans.

5. Key impacts and learning

This project has the potential to make a considerable impact on the treatment and care of people using the Trust's services and on the people who care for them. Work undertaken on this project in the past 12 months has enabled participants to learn from both their achievements and their mistakes, which is an essential part of the learning process. The main learning outcomes are outlined below:

- It is important to combine 'top down' and 'bottom up' approaches, so that staff – as well as people who use services and the people who care for them – have an awareness of how Human Rights principles can be applied. This will facilitate improvements in care.
- Project sponsors and the project team must ensure that there are adequate project resources (funding and people) to deliver the project at an early stage in the project.
- Strong relationships between key players involved in the project and the alignment of objectives and other conflicting priorities is essential.
- Senior level commitment and buy-in is essential for project success, and must be secured at the earliest possible point.

One key impact of this project has been an increased level of involvement with people who are drawn from diverse backgrounds, which in turn has increased the richness and diversity of our experience.

6. Future plans

- To develop the experiential Human Rights Training in partnership with the Playback Theatre Company and members of diverse groups.
- To disseminate and deliver the training in order to facilitate awareness of their Human Rights among those people and groups who are most at risk of experiencing social exclusion, stigma and discrimination.
- To develop and maintain involvement with the three working groups, which the TEWV NHS Trust is in the process of establishing following its successful application for Foundation Trust status, to improve the experience of people who use services, the people who support them to do so and the engagement with the community it aims to serve.
- To continue the involvement with and support of members of diverse groups working in partnership on projects that are of importance to them, such as the development of the Community Garden and the establishment of services that meet the needs of minority groups of the population.

Members of developing partners will also undertake their own evaluation of the work they are doing to include the Human Rights in Healthcare Project, and to this end they have established relationships with members of York St John University. This will be undertaken using a Community Psychology perspective and will draw upon the philosophies of a liberation perspective, including the adoption of participatory action research as the methodology of choice. This will assess the impact of the work being undertaken at the personal, interpersonal, organisational and community levels through the development of quantitative and qualitative outcome measures that are of relevance to all the individuals and groups involved.

7. Contacts

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developing partners
'recovery through discovery'

Glossary

Human Rights Based Approach (HRBA)

A human rights based approach is one where the realisation of human rights principles is a central aim in policy and planning, where staff and patients are empowered and involved in achieving these, where accountability is clear and the most vulnerable groups are prioritised. It is the process by which human rights principles are put into practice.

European Convention on Human Rights

The European Convention on Human Rights is a regional human rights treaty made by the member states of the Council of Europe after the Second World War. The Convention established a European Court of Human Rights, based in Strasbourg, France. The UK signed up to the Convention in 1951.

Human Rights Act

The Human Rights Act became effective in the UK in October 2000. It brought most of the rights contained in the European Convention on Human Rights into UK law. The Act places a duty on all public authorities in the UK to act in accordance with the rights protected by the Convention.

Public authority

The term 'public authority' is not fully defined in the Human Rights Act, but it should be interpreted broadly. It includes any person or organisation 'whose functions are of a public nature'. Strategic Health Authorities, NHS Trusts, Primary Care Trusts and NHS Foundation Trusts are all included. The term covers private organisations such as companies or charities, but only when they are carrying out a public function.

Absolute rights

These rights may never be interfered with, not even in times of war or national emergency. Lack of resources is never an excuse for interfering with an absolute right. An example is Article 3 (the prohibition of torture, inhuman and degrading treatment).

Limited rights

These rights are not absolute. They may be limited in certain strictly defined circumstances. An example is Article 5 (the right to liberty and security). This right may be limited in circumstances where someone is lawfully detained on the basis that the person has committed a crime or is suffering from serious mental health problems.

Qualified rights

These rights are not absolute. They may be interfered with so long as the interference is (1) prescribed by law, (2) for a legitimate purpose, (3) necessary and (4) proportionate (see 'proportionality' below). An example is Article 8 (the right to respect for private and family life, home and correspondence).

Proportionality

A proportionate response to a problem is one that is appropriate and not excessive in the circumstances. The expression commonly used to capture this meaning is 'you should not use a sledgehammer to crack a nut'.

Positive obligations

These obligations require authorities to take proactive steps to protect human rights. Positive obligations are often contrasted with negative obligations, which require authorities to refrain from action that may violate human rights.

Further Resources

Health-specific resources

Croft J. *Health and Human Rights – A guide to the Human Rights Act 1998*, The Nuffield Trust, 2003 (available from www.nuffieldtrust.org.uk)

Lilley R, Lambden P and Newdick C. *Understanding the Human Rights Act – A toolkit for the health service*, Radcliffe Publishing, 2001

Mental Health Act Commission. *Making it Real – A human rights case study*, January 2007 (available from www.mhac.org.uk)

NHS Litigation Authority's Human Rights Act Information Service, www.nhsla.com/humanrights

Wilkinson R and Caulfield H. *The Human Rights Act – A practical guide for nurses*, Whurr Publishers, 2000

World Health Organization. *25 Questions and Answers on Health and Human Rights*, Health and Human Rights Publications Series, July 2002 (available from www.who.int)

Non-health-specific resources

Guides/toolkits

British Institute of Human Rights. *Your Human Rights* Guides, 2006 (available from www.bihr.org.uk)

Ministry of Justice. *A Guide to the Human Rights Act 1998* (3rd edition), October 2006

Ministry of Justice. *Human Rights: Human Lives – A handbook for public authorities* (available from www.justice.gov.uk/guidance/humanrights.htm)

Office of the Deputy Prime Minister. *Guidance on contracting for services in the light of the Human Rights Act 1998*, 2005 (available from www.communities.gov.uk)

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Reports

Age Concern. *Rights for Real – Older People, Human Rights and the CEHR*, May 2006

Amnesty International Irish Section. *Our Rights, Our Future, Human Rights Based Approaches in Ireland – Principles, policies and practice* (available from www.amnesty.ie)

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Act (available from www.carersuk.org)

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Watson J. *Something for Everyone – The impact of the Human Rights Act and the need for a Human Rights Commission*, The British Institute of Human Rights, December 2002 (available from www.bihr.org.uk)

Books

Clements L (ed.). *Human Rights Act – A success story?*, Blackwell, 2005

Drabble R, Maurici J and Buley T. *Local Authorities and Human Rights*, Oxford University Press (OUP), 2004

Harris DJ, O'Boyle M and Warbrick C. *Law of the European Convention on Human Rights*, Butterworths, 2003

Harvey C (ed.). *Human Rights in the Community – Rights as agents for change*, Hart Publishing, 2005

Hoffman D and Rowe J. *Human Rights in the UK – An introduction to the Human Rights Act 1998*, Pearson Longman, 2006

Leach P. *Taking a Case to the European Court of Human Rights* (2nd edition), OUP, 2005

Lester A and Pannick D. *Human Rights Law and Practice*, Butterworths, 2004

Simor J and Emmerson B QC. *Human Rights Practice*, Thomson, Sweet & Maxwell, Dec 2000

Starmer K. *European Human Rights Law – The Human Rights Act 1998 and the European Convention on Human Rights*, Legal Action Group, 1999

Wadham J, Mountfield H, Edmundson A and Gallagher C. *Blackstone's Guide to the Human Rights Act 1998*, OUP, 2007

Useful Websites

Audit Commission
www.audit-commission.gov.uk

British and Irish Legal Information Institute (useful source of case law)
www.bailii.org

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

Department of Health
www.dh.gov.uk

Equality and Human Rights Commission
www.equalityhumanrights.com

European Court of Human Rights
www.echr.coe.int

Joint Committee on Human Rights (Houses of Parliament)
www.parliament.uk/parliamentary_committees/joint_committee_on_human_rights.cfm

Justice
www.justice.org.uk

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

Mental Health Act Commission
www.mhac.org.uk

Ministry of Justice
www.justice.gov.uk/whatwedo/humanrights.htm

NHS Litigation Authority
www.nhsla.com

Office of the UN High Commissioner for Human Rights (United Nations)
www.ohchr.org

United Nations Home Page
www.un.org

World Health Organization
www.who.int

Endnotes

i Targets include:

- Challenge discrimination, promote equality and respect human rights (C7)
- Have systems in place to ensure that staff treat patients, their relatives and carers with dignity and respect (C13)

National Standards, Local Action – Health and Social Care Standards and Planning Framework 2005/06–2007/08 (available from www.dh.gov.uk)

ii *Commissioning a Patient-Led NHS* www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4116716

iii Dignity in Care www.dh.gov.uk/en/Policyandguidance/Healthandsocialcaretopics/Socialcare/Dignityincare/index.htm

iv Patient choice www.dh.gov.uk/en/Policyandguidance/PatientChoice/index.htm

v *Our Health, Our Care, Our Say – A new direction for community services* – www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4127453

vi Participating Trusts are: Mersey Care NHS Trust, Southwark Health and Social Care, Surrey and Borders Partnership NHS Foundation Trust, Heart of Birmingham Teaching PCT and Tees, Esk and Wear Valleys NHS Trust

vii Through the Mental Health Act Commission's 'Making it real – a human rights case study' project, 2007

viii www.udhr.org

ix Department for Constitutional Affairs Human Rights Conference, 30 October 2006

x World Health Organization. *25 Questions and Answers on Health and Human Rights*, Health and Human Rights Publications Series, July 2002

xi Constitution of the World Health Organization, www.who.int

xii Targets include:

- Challenge discrimination, promote equality and respect human rights (C7)
- Have systems in place to ensure that staff treat patients, their relatives and carers with dignity and respect (C13)

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xiii *Commissioning a Patient-Led NHS* www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4116716

xiv Dignity in Care www.dh.gov.uk/en/Policyandguidance/Healthandsocialcaretopics/Socialcare/Dignityincare/index.htm

xv Patient choice www.dh.gov.uk/en/Policyandguidance/PatientChoice/index.htm

xvi *Our Health, Our Care, Our Say – A new direction for community services* – www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4127453

xvii Article 12, International Covenant on Economic, Social and Cultural Rights. More about the right to the highest attainable standard of health can be found at www.who.int/hhr

xviii Text of international human rights instruments can be found at www2.ohchr.org/english/law/

xix Full text available from www.coe.int

xx Joint Committee on Human Rights, 6th report, *The Case for a Human Rights Commission*

xxi *R (H) v Mental Health Review Tribunal, North and East London Region* (2001)