Human Rights in Health and Social Care: useful resources

The Human Rights Review 2012

The Human Rights Review concludes that people in England and Wales have their human rights upheld in many ways. But more could be done to improve human rights protections for some – including people using care services. It says that the core principles of human rights – dignity, equality and respect for everyone – should get more emphasis.

The review shows that many public authorities have a good track record in using human rights principles to protect the public. As a result, people are by and large able to live the lives that they choose and may take their human rights for granted. However, the review also finds that some public authorities are not using human rights principles as much as they could to protect people. Some of the problems highlighted include the abuse of vulnerable people in care; misuse of personal data by the state; treating victims of human trafficking as criminals; threats to the right to peaceful protest; and lack of support for some victims of crime.

The Commission says that putting human rights principles into public service practice is in the public interest. The evidence shows that public bodies taking human rights seriously treat people better. The law already expects public bodies to do this and taking a 'human rights approach' can be cost effective.

The following sections explore key issues for the health and social care sector:

**Article 3 - Freedom from torture and inhuman and degrading treatment or punishment**

People who use health and social care services may be at risk of inhuman or degrading treatment

The review shows that:

- People who are receiving health or social care from private and voluntary sector providers do not have the same level of direct
protection under the Human Rights Act as those receiving it from public bodies.

- Local authorities do not make the most effective use of the scope that they have for protecting and promoting human rights when commissioning care from other providers.
- Better inspections of all care settings are needed.

**Article 8 - The right to respect for private and family life, home and correspondence**

Not enough is done to protect the dignity and autonomy of people who use health and social care services

The review shows that:

- People who are receiving health and social care from private and voluntary sector providers do not have the same guaranteed level of protection under the Human Rights Act as those receiving it from public providers.
- There is a lack of awareness, both within local authorities and among care staff, of how human rights obligations apply in a health and social care setting.
- Better complaints systems are needed across the health and social care sectors.
- Increased pressure on health and social care budgets puts the Article 8 rights of services users at risk.

As part of our work on the Human Rights Review, we gathered examples of how human rights have been used to improve the way public services are managed and delivered. These real life cases show how human rights have been used to deal with the difficult or distressing situations that individuals or groups have experienced. We have also produced three short films illustrating some of the issues, including the Mersey Care film and another focusing on Macmillan Cancer Support's human rights-based standards.

**Practical human rights guidance for those working on the health and social care sector**

We have drawn together a range of good practice and learning material on human rights for people working in the public sector or in organisations carrying out public functions. A key feature of the resources is that, rather than simply listing and linking to existing guidance, we have produced short, accessible summaries of each
publication to highlight their key human rights messages and other essential information.

While the guidance we have reviewed here covers a wide range of issues and different areas of the public sector, there are a number of common and recurring themes that should be applicable to everyone.

- **Positive obligations** - The Human Rights Act means that all public authorities have an obligation to ensure that people’s rights are respected in all that they do.
- **Human rights as an aid to decision making** - Human rights principles can strengthen decision-making at both corporate and service levels and help to prevent service failure. Human rights can provide an important ‘check and balance’ - helping to determine proportionate action, especially where the interests of different parties conflict.
- **Proportionality** - The principle of proportionality is at the heart of a human rights framework. This can be summarised as 'not using a sledgehammer to crack a nut'. It ensures that any restriction of a person's human rights is kept to a minimum.
- **Assessing and managing risk** - Human rights can be used to ensure that risk management practice is lawful, balances the interests of all those involved, and is proportionate. Human rights can be infringed when public authorities are excessively risk averse as well as when they fail to act to prevent risk.
- **User and public involvement** - The inclusion of service users is an essential part of a human rights based approach.
- **Equality and good relations** - Viewing equality issues through a human rights lens can help to shift the emphasis from negative compliance to positive cultural change.
- **Building a human rights culture** - Leadership, senior level commitment and engagement, and effective training in human rights principles and practice are fundamental to any organisation committed to compliance with the Human Rights Act.

There is specific guidance for both the [health sector](#) and for those working in [social care](#).
Home Care Inquiry

Our inquiry into the protection and promotion of human rights of older people looked at the effectiveness of the English care and support system in protecting and promoting the human rights of older people requiring or receiving home based care and support.

The nature of social care is changing rapidly with a greater emphasis on personalised services and choice. The majority of social care services are already delivered by private sector agencies, either via contract with local authorities or directly with individuals through a mix of public and private funding.

Given the nature and pace of these changes it is important to make sure that the legislative, regulatory and quality control systems we have in place are able to keep up, and the elements in place make sure that human rights are fully protected.

We have drawn up a series of principles for good home care which may provide a useful starting point for commissioners and providers of services who are thinking about adopting a human rights approach to home care.

Over the next few months, we will be implementing the recommendations of the Home Care Inquiry. This will include publication of a consumer guide for older people and their families, production of resources for the voluntary and community sector and training and guidance on human rights in the commissioning of care services.