

Human rights Articles relevant to health and social care

The [Human Rights Act 1998](#) sets out human rights in a series of 'Articles'. Each Article deals with a different right. These are all taken from the European Convention on Human Rights and are commonly known as 'the Convention Rights'.

Human rights cannot be given away or taken away from you by anybody – although some rights (non-absolute) can be restricted in certain circumstances but only if the Government can show that the restriction is:

- lawful
- legitimate (there is a genuine aim or reason for doing it)
- proportionate (it's the least restrictive way to meet that aim).

For example, a person's right to liberty (Article 5, European Convention on Human Rights) can be restricted if they are detained under the Mental Health Act, making this a non-absolute right.

The following table shows which regulations in the Health and Social Care Act 2008 link to the European Convention on Human Rights Articles incorporated within the Human Rights Act. We can use these regulations to take action to uphold aspects of people's human rights.

We also show relevant examples and where this links to specific quality statements in the new assessment framework.

Article/protocol and right:

[Article 2: Right to life](#)

Regulation:

- [12 Safe care and treatment](#)

Examples:

Lack of access to food and hydration.

Failure to provide appropriate safe care.

[K G Dehydration Case](#)

[Who I am matters](#)

[LeDeR Report 2021](#)

Key question and quality statement element:

Safe: We concentrate on improving people's lives while protecting their right to live in safety, free from bullying, harassment, abuse, discrimination, avoidable harm and neglect. We make sure we share concerns quickly and appropriately.

Article/protocol and right:

[Article 3: Freedom from torture and inhuman or degrading treatment](#)

Regulations:

- [13 Safeguarding](#)
- [10 Dignity and respect](#)

- [17 Good governance](#)

Examples:

Systemic abuse of people's human rights and failures to safeguard people from harm:

[Winterbourne View Response](#)

[Mid Staffordshire Public Inquiry](#)

Key question and quality statement element:

Safe: We concentrate on improving people's lives while protecting their right to live in safety, free from bullying, harassment, abuse, discrimination, avoidable harm and neglect. We make sure we share concerns quickly and appropriately.

Article/protocol and right:

[Article 4: Freedom from slavery and forced labour](#)

Regulations:

- [17 Good Governance](#)
- [13 Safeguarding](#)

Examples:

[The vulnerability of paid migrant live-in care workers in London to modern slavery](#)

Key question and quality statement element:

Caring: We care about and promote the wellbeing of our staff, and we support and enable them to always deliver person-centred care.

Article/protocol and right:

[Article 5: Right to liberty and security](#)

Regulations:

- [11 need for consent](#)
- [13 Safeguarding](#)

Examples:

Restrictive practices where people are deprived of their liberty unlawfully, for example, being in seclusion for extensive periods without proper review.

[Unlawful Restriction S N Ruling](#)

Being overly restricted with use of medication or use of physical restraints.

[Out of sight – who cares?](#)

Key question and quality statement element:

Safe: We work with people to understand and manage risks by thinking holistically so that care meets their needs in a way that is safe and supportive and enables them to do the things that matter to them.

Effective: We plan and deliver people's care and treatment with them, including what is important and matters to them. We do this in line with legislation and current evidence-based good practice and standards.

Caring: We promote people's independence, so they know their rights and have choice and control over their own care, treatment and wellbeing.

Article/protocol and right:

[Article 8: Respect for your private and family life, home and correspondence](#)

Regulations:

- [9 Person-centred care](#)
- [10 Dignity and respect](#)

Example:

Restriction of visitors in care homes during the pandemic.

[Protecting Human Rights in care settings](#)

Key question and quality statement element:

Caring: We treat people as individuals and make sure their care, support and treatment meets their needs and preferences.

Example:

Prevention of developing relationships and expression of sexuality.

[Sexual safety and empowerment guidance](#)

Key question and quality statement element:

Safe: We work with people to understand and manage risks by thinking holistically so that care meets their needs in a way that is safe and supportive and enables them to do the things that matter to them.

Regulation:

- [11 Need for consent](#)

Example:

Use of blanket DNACPR decisions that are not made in discussion with the person or their nominated representatives.

[Protect, Connect, Respect](#)

Key question and quality statement element:

Effective: We tell people about their rights around consent and respect these when we deliver person-centred care and treatment.

Article/protocol and right:

[Article 9: Freedom of thought, belief and religion](#)

Regulations:

- [9 Person-centred care](#)
- [10 Dignity and respect](#)

Examples:

Inpatient setting or care home obstructing, preventing or going against personal religious practices.

[Culturally appropriate care](#)

Key question and quality statement element:

Caring: We treat people as individuals and make sure their care, support and treatment meets their needs and preferences. We take account of their strengths, abilities, aspirations, culture and unique backgrounds and protected characteristic.

Article/protocol and right:

[Article 12: Right to marry and start a family](#)

Regulations:

- [9 Person-centred care](#)
- [10 Dignity and respect](#)
- [11 Need for consent](#)

Examples:

Supporting people to marry and have a family.

[Right to marry case example BIHR](#)

Key question and quality statement element:

Caring: We treat people as individuals and make sure their care, support and treatment meets their needs and preferences. We take account of their strengths, abilities, aspirations, culture and unique backgrounds and protected characteristics.

Article/protocol and right:

[Article 14: Protection from discrimination in respect of these rights and freedoms](#)

Regulations:

- [13 Safeguarding](#)
- [10 Dignity and respect](#)

Examples:

Failing to provide services that meet the needs of people from protected groups so that care outcomes are equal despite equality characteristics.

[Protection from discrimination](#) BIHR example

[Safety, equity and engagement in maternity services](#)

Key question and quality statement element:

Responsive: We actively seek out and listen to information about people who are most likely to experience inequality in experience or outcomes. We tailor the care, support and treatment in response to this.

Article/protocol and right:

[Protocol 1, Article 1: Right to peaceful enjoyment of your property](#)

Regulations:

- [9 Person-centred care](#)
- [10 Dignity and respect](#)

Examples:

Blanket bans on use of possessions, for example use of telephones.

[Right to enjoy possessions](#) example BIHR

Key question and quality statement element:

Caring: We treat people as individuals and make sure their care, support and treatment meets their needs and preferences.

Article/protocol and right:

[Protocol 1, Article 2: Right to education](#)

Regulation:

- [9 Person-centred care](#)

Examples:

Not providing adequate educational support for children and young people in care settings.

[Education in inpatient children and young people's mental health services](#)

Key question and quality statement element:

Caring: We treat people as individuals and make sure their care, support and treatment meets their needs and preferences. We take account of their strengths, abilities, aspirations, culture and unique backgrounds and protected characteristics.

Article/protocol and right:

[Protocol 1, Article 3: Right to participate in free elections](#)

Regulation:

[9 Person-centred care](#)

Examples:

Not providing opportunities for people to exercise their right to vote.

[Care Home election](#) example BIHR

Key question and quality statement element:

Caring: We treat people as individuals and make sure their care, support and treatment meets their needs and preferences. We take account of their strengths, abilities, aspirations, culture and unique backgrounds and protected characteristics.

Article/protocol and right:

Any or all of these articles or protocols

Regulation:

- [17 Good governance](#)

Examples:

Systemic failures where the leadership has failed to provide the governance for a rights-based culture and therefore where closed cultures can thrive.

[Winterbourne View Response](#)

[Mid Staffordshire Public Inquiry](#)

Key question and quality statement element:

Well-led: We have a shared vision, strategy and culture. This is based on transparency, equity, equality and human rights, diversity and inclusion, engagement, and understanding challenges and the needs of people and our communities in order to meet these.

Relationship with UN Conventions on human rights

The UK is a signatory to several UN conventions on human rights. We aim to ensure that our approach to regulation is compatible with these conventions and furthers the rights of people in line with these conventions.

Our Children's Services team and our Health and Justice team undertake programmes of joint inspections with other bodies. The UN Convention on the Rights of the Child is integrated into these assessments. This includes:

- The right to a childhood (including protection from harm and the right to leisure, play, culture and education).
- The right to be healthy (including access to medical care).
- The right to be treated fairly (including changing laws and practices that are unfair on children as well as discrimination against children, for example on grounds of ethnicity, gender, religion or disability).
- The right to be heard (including considering children's views).

Services for children and young people are also 'core services' that we regulate in acute hospitals, community health or mental health services. When we regulate GP practices and GP out-of-hours services, we look at the services provided to mothers, children and young people.

The UN Convention on the Child Committee's UK report (2016) identified persistent inequality in access to health services and health outcomes for specific groups of children and young people, for example those from Roma, Gypsy, Traveller, and other ethnic minority communities, migrant children and young people, children living with HIV/AIDS, in care and custody, in poverty and deprived areas and lesbian, gay, bisexual, trans and intersex young people.