



Local Government &
Social Care
OMBUDSMAN

Human Rights issues for Care Providers

October 2021

Human rights and the Ombudsman's role

Background

Human rights are the basic rights and freedoms that belong to everyone. They apply regardless of where you are from, what you believe or how you choose to live your life. They can never be taken away, although they can sometimes be restricted – for example if a person breaks the law, or in the interests of national security. These basic rights are based on shared values like dignity, fairness, equality, respect and independence.

The European Convention on Human Rights (ECHR) says we all have the right to life, freedom from torture and inhuman or degrading treatment or punishment, liberty and security of person, a fair hearing, respect for private and family life, freedom of expression, freedom of religion, freedom from forced labour, and education. The UK signed up to the ECHR and the Human Rights Act 1998 incorporated it into UK law to enable people to claim their rights at home, through the courts if necessary.

The Human Rights Act requires all local authorities - and other bodies carrying out public functions - to respect and protect individuals' rights.

The language and ideas of human rights are not exclusively for lawyers and courts. We consider human rights in our investigations, say when they are relevant ('engaged') and point out when a council, or a body acting for a council, has not had regard to them. We treat consideration of human rights like any another legal requirement and highlight failures in our findings.

Do care providers have to comply with the Human Rights Act?

Section 6 of the Human Rights Act 1998 (HRA) says it is unlawful for public authorities to act in a way which is incompatible with a convention right. Councils are public authorities, but what about other bodies, like care homes or home care providers?

Section 73 of the Care Act 2014 says CQC regulated care providers are acting as public authorities for the purposes of the HRA when they provide care or support if:

- > The care or support is arranged or paid for (in part or full) by a council and
- > the care is arranged or provided under sections 2,18,19,20,38 or 48 of the Care Act 2014

This means that if a local authority funds/arranges a person's care then the care provider is a public authority and so the person gets the protection of the Human Rights Act.

Self-funders (that is, people who arrange and pay for their own care privately, with no involvement from the local authority) do NOT get the protection of the Human Rights Act. This means where there is no local authority involvement in commissioning the care, we do not refer to the Human Rights Act when determining a complaint.

When we are considering complaints from self-funders we can and do refer to other legal provisions which have some similarity with human rights law. For example, Regulation 10 of the Health and Social Care 2009 (Regulated Activities) Regulations 2014 which says people using care services should be treated with dignity and respect including ensuring their privacy and autonomy.

Human rights and adult social care

Some examples below where we may look at human rights issues in our casework involving council-funded placements or home care:

- > **Article 2** of the EHCR says everyone's life must be protected by law. This is a limited right, with exceptions. Article 2 may be relevant where a care home is involved with end of life care planning and DNACPR notices/or orders. These are not court orders but are recommendations by clinicians. The Department of Health and Social Care issued a statement in April 2020 stating blanket DNACPR notices were unacceptable in care plans.
- > **Article 3** says everyone has the right not to be tortured or subject to inhumane or degrading treatment. There is a high threshold to establish treatment is cruel, inhuman or degrading and so we consider carefully the severity and take care when using these terms. Article 3 may be relevant in care settings where restraint is used and in complaints involving safeguarding investigations or complaints about poor care which may amount to serious neglect.
- > **Article 8** says everyone has the right to respect for private and family life, their home and correspondence. It is of relevance to complaints which involve separating a married couple when one person moves into a care home, banning visitors to care homes, CCTV monitoring, privacy during visits and calls.
- > **Article 9** protects freedom of thought, conscience and religion. This might be relevant in a complaint about not meeting a person's dietary preferences or a failure to facilitate religious practices

**Local Government and Social Care
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PO Box 4771
Coventry
CV4 0EH

Phone: 0300 061 0614

Web: www.lgo.org.uk

Twitter: [@LGOmbudsman](https://twitter.com/LGOmbudsman)