



Midlands and Lancashire
Commissioning Support Unit

Human Rights Policy

**NHS Midlands and Lancashire Commissioning Support
Unit**

December 2018

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1.0 Policy Statement:

To ensure that all employees, patient and public groups are protected by human rights legislation. To ensure that the organisation meets its obligations under the Human Rights Act 1998 and staff have an understanding of how this applies in their everyday work.

1.1 Who the policy applies to:

Employer, office holders and employees.

2.0 Introduction:

This policy is applicable to employees of the organisation. A separate Equality and Diversity policy is available and should be read in conjunction with this policy.

2.1 Independencies:

- Equality and Diversity Policy and Strategy
- Human Resources Policies
- Safeguarding Policies

As an employer, NHS Midlands and Lancashire Commissioning Support Unit sets high standards of performance and behaviour from the people it employs. As an employer, NHS Midlands and Lancashire Commissioning Support Unit is committed to equality and upholding human rights. The seriousness of this commitment is reflected in its policies and procedures. It recognises that any breach of human rights is unacceptable and unlawful

This policy has been developed in accordance with the following legislation:

- Human Rights Act 1998
- Equality Act 2010
- Equality Delivery System²
- The Health and Social Care Act 2012
- Mental Capacity Act 1983 amended 2005 and 2007
- Care Act 2014
- The Children's Act 2004
- PREVENT Strategy
- Modern Day Slavery Act 2015

2.2 Purpose / Rational:

To provide a framework to ensure that all employees and prospective employees are following the legal obligations as set out in the Human Rights Act 1998 and Equality Act 2010.

2.3 Responsibilities:

The Accountable Officer will be accountable for the implementation of this policy.

In cases where an employee makes a complaint of a human rights breach, Human Resources team will support an investigation.

In cases where a patient or patients representative makes a complaint of a human rights breach, the Customer Care team will support an investigation.

Managers and Supervisors are responsible for:

- Ensuring that this policy is implemented throughout their areas of responsibility and in assisting the monitoring for mandated requirements
- Monitoring of mandated contract requirements for commissioned services relating to the Human Rights Act
- Ensuring that all the staff for whom they are responsible are aware of their responsibilities under this policy
- Promoting a culture where discrimination is unacceptable and equality and human rights are promoted
- Ensure that mandated equality legislation is implemented within the NHS Midlands and Lancashire Commissioning Support Unit and its policies

All employees are responsible for:

- Familiarising themselves with the Human Rights Policy and related Equality and Diversity Policy and for complying with it
- Employees should inform their line manager or follow a Reporting a Concern Policy / Safeguarding Policies if they know or suspect that human rights breaches are occurring
- Not induce or attempt to induce other employees to practice discrimination

3.0 Human Rights

3.1 Background to Human rights legislation:

The Human Rights Act 1998 sets universal standards to ensure that a person's basic needs as a human being are recognised and met. The act includes 16 basic rights. The rights relating to health care and commissioning include:

- 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
- The right to a fair trial
- The right to respect private and family life, home and correspondence
- The right to freedom of thought, conscience and religion
- The right not to be discriminated against in relation to the enjoyment of any of the rights contained in the European Convention

Human rights belong to everyone. They are the basic rights that protect us in order to live our lives in safety, with dignity and respect regardless of our backgrounds. Human rights enable us to choose how we live our life. Human rights are based on a number of core values including:

- **Fairness**
- **Respect**
- **Equality**
- **Dignity**
- **Autonomy**

These values are referred to as the FREDA principles.

Human rights are important in the NHS as the majority of people will come into contact with NHS services at some point of their lives – usually when they are most vulnerable.

Putting human rights at the centre of policy development, employment and service provision and commissioning decisions ensures that services are designed and delivered for everyone, ensuring that patients, patients relatives, carers and staff experiences reflect the core values of fairness, respect, equality, dignity and autonomy. This improves compliance with the Human Rights Act and reduces complaints and risk of legal challenge.

Development of current human rights legislation dates back to 1948 with the United Nations proclaimed Declaration of Human Rights. Within this, the international community agreed a range of human rights treaties. These covered civil, political, economic, social, cultural and environmental rights. Following this, the European Convention on Human Rights further developed rights under the European Convention of Human Rights in 1950.

In terms of UK law, the Human Rights Act 1998 incorporated most of the rights within the European Convention on Human Rights. It was developed to bring a 'human rights culture' to public services. A main change was that people no longer had to take their complaints to the European Court of Human Rights but could take challenges through UK courts.

3.2 Types of rights:

Human Rights can be categorised within three types:

1. Absolute rights

These can not be limited or interfered with by any organisations (including the NHS).

2. Limited rights

These can be limited in specific circumstances where there is a clear reason and may be linked with other legislation such as the Mental Health Act 1983 amended 2007 and Mental Capacity Act 2005.

3. Qualified rights

This can be limited by a wide range of circumstances which may include where the protection of rights may affect the rights of others.

In addition to human rights, the UK has ratified a number of international human rights treaties, many covering economic, social and cultural rights as well as civil and political rights. Although these are not part of domestic law, they help guide policies and interpretation of existing legislation.

3.3 Human Rights Articles most relevant in Health Care

NHS Midlands and Lancashire Commissioning Support Unit have a duty to comply with the Human Rights Act to provide protection to:

- Article 2: Right to life.
This is an absolute right and the state has a duty to not take away anyone's life and a positive duty to take reasonable steps to protect life
- Article 3: Right to be free from torture, inhuman and degrading treatment.
This duty is an absolute right and treatment must be very severe. The state has a positive duty to protect people from inhuman treatment and degrading treatment
- Article 5: Right to liberty.
This is a limited right and can be breached in certain and very specific circumstances
- Article 6: Right to a fair trial.
This article focuses on how decisions are made. It helps processes and decisions to be scrutinised
- Article 8: Right to a private and family life, home and correspondence.
This is a qualified right and has to be balanced against the rights of others and need of society. It is protected against the four areas of interest – family life, private life, home and correspondence. The state has a positive obligation to protect this right
- Article 14: Right to non-discrimination.
This is linked to other rights and prohibits discrimination on any grounds – these may include but are not limited to: disability, gender, race, political views, carer status, marital status or being HIV positive.

Appendix B provides further information on examples of human rights in health care settings and examples of possible violations and CCG action.

3.4 Human Rights Treaties most relevant in Health Care:

These treaties provide guiding principles for public policy-making. Public services have a duty to comply with the following treaties:

- United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- United Nations Convention on the Rights of the Child
- United Nations Convention on the Rights of Persons with Disabilities
- The 1951 Refugee Convention

Links are provided for each of these treaties with the references section.

4.0 Human Rights and Healthcare commissioning

There are a range of circumstances where human rights need to be considered. These are not exclusive but include:

4.1.1 Policy development work:

- Development and review of commissioning policies (clinical and non-clinical policies and procedures and processes) that impact NHS providers and patients, carers and their families
- Development and review of policies, procedures, processes and strategies that impact employees
- Policies affecting employees and protecting employees from violence and abusive patients

All policy development work should follow processes for carrying out an Equality Impact Risk Assessment which includes a Human Rights Screening section. Any issues raised should be discussed with the policy author and a member of the Equality and Inclusion team who may advise that a full Human Rights Assessment is carried out. Specific Midlands and Lancashire Commissioning Support Unit templates are available for this.

Staff undertaking any Impact Assessment work should have access to assessment training or support from the Equality and Inclusion team.

Staff should have undertaken Equality and Inclusion mandated training.

4.1.2 Provider level:

- Commissioners are responsible for the monitoring of compliance to legislation – Human Rights Act and related Equality Legislation
- Monitoring of provider compliance to Contract Monitoring and Quality Performance indicators
- Reporting processes in place and support through various teams including safeguarding, quality and performance and contracting
- Ensuring that patients receive care that is safe and does not breach human

rights

- Sharing concerns with the relevant organisations such as NHS England, Care Quality Commission, Local Authority, Police
- Sharing concern (if appropriate) with the provider

Processes and lines of communication should be in place for reporting any human rights concerns between the commissioner, providers and other organisations where concerns may be reported. Any such concerns should be reported to the Lead Commissioner, Head of Quality and Head of Safeguarding (if appropriate) for action. Concerns should be added to the organisations risk register where appropriate. (See Appendix A for organisations where concerns may be reported)

There may be different arrangements for communicating concerns between organisations, CCG's and Midlands and Lancashire Commissioning Support Unit. Such arrangements should be robust and consistent.

4.1.3 System changes at scale:

System changes at scale includes:

- Integrated Care Partnerships and Integrated Care Systems involving multiple organisations working in partnership – this may include reviewing services and decision making affecting communities
- Involvement from communities in providing insight to decision making for health and social care services

Processes need to be in place to ensure that there are clear roles for the responsibility for carrying out initial human rights assessment work. This may form part of the Equality Impact and Risk Assessment work. Any identified human rights concerns may require a full Human Rights Assessment.

Staff within any of the partner organisations that are involved in undertaking any Impact Assessment work should have access to assessment training or support from the Equality and Inclusion team. Staff should have undertaken Equality and Inclusion mandated training and access to relevant templates.

4.2 Taking action which interferes with rights:

An NHS organisation may take action that results in interfering with Limited rights or Qualified rights where:

- There is a pursuit of a legitimate aim such as protecting the rights of others or for the protection of health
- There is existing legislation
- The action is necessary and proportionate

Decision makers should ensure that in cases where any decision making interferes with human rights, that decisions are fully documented in order to document that there is a legitimate aim and that action is necessary and proportionate.

This should be documented within a Human Rights Assessment and documented within decision making meetings. Any identified risks should be added to the risk register where appropriate.

Where identified risk is significant, NHS Midlands and Lancashire Commissioning Support Unit may consider seeking legal advice from an independent legal advisor.

4.3 Reporting human right violations:

Where the CCG are aware of a human rights violation, this should be reported to NHS England and The Parliamentary and Health Service Ombudsman (PHSO). If the concern constitutes a safeguarding concern, you should consult your safeguarding policies for children and adults and seek advice from your safeguarding team.

5.0 Glossary of terms:

Human Rights – these are rights and freedoms that belong to all individuals regardless of their nationality and citizenship. They are fundamentally important in maintaining a fair and civilised society.

Discrimination – In this policy discrimination is used as an overarching term and covers both Direct and Indirect Discrimination.

Direct Discrimination – Is when one person receives less favourable treatment than another person because of a protected characteristic. For example, refusing to employ someone because of their colour, race, marital status, or disability.

Direct Discrimination by Association – This means that the law also gives protection from less favourable treatment because the person is associated with someone who has a protected characteristic.

Indirect Discrimination – Indirect discrimination is when there's a practice, policy or rule which applies to everyone in the same way, but it has a worse effect on some people than others.

Harassment – The standard definition for harassment is unwanted conduct on the grounds of race, gender, sexual orientation etc. which has the purpose or effect of either violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

Proportionality - Proportionate action is where the response to a problem is appropriate and not excessive. This enables competing interests to be considered. When considering decisions which interferes with human rights the following factors should be taken into account:

- Check that the right is not absolute
- What rights are left for the person if decision is taken

- Have alternative approaches with less impacts being considered

Victimisation – the victimisation provisions with the Equality Act are there to protect people from retribution for:

- using or intending to use their rights under the Act;
- supporting another person’s rights under the Act;
- or doing something else connected to the Act

Victimisation occurs if person A subjects person B to a detriment because B has either done a protected act or A believes that B has done or may do a protected act.

Protected acts are:

- Bringing legal proceedings under the Equality Act
- Giving evidence or information in connection with this Act
- Making an allegation that A or another person has breached this Act

The Parliamentary and Health Service Ombudsman (PHSO) - The PSHO investigates complaints that individuals have been treated unfairly or have received poor service from government departments and other public organisations and the NHS in England.

Clinical Commissioning Groups (CCG’s) – these are clinically-led statutory NHS bodies responsible for the planning and commissioning of health care services for their local area

6.0 References

http://www.hscbusiness.hscni.net/pdf/Human_rights_in_healthcare_short_intro.pdf

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

Equality and Human Rights Commission www.equalityhumanrights.com

<https://www.legislation.gov.uk/ukpga/1998/42/contents>

<https://www.unicef.org.uk/what-we-do/un-convention-child-rights/>

Treaties:

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

Convention on the Rights of the Child:

<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

Convention on the Rights of Persons with Disabilities:

<https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx>

7.0 Appendix

Appendix A:

Reporting routes for information flows when someone raises a human rights concern:

Concerns about a hospital setting	Concerns about a primary care setting	Concerns about a non NHS provider
	Concerns about a Care Home	Concerns about a Children's Home



Care Quality Commission (CQC)	Local Authority (Commissioner)	Provider
Ofsted	Healthwatch	Police
	CCG or Commissioning Support Unit	

If any of the above concerns constitute a safeguarding concern, consult your safeguarding policies and procedures.

Appendix B:

Table A showing where human rights are most relevant to health care – adapted from Human Rights in Healthcare, Department of Health.

Human Right	Relevant issues	Potential CCG actions
<p>The right to life (Article 2)</p> <ul style="list-style-type: none"> • Duty not to take away anyone’s life (apart from in certain limited circumstances). • Positive duty to take reasonable steps to protect life. 	<p>Commissioning services that are safe from harm.</p> <p>Ensuring that vulnerable patients are treated in safe environments and staff are working in safe environments.</p> <p>Do Not Resuscitate orders.</p> <p>This duty does not include right to Euthanasia - practice of intentionally ending a life to relieve pain and suffering.</p>	<p>CCG monitoring on serious incidents where loss of life could be prevented.</p> <p>Provider policies and procedures in place to provide safe practices and protection.</p> <p>High rates of mortality levels within a department are monitored. A recent spike is reported for immediate action and investigation.</p> <p>Decommissioning services which may impact on the state to prevent loss of life.</p>
<p>The right not to be tortured or treated in an inhuman or degrading way (Article 3)</p> <ul style="list-style-type: none"> • 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. 	<ul style="list-style-type: none"> • 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. 	<p>CCG have monitoring procedures in place to report any incidents of concern.</p> <p>Staff training in place and safeguarding / whistle blowing policies in place and monitored.</p>
<p>The right to respect for private and family life, home and</p>	<ul style="list-style-type: none"> • Privacy on wards and in care homes. 	<p>CCG policies which affect where patients receive their care – this may be</p>

<p>correspondence (Article 8) This right is very wide ranging. It protects four broad categories of interests:</p> <ul style="list-style-type: none"> • Family life is interpreted broadly. It does not just cover blood or formalised relationships. Includes the right to develop normal family 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. Includes right to physical and psychological integrity, and right to form and maintain relationships with other people. • The right to respect for home is not a right to housing, but a right to respect for the home someone already has. Care homes or hospital wards are included. • 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 	<ul style="list-style-type: none"> • Family visits and refusal to visits / contact whilst in hospital / care. • Sexual and other relationships. • Participation in social and recreational activities. • Personal records – including medical, financial – Governance policies. • Independent living. • Closure of residential care homes or hospitals. • Separation of families due to residential care placements. 	<p>far away from family and involve provider limitations on access to contact family.</p> <p>Behaviours of staff which potentially violate this right – such as staff discussing a trans woman gender reassignment treatment in front of other patients.</p> <p>The article does not include This right does not include the right to access assisted conception services.</p>
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<p>protection of the rights of others.</p>		
<p>The right to liberty (Article 5) 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.</p> <p>Detention must be lawful and should end when the need for that restriction or detention is no longer required in the interests of protection or safety of the individual.</p>	<ul style="list-style-type: none"> • 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. <p>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.</p> <p>People can also be deprived of their liberty in their own home (including supported living) and also</p>	<p>CCG’s safeguarding policies and seeking assurance from providers. Commissioning of mental health services and services for vulnerable patients such as people with Learning Disabilities, Brain Injuries, Cognitive impairment conditions.</p> <p>Reporting and assurance procedures in place for violations.</p>

	<p>those that reside in care homes. If they are deprived of their liberty, in their best interests, an application to the Local Authority is needed to approve a DOL under the deprivation of liberty safeguards (2007) or a Court of Protection application for those in their own home. If a person is deprived of their liberty without a legal framework in place this is unlawful.</p>	
<p>The right to a fair trial (Article 6) 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:</p> <ul style="list-style-type: none"> • 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. 	<p>This article usually relates to criminal proceeding but can include Staff disciplinary proceedings and transparent decision making which could be applied within health care. May include:</p> <ul style="list-style-type: none"> • Compensation claims. • Independence of tribunals, e.g. the Mental Health Review Tribunal Care package assessments. • Staff tribunals. 	<p>Ensure that decision making processes around an individuals care have considered range of factors – such as Individual Funding Requests and access for Continuing Health Care.</p> <p>In cases where patients have communication barriers they may need additional support to understand and communicate their wishes. This may include access to translators.</p> <p>Employees to be treated in a fair manner – following policies and procedures in cases of disciplinary.</p> <p>Ensure that there is a robust and fair process for dealing with any concerns about the professional conduct or performance of a healthcare professional.</p>

<p>The right not to be discriminated against (Article 14) 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.</p>	<ul style="list-style-type: none"> • 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. 	<p>Ensure that decision making processes has identified any equality and human rights risks.</p> <p>All staff undertake equality training.</p>
<p>The right to freedom of thought, conscience and religion (Article 9) This right gives people the right to put thoughts and beliefs into action. This also includes religious clothing and right to practise a belief. There may be situations where there are restrictions within this right.</p>	<p>Dress code policies for staff. Rooms available for people (staff and patients) who wish to pray and exercise their religious beliefs.</p>	<p>Policies and procedures to deal with requests relating to religion and belief.</p>
<p>The right to freedom of expression (Article 10) This right give people the right to hold their own opinions and express themselves freely without</p>	<p>Whistleblowing policies for staff. Clear ways of reporting concerns for patients and staff.</p>	<p>Policies and procedures around reporting concerns.</p>

government interference. There may be situations where there are restrictions within this right.		
The right to freedom of assembly and association (Article 11) This right gives people the right to be part of a trade union, political party or another association or voluntary group. There are some restrictions to this right.	Staff rights to join networks and Unions.	Procedures to provide information to staff on Union membership.

Table B: At a glance CCG decisions which may require Human Rights Assessments and articles which should be considered:

Examples	Human Rights Articles					
	Article 2	Article 3	Article 5	Article 6	Article 8	Article 14
Medicines Management policies	✓					
Closure of hospital	✓					
Continuing Health Care policies	✓		✓	✓	✓	
Mental Health provision	✓		✓		✓	
Engagement Strategy				✓		✓
Information Governance policies				✓		
Cancer Services	✓					
CCG monitoring of serious incidents	✓	✓	✓	✓	✓	✓
Staff policy on disciplinary				✓	✓	

For further information seek advice from your Equality and Inclusion Lead

This policy was developed by MLCSU Equality and Inclusion team with support from East Lancashire CCG and MLCSU Safeguarding Lead. An Equality Impact Assessment has been completed on this policy.