



Older people and human rights

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Older People and Human Rights

Research and Mapping Report

March 2009

The Older People and Human Rights Project (OPHRP) will work with four local Age Concerns to raise awareness and empower older people to use human rights principles to influence decisions affecting their lives and wider public policy. The three-year project is run in partnership with the British Institute of Human Rights (BIHR) and is funded by Comic Relief.



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Whilst all reasonable care has been taken in compiling this document, it is important to recognise that legislation and regulations, nationally and locally, are frequently subject to change.

Age Concern England and Help the Aged are intending to join together to form a single new charity dedicated to improving the lives of older people.

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Introduction

This report is the product of research into existing evidence of the human rights issues affecting older people in the UK and their engagement with human rights issues. It is intended to inform the Older People and Human Rights Project (OPHRP) – a 3-year partnership project between Age Concern England and the British Institute of Human Rights (BIHR), funded by Comic Relief.

The overall aim of the project is to empower disadvantaged older people to use human rights to influence decisions affecting their lives and wider public policy. The project will support older people to use human rights principles and standards to influence the improvement of local public services (e.g. health and social care) by delivering awareness-raising sessions, information, training and support. The project will work through and enhance existing schemes for involving disadvantaged older people (e.g. over 75s, BME elders). It will also support participants to use human rights principles and standards to identify national influencing priorities, enabling them to contribute to the development of Age Concern England's national policy and influencing work.

The report is divided into four main chapters:

- 1 **The context** – an overview of policy and practice with regards to older people and human rights in the UK (pages 2 – 5)
- 2 **The legislation** – an outline of UK, European and International human rights laws (pages 6 – 17)
- 3 **Human rights issues affecting older people in the UK** – mapping the existing evidence and suggesting possible further issues to be explored in the project (pages 18 – 30)
- 4 **Engaging older people in human rights issues** – an overview of projects and initiatives from which there may be useful learning for the Older People and Human Rights Project (pages 31 – 36)

The research and mapping has been carried out via a desk-based review and analysis of existing research and policy reports, publications and initiatives with regards to human rights and older people. A list of the sources used for the research is provided in an Appendix (pages 37 – 39).

1 The context – policy and practice

Policy

The Human Rights Act (1998) is absent from much of Government policy-making with regards to older people and beyond. For example, there is no reference to human rights in the Department of Health White Paper on Health and Social Care¹, and almost none in Opportunity Age², the national strategy for an ageing society. Within many parts of government, human rights are so little understood that conversations using human rights ‘language’ are ineffective. However, there are examples of good practice emerging, for example the ‘Human Rights in Healthcare Project’ led by the Equality and Human Rights Unit at the Department of Health in conjunction with BIHR³; a focus on human rights by the Audit Commission, Healthcare Commission and Commission for Social Care Inspection⁴; and the recently published final version of the NHS constitution which references human rights a number of times, for example: ‘The NHS ... has a duty to each and every individual that it serves and must respect their human rights’.⁵

Current opportunities and challenges include:

- The recently established Equality and Human Rights Commission⁶ has a crucial role to play in promoting and protecting the rights of older people. It is important to note that their remit is not limited to the Human Rights Act and extends to ‘other human rights instruments’, which include the International Covenant on Economic, Social and Cultural Rights⁷ and the important provisions for older people in the UN Principles for Older Persons⁸ (see pages 10-11).
- The forthcoming Equality Bill is a potential opportunity to confirm the role of human rights in tackling equality. In their Human Rights Policy Position Paper, Age Concern states that the Bill ‘should be prefaced by a purpose clause that recognises the role of human rights in protecting equality and the close relationship between equality duties and public bodies’ *‘positive obligations’ to protect human rights.*

¹ Department of Health, 2006. *Our health, our care, our say: a new direction for community services*. Available at www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4127453.

² See www.dwp.gov.uk/opportunity_age/.

³ See www.bihr.org.uk/projects/human-rights-in-healthcare-project for more details.

⁴ Audit Commission: www.auditcommission.gov.uk; Healthcare Commission: www.healthcarecommission.org.uk; Commission for Social Care Inspection: www.csci.org.uk. The Healthcare Commission and Commission for Social Care Inspection, together with the Mental Health Act Commission (www.mhac.org.uk) merge into the new Care Quality Commission in April 2009 (www.cqc.org.uk).

⁵ NHS Constitution, Guiding Principle 1, DH (January 2009), p.3.

⁶ See www.equalityhumanrights.com.

⁷ Available at <http://www2.ohchr.org/english/law/cescr.htm>.

⁸ Available at <http://www2.ohchr.org/english/law/olderpersons.htm>.

- The merging of the Healthcare Commission, the Mental Health Act Commission and the Commission for Social Care Inspection into the new Care Quality Commission provides an opportunity to embed human rights into regulation and inspection processes.
- The possibility of a new Bill of Rights is an opportunity to extend human rights protection. However, there is also a potential major challenge to ensure that any new Bill of Rights does not compromise the provisions of the Human Rights Act, particularly with a general election pending.
- The recent amendment to the Human Rights Act through the Health and Social Care Bill extended the definition of ‘public function’ to include private care homes (see page 6 for more details on this issue). However, human rights protection is still an issue for self-funders, and the exact definition of ‘public function’ is still unclear in the health and social care context and beyond.
- There is no binding international human rights treaty that specifically protects the rights of older people, although there is scope for better use of the UN Principles for Older Persons (see pages 10 – 11), for example by embedding them into the National Strategy for an Ageing Society, and the National Strategy for Housing in an Ageing Society
- There is a lack of enforceable economic, social and cultural rights in the UK, with the Human Rights Act focusing largely on civil and political rights. This omission has major implications for older people, who face a range of economic, social and cultural issues.

Practice

There is generally low understanding and awareness of the Human Rights Act among those working with older people. Initiatives such as the Joint Committee on Human Rights (JCHR) inquiry into the human rights of older people in healthcare (see pages 34 – 35), and an increasing number of research reports and publications on human rights and older people (see Appendix) are helping to address this to some extent. However, overall awareness remains low.

In addition, a key finding from research for this report is that much of the existing literature and research regarding human rights and older people in the UK focuses largely, although not entirely exclusively, on health and social care.⁹

⁹ Health and social care have generally been treated together for the purposes of this report. However, it is useful to note that the statutory framework for health is separate from the statutory framework for social care, and that services are delivered by different providers (i.e. NHS Trusts vs local authority social services departments) although there is some overlap between the types of services provided/funded. For example, care in a nursing home could be funded by the local authority or by the Primary Care Trust, as well as the person him/herself depending on a range of circumstances.

This is likely to be for a number of reasons, the major ones being:

- Older people are the main users of the NHS, and the NHS is a major public service. Furthermore, older people are especially vulnerable to ill treatment and human rights abuses in a health and social care context because of their dependency on others for their basic needs.
- There have been a number of initiatives and publications focusing specifically on older people in health – and social – care, most notably the Joint Committee on Human Rights inquiry into the Human Rights of Older People in Healthcare.
- The Human Rights Act focuses largely on civil and political rights. It can be difficult to link other issues faced by older people, such as social exclusion, poor housing or poverty, directly to the Human Rights Act, since these are more naturally expressed as social or economic rights. For example, it makes more sense to talk about poverty in terms of the right to an adequate standard of living rather than the right to be free from inhuman or degrading treatment.
- The Human Rights Act applies only to public authorities. However, the relevant public authority in areas such as employment, social exclusion, learning and skills, etc. may not always be easy to identify, and in some cases the relevant party may be a private actor, e.g. employers, shop keepers.

To frame some of the issues faced by older people outside the health and social care context in human rights terms, it may be necessary to look beyond the application of the European Convention on Human Rights¹⁰ (incorporated into UK law through the Human Rights Act, see pages 6 – 7 for more details) towards international standards, and also explore wider issues around creating a human rights culture. It may be necessary to distinguish between what can be seen as a human rights issue in strictly legal terms, and using human rights language in a broader sense to talk about and frame particular issues.

With regard to older people themselves, there are a number of practical barriers that may discourage their use of human rights. It will be important to keep these in mind during the project, which includes:

- Widespread negative perceptions and misunderstandings surrounding human rights among the general public, including older people
- A lack of information for older people and those that work with them about human rights
- Difficulties faced by older people accessing justice and making complaints, for example:

¹⁰ Convention for the Protection of Human Rights and Fundamental Freedoms (1950), available at <http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm>.

- Older people may not complain because of a fear of the consequences, e.g. fear that they will be evicted from care home if they do so
- A lack of confidence in complaining
- Older people may feel they are just ‘making a fuss’
- A lack of accessible complaints mechanisms or information about how to complain
- Older people may have particular communications/language difficulties – for example, it may be difficult for older people with dementia to complain
- With regard to legal processes, older people may face limited access to legal aid providers, limitations in the scope of legal aid and may be put off by complex legal procedures

2 The legislation

The Human Rights Act and the European Convention on Human Rights

The Human Rights Act came into force in the UK on 2 October 2000. The Act brought most of the human rights contained in the European Convention on Human Rights into UK law. The European Convention was agreed after the Second World War by the Council of Europe. The UK signed up to the European Convention in 1951.

The Human Rights Act applies to everyone in the UK and as such is the key source of human rights protection for older people. The major difference brought about by the Human Rights Act is that people can now raise or claim the human rights that are set out in the European Convention within the complaints and legal systems in the UK. Anyone in the UK can bring a claim under the Human Rights Act – the Act is not limited to UK citizens. Prior to the Human Rights Act coming into force, those wanting to claim a breach of their rights had to take their case to the European Court of Human Rights in Strasbourg. Cases can still be taken to the European Court, but they have to have gone through the UK courts system first.

The Human Rights Act places all public authorities in the UK under a duty to respect the rights it contains in everything that they do. Public authorities are therefore under a duty not to commit human rights abuses. They also have duties to take proactive steps (known as ‘positive obligations’) in order to ensure that human rights are respected, protected and fulfilled. For example, if a public authority is aware that someone is being abused, they may have a duty under the Human Rights Act to investigate or intervene.

The term ‘public authority’ includes the NHS, social services, the police and central, regional and local government, and, more generally, any person or organisation – including private organisations – who performs ‘functions of a public nature’. However, there is a lack of clarity over exactly what is meant by ‘functions of a public nature’. A series of recent court decisions led to the so-called ‘human rights loop-hole’ whereby private providers of residential care services were ruled to fall outside the scope of the Act. A group of Non-Governmental Organisations (NGOs), including Age Concern and BIHR, successfully lobbied the Government to close this loophole via the Health and Social Care Act 2008. Section 145 of this Act now confirms that private and voluntary sector organisations providing residential care services under contract to local authorities are bound by the Human Rights Act.

However, the amendment does not extend to those who pay for their own care, leaving 115,000 care home residents who are ‘self-funders’ still unprotected by the Human Rights Act.

The European Convention on Human Rights, and therefore the Human Rights Act, focuses largely on civil and political issues, with the major exception being the right to education. The ‘sister’ document to the European Convention is the European Social Charter, which includes a number of economic and social rights such as health, housing and employment. State parties to the Charter submit yearly reports on the implementation of the Charter to the European Committee on Social Rights. While the Charter does not have an associated court, a protocol which came into force in 1998 allowed for collective complaints of violations of the Charter to be lodged with the Committee. The UK ratified the Charter in 1961, but has not accepted to be bound by the collective complaints mechanism. The UK Government has to date shown itself to be reluctant to incorporate the European Social Charter or any other economic, social and cultural rights provisions into domestic law.

The rights included in the Human Rights Act are:

- Article 2: Right to life
- Article 3: Right not to be tortured or treated in an inhuman or degrading way
- Article 4: Right to be free from slavery or forced labour
- Article 5: Right to liberty
- Article 6: Right to a fair trial
- Article 7: Right to no punishment without law
- Article 8: Right to respect for private and family life, home and correspondence
- Article 9: Right to freedom of thought, conscience and religion
- Article 10: Right to freedom of expression
- Article 11: Right to freedom of assembly and association
- Article 12: Right to marry and found a family
- Article 14: Right not to be discriminated against in relation to any of the rights contained in the European Convention
- Article 1, Protocol 1: Right to peaceful enjoyment of possessions
- Article 2, Protocol 1: Right to education
- Article 3, Protocol 1: Right to free elections

International human rights standards

The UK has also signed up to a range of international human rights treaties and declarations, many of which are very relevant for older people. While these are not directly enforceable in the UK courts, they have potential to influence issues facing older people, in particular as standards to be embedded throughout policies affecting older people. They cover the full spectrum of human rights – civil, political, economic, social and cultural.

There are nine core UN human rights treaties that are monitored by the United Nations. These are:

- The International Covenant on Civil and Political Rights (ICCPR)
- The International Covenant on Economic, Social and Cultural Rights (ICESCR)
- The Convention Against Torture (CAT)
- The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)
- The International Convention on the Elimination of all forms of Racial Discrimination (CERD)
- The Convention on the Rights of the Child (CRC)
- The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (the UK has not signed this Convention)
- The International Convention for the Protection of all Persons from Enforced Disappearances (not yet in force; the UK has not signed this Convention)
- The Convention on the Rights of Persons with Disabilities (CRPD – the UK has signed but not yet ratified this Convention)

The full text of these treaties can be found at <http://www2.ohchr.org/english/law/index.htm>. Of particular relevance for older people is the ICESCR, particularly given the lack of enforceable economic, social and cultural rights in the UK. Older people face a range of economic, social and cultural issues, and the UN Committee on Economic, Social and Cultural Rights frequently references older people in their regular reports and General Comments.¹¹

¹¹ See in particular General Comment 6 on the economic, social and cultural rights of older persons, available from www.ohchr.org.

The UK Government has to submit regular reports for each treaty they have ratified (usually every 4-5 years) that explain how the UK is implementing the rights in the treaty. These reports are examined by a committee of experts, which publishes its concerns and recommendations. NGOs can produce 'shadow reports' which the committee will consider alongside the UK Government's report. Some of the treaties have an optional mechanism that States can choose to sign up to, which means that individuals can make specific complaints that their rights have been violated to the relevant committee. Currently, the UK Government has chosen only to allow individual complaints for the Convention on the Elimination of Discrimination Against Women. Therefore, older women who feel they have a complaint under this treaty can apply to the Committee on the Elimination of Discrimination Against Women, but will need to have taken their complaint through the UK courts system first. More information on this process can be found on the website of the Office of the UN High Commissioner for Human Rights at <http://www2.ohchr.org/english/bodies/petitions/individual.htm>. The UK Government has also recently indicated that it intends to sign up to the optional complaints mechanism for the Convention on the Rights of Persons with Disabilities when it ratifies this treaty.

As can be seen from the above list, some of the core international human rights treaties protect the rights of specific groups – women, children, disabled people and racial and ethnic minorities. The existence of these treaties does not give these groups any additional human rights, but recognises the particular discrimination and difficulties some groups face in claiming their human rights. There is currently no binding international human rights treaty that specifically protects the rights of older people. However, in 1991 the UN produced the 'UN Principles for Older Persons' (listed in full on the next page). This document is a declaration rather than being binding international law and does not have any associated enforcement or monitoring mechanisms. However, the principles are an important and powerful statement of the human rights protection afforded to older people, and are designed to influence national policy. There is certainly scope for wider use of these principles in the UK in policy-making and practice.

UN Principles for Older Persons

Independence

- 1 Older persons should have access to adequate food, water, shelter, clothing and health care through the provision of income, family and community support and self-help.
- 2 Older persons should have the opportunity to work or to have access to other income-generating opportunities.
- 3 Older persons should be able to participate in determining when and at what pace withdrawal from the labour force takes place.
- 4 Older persons should have access to appropriate educational and training programmes.
- 5 Older persons should be able to live in environments that are safe and adaptable to personal preferences and changing capacities.
- 6 Older persons should be able to reside at home for as long as possible.

Participation

- 7 Older persons should remain integrated in society, participate actively in the formulation and implementation of policies that directly affect their well-being and share their knowledge and skills with younger generations.
- 8 Older persons should be able to seek and develop opportunities for service to the community and to serve as volunteers in positions appropriate to their interests and capabilities.
- 9 Older persons should be able to form movements or associations of older persons.

Care

- 10 Older persons should benefit from family and community care and protection in accordance with each society's system of cultural values.
- 11 Older persons should have access to health care to help them to maintain or regain the optimum level of physical, mental and emotional well-being and to prevent or delay the onset of illness.
- 12 Older persons should have access to social and legal services to enhance their autonomy, protection and care.
- 13 Older persons should be able to utilize appropriate levels of institutional care providing protection, rehabilitation and social and mental stimulation in a humane and secure environment.
- 14 Older persons should be able to enjoy human rights and fundamental freedoms when residing in any shelter, care or treatment facility, including full respect for their dignity, beliefs, needs and privacy and for the right to make decisions about their care and the quality of their lives.

Self-fulfilment

- 15 Older persons should be able to pursue opportunities for the full development of their potential.
- 16 Older persons should have access to the educational, cultural, spiritual and recreational resources of society.

Dignity

- 17 Older persons should be able to live in dignity and security and be free of exploitation and physical or mental abuse.
- 18 Older persons should be treated fairly regardless of age, gender, racial or ethnic background, disability or other status, and be valued independently of their economic contribution.

Which law, which right?

Section 3 of this report explores the key human rights issues facing older people in the UK, and relates these issues to particular rights. The table below lists some of the most relevant rights for older people, and links them to the specific articles in the European Convention and the UN human rights instruments. The table is intended to be a useful reference point to accompany Section 3 of the report. A short explanation of each right is given following the table.

As can be seen from below, many of the rights are contained in both the European Convention and the UN instruments. Where this is the case, the Convention rights are of primary consideration, as they are enforceable in the UK courts. However, at the UN level the rights often have a broader scope and application – for example, the right not to be discriminated against under Article 14 of the European Convention is limited to instances when another right is engaged, while at the UN level the right not to be discriminated against is a freestanding right. As already discussed, the UN instruments also cover a fuller set of rights than the European Convention. The UN Principles for Older Persons in particular cover a broader range of issues and are more tailored to the particular issues faced by older people. Therefore, there is scope to use the UN instruments to complement and strengthen the Convention rights – in particular with regard to policy influencing.

WHICH RIGHT?	European Convention (enforceable in the UK under the Human Rights Act)	UN human rights instruments
Right to life	Absolute right under Article 2 ECHR	Article 6, ICCPR
Right not to be treated in an inhuman or degrading way	Absolute right under Article 3 ECHR	UN Principle ¹² 17; Article 7, ICCPR
Right to liberty	Limited right under Article 5 ECHR	Article 9, ICCPR

¹² UN Principles have been used as shorthand for the UN Principles for Older Persons.

WHICH RIGHT?	European Convention (enforceable in the UK under the Human Rights Act)	UN human rights instruments
Right to respect for private and family life	Qualified right under Article 8 ECHR	UN Principles 7-9, 14-16; Article 17, ICCPR
Right to respect for home	Qualified right under Article 8 ECHR	UN Principles 5 & 6
Right to freedom of thought, conscience and religion	Qualified right under Article 9 ECHR	UN Principle 16; Article 18, ICCPR
Right not to be discriminated against	Article 14 ECHR (in relation to the other rights contained in the ECHR)	UN Principle 18; Article 26, ICCPR
Right to peaceful enjoyment of possessions	Qualified right under Protocol 1, Article 1 ECHR	N/A
Right to education	Qualified right under Protocol 1, Article 2 ECHR	UN Principles 4, 16; Article 13, ICESCR
Right to an adequate standard of living	N/A	UN Principle 1; Article 11, ICESCR
Right to work and other employment rights	N/A	UN Principles 2 & 3; Articles 6-9, ICESCR
Right to the highest attainable standard of health	N/A	UN Principles 10-14; Article 12, ICESCR

More on the rights

Absolute/non-absolute rights

Some rights are known as ‘absolute’ rights, which means they can never be limited or restricted under any circumstances. Other rights are non-absolute (i.e. they are limited or qualified) and may be limited or restricted under certain conditions, such as to protect the rights of others or the wider community. The conditions under which they can be limited or restricted are specified in the Article that sets out the right.

The right to life

The right to life is an absolute right and imposes two types of obligations on the state:

- 1 A duty not to take away anyone’s life except in a few very limited circumstances. These are: lawful action taken to defend someone from violence, to arrest someone, to prevent someone who is lawfully detained from escaping, or to suppress a riot. Any action taken must use no more force than is absolutely necessary.
- 2 A duty to take reasonable steps to protect life. This second duty is called a **positive obligation** because it requires authorities to take proactive steps to protect the right to life. The positive obligation to protect life includes a duty on the state to take practical steps to protect someone whose life is at risk from another person, where the authorities know or ought to know of this risk.

The right not to be treated in an inhuman or degrading way

The right not to be tortured or treated in an inhuman or degrading way is an absolute right. Torture is unlikely to be relevant for older people in the UK. Inhuman treatment means treatment causing severe mental or physical harm; degrading treatment means treatment that is grossly humiliating and undignified. Only the most serious kinds of ill treatment are covered by this right. The treatment does not have to be deliberate – it is the impact it has that matters. Human dignity is at the core of this right.

The right to liberty

The right to liberty is a right not to be locked in a cell or room, or have any other extreme form of restriction placed on your movement. It is a limited right – it can be restricted in tightly defined circumstances, including being sent to prison for committing a crime and the lawful detention of people with

mental health problems. The right to liberty establishes minimum safeguards and states that certain procedures must be in place to make sure that any restriction on the right to liberty is lawful.

The right to respect for private and family life, home and correspondence

This right has a very wide scope, protecting four interests:

- **Family life** covers close and personal ties of a family kind. It does not just cover blood or formalised relationships.
- **Private life** has been defined particularly broadly, and covers issues such as privacy, personal choices, relationships, physical and mental well-being, access to personal information and participation.¹³
- 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 restricted in certain circumstances to protect the rights of others or the interests of the wider community.

The right to freedom of thought, conscience and religion

The freedom to hold and change a religion or a belief is an absolute right which cannot be qualified in any way. The state cannot legislate as to how people should think.

However, there are limitations on the freedom to *manifest* a religion or belief, through worship, teaching, practice and observance. This part of the right is qualified and may be restricted in certain circumstances to protect the rights of others or the interests of the wider community. The right protects a broad range of beliefs, including both religious and non-religious.

The right not to be discriminated against

The right not to be discriminated against that is contained in the European Convention on Human Rights is **not** a free-standing right. It is a right not to be discriminated against in the enjoyment of the other rights contained in the Convention – so for example, if an older person is denied life-saving medical treatment because of their age, this may be a breach of the right to life alongside the right not to be discriminated against in the enjoyment of that right.

¹³ In addition to being an important aspect of private life, participation is also central to international human rights law, in particular as one of the five core themes of the UN Principles for Older Persons.

The European Convention prohibits discrimination on a non-exhaustive list of grounds including ‘sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status’. ‘Other status’ would include discrimination on the basis of age.

At the UN level, discrimination is recognised as a free-standing right. There is also an optional protocol to the European Convention that would introduce a free-standing right not to be discriminated against, but the UK has not yet signed up to this.¹⁴

The right to peaceful enjoyment of possessions

The right to peaceful enjoyment of possessions is a qualified right guaranteeing in effect a right to property. The term ‘possessions’ has been interpreted broadly and includes welfare benefits, pensions, all property and also acquired rights with economic interests such as shares, patents, fishing rights, and planning consents.

The right to education

The right to education that is contained in the European Convention is phrased as ‘no person shall be denied the right to education’. This does not mean that people have a right to learn what they want, where they want; instead it is a right to access educational institutions and facilities that exist and to gain benefit from the education received. Article 13 of the ICESCR is more expansive, recognising the right of everyone to education.

The right to an adequate standard of living

This right is not included in the European Convention. The ICESCR defines an adequate standard of living as including adequate food, clothing and housing and the continuous improvement of living conditions. States are required to take steps towards the full realisation of the rights contained in the ICESCR, to the maximum of their available resources.

The right to the highest attainable standard of health

The right to health in the ICESCR is not a right to be *healthy*. The Committee on Economic, Social and Cultural Rights has defined the right to health as containing both freedoms and entitlements.¹⁵ The freedoms include the right

¹⁴ Protocol 12 to the European Convention on Human Rights, available at <http://conventions.coe.int/Treaty/en/Treaties/Html/177.htm>.

¹⁵ See General Comment 14 of the Committee on Economic, Social and Cultural Rights, available at <http://www2.ohchr.org/english/bodies/cescr/comments.htm>.

to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation. The entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.

The right to work and other employment rights

The European Convention does not contain any specific employment rights. However, the UN Principles for Older Persons state that: 'Older persons should have the opportunity to work or to have access to other income-generating opportunities' and 'Older persons should be able to participate in determining when and at what pace withdrawal from the labour force takes place.' The ICESCR also includes rights to the opportunity to gain living by work, to just and favourable conditions of work, to join Trade Unions and to social security.

3 Human rights issues affecting older people in the UK

This chapter of the report explores the key issues in relation to human rights and older people in the UK. As explained in section 2, much of the existing literature and research into the human rights issues facing older people has focused on health and social care. Therefore, the topics in this section of the report that relate to health and social care are more numerous and more fully developed. However, the report also explores how other issues facing older people, such as social exclusion, poverty and poor housing, could be framed as human rights issues. This is intended to provide a basis for the Older People and Human Rights Project to explore further. It is suggested that the project could explore this potential and work with older people to identify themselves which issues they face can usefully be framed as human rights issues.

Each topic in this section includes explanatory text, and links the issues to the relevant rights. Where applicable and/or available, illustrative case studies have also been used, derived either from case law or real-life situations. Please refer to the table and explanatory notes on pages 12 – 17 for more detail on the particular rights. It is important to remember that many of the rights are contained in both the European Convention and the UN instruments. Where this is the case, the Convention rights are of primary consideration, as they are enforceable in the UK courts.

Elder abuse and neglect

Relevant rights: *Right to respect for private life; Right not to be treated in an inhuman or degrading way; Right to life.*

Mrs S, aged 102, felt isolated, disrespected and neglected while she was in hospital. Despite being blind, her meals and drinks were left on a trolley – in most cases without her being alerted. For the most part, staff also did not offer any assistance with eating or drinking. As a result many of the meals were removed untouched. Mrs S also suffered a great indignity when she asked for a commode, but was told by a nurse that she could use her incontinence pad. Staff frequently talked over her and about her rather than to her in the mistaken belief that she was unable to talk for herself.

Source: Age Concern: On the Right Track?, 2008

The UN Principles for Older Persons state that older people should be able to live in dignity and be free of physical or mental abuse. However, Action on Elder Abuse estimates that 500,000 older people are subject to abuse at any one time in the UK.¹⁶

Examples of abuse or neglect may include:

- Malnutrition and dehydration
- Physical, psychological or sexual abuse
- Ignoring calls for help
- Unchanged sheets
- Not feeding people properly
- Bed sores
- Poor hygiene
- Excessive physical restraint
- Bullying, patronising and infantilising attitudes

Severe elder abuse may breach the prohibition on inhuman or degrading treatment. In less extreme cases, elder abuse may raise issues under the right to respect for private life, which includes a right to physical and psychological well-being. The right to life may be breached where abuse or neglect leads to the death of the person involved.

Elder abuse is most widely documented in a health and social care context. However, it should be noted that older people may experience abuse or neglect in other contexts such as prisons, immigration services, etc. Older people may also face abuse or neglect in their own home, from care workers, family members or friends. Private individuals cannot be held directly responsible for human rights abuses under the Human Rights Act. However, public authorities have a positive duty to protect certain rights under the Act, including the right to life, the right not to be treated in an inhuman or degrading way and the right to respect for private and family life. If a public authority is made aware of evidence that an older person is being abused, failure to act may breach these rights.

¹⁶ Action on Elder Abuse, *Hidden Voices: Older People's Experience of Abuse* (London: Action on Elder Abuse, 2004).

Lack of dignity/privacy

Relevant rights: *Right to respect for private life; Right not to be treated in an inhuman or degrading way.*

A consultant came across an older woman on a hospital ward in London who was crying out in distress. The woman was in a wheelchair and when the consultant lifted up her blanket, she discovered that the woman had been strapped in and that this was why she was so upset. Staff explained that they had fastened her into the wheelchair in order to stop her walking around because they were fearful she might fall over and hurt herself. The consultant told staff that while their concerns were understandable, strapping her into a wheelchair for long periods was an inappropriate response because her human rights had not been taken into account. She pointed out that this could be considered degrading treatment (Article 3) given the impact on the woman. Staff quickly agreed to unstrap her and, after she was assessed by a physiotherapist, they were encouraged to support her to improve her mobility.

Source: BIHR: The Human Rights Act – Changing Lives, 2nd Edition, 2008

There is a wide range of toolkits, guidance, papers and initiatives regarding dignity in care. However, despite this, there is wide-ranging evidence that older people frequently experience a lack of dignity in a health and social care context. Dignity is a core human rights principle, and lack of dignity is often at the heart of instances of human rights abuses in health and social care – for example, a lack of dignity is a common theme in the above examples of abuse and neglect. Closely linked to dignity is privacy – while the two concepts are distinct, privacy can be viewed as an essential aspect of dignity.

Other examples include:

- Mixed sex wards
- Privacy and dignity during personal care, e.g. bathing, undressing
- Privacy while using the toilet
- Sensitive medical advice being given when other patients can overhear
- Care home residents being fed whilst on the commode

Again, while lack of dignity/privacy for older people is most often raised in a health and social care context, it also may be relevant in a range of other contexts, for example prisons, immigration services, etc.

Lack of dignity/privacy raises issues under the right to respect for private life, and in more extreme cases, the prohibition on inhuman or degrading treatment.

Hospital discharge and inadequate care assessments

Relevant rights: *Right to respect for private life; Right not to be treated in an inhuman or degrading way; Right to life.*

Help the Aged received a call from an older woman who was discharged from hospital without a proper assessment. When she got home, she found that she could not use the toilet as she needed rails to push herself up. She contacted the occupational therapist, who said she would have to wait at least two months and could use incontinence pads in the meantime. She is not incontinent. She is upset by the indignity and feels suicidal.

Source: SeniorLine, Help the Aged in 'Rights at Risk – Older People and Human Rights', 2005

Older people may have a variety of care needs, such as assistance with personal care, mobility assistance or general help around the house. Human rights issues may be raised when older people do not receive a proper care assessment, are provided with inadequate care or experience delays in receiving services following an assessment. This is a particular concern when older people are discharged from hospital. Incentives in the system, such as the Delayed Discharges Regulations¹⁷ and Payment by Results¹⁸, can lead to older people being discharged from hospital without appropriate arrangements for their care in place or when they are still unwell.

Inadequate care arrangements can have a severe impact on an older person's right to respect for private life, and in extreme cases, the right not to be treated in an inhuman or degrading way. In some cases, particularly when a person is discharged from hospital when still unwell, inadequate care can be life-threatening and may therefore raise issues under the right to life.

¹⁷ The Delayed Discharges (England) Regulations 2003, Statutory Instrument 2003 No.2277.

¹⁸ See www.dh.gov.uk/en/Managingyourorganisation/Financeandplanning/NHSFinancialReforms/DH_4065236.

Life sustaining medical treatment

Relevant rights: *Right to life; Right not to be discriminated against.*

The right to respect for private life gives older people with capacity the right to make their own choices with regard to whether they would like to accept or refuse medical treatment. This is very relevant for older people who do not wish to receive painful or intrusive treatment in order to prolong their lives.

The right to life does not include a right to life-sustaining treatment in all circumstances – there is no absolute obligation to continue to provide treatment if it would be futile. However, the right to life must be taken into account in decisions about whether to provide an older person with life-sustaining treatment. If an older person is not provided with life-sustaining treatment solely because of their age, this may be a breach of the right to life alongside the right not to be discriminated against.

Inappropriate medication

Relevant rights: *Right to respect for private life; Right to life.*

There is a common practice of over-using sedatives or anti-psychotic drugs to control the behaviour of older patients or residents with dementia. Inappropriate use of medication in this way is likely to raise issues under the right to respect for private life. Anti-psychotic drugs also increase the risk of strokes for older people with dementia, so this practice may be a breach of the right to life.

Detention

Relevant right: *Right to liberty.*

Older people, particularly those with dementia, may be in a situation where they are prevented from leaving a residential care home or hospital. If this is done on an informal basis, without the procedural safeguards of the Mental Health Act or Mental Capacity Act, this may breach the right to liberty.

A 48 year old man with learning disabilities lacked the ability to communicate and consent or dissent to treatment. He lived with a couple who took responsibility for his care. He had a challenging episode at a day care centre, and because his carers could not be contacted, he was taken to Bournemouth Hospital, sedated and detained. When his carers went to collect him, they were informed that this was not possible and that they could not see him as this might upset him.

Because he lacked the capacity to object, he did not need to be formally sectioned under the Mental Health Act. However, he was effectively detained without the safeguards and review procedures that are required by the Mental Health Act. The European Court of Human Rights found this lack of procedural safeguards to be a breach of the right to liberty. As a result, the Government has taken steps to address this through amending the Mental Capacity Act.

HL v UK 2004 (the 'Bournemouth' case)

Inquests

Relevant right: *Right to life.*

The right to life can extend to include a positive duty to carry out inquests into deaths in suspicious or unexplained circumstances. Examples relevant to older people may include where life-saving treatment has been withheld, or if there have been suspicious deaths at a residential home and there is a strong evidence to suggest there may have been abuse or neglect. Failure by public authorities to properly investigate these deaths could breach the right to life. The right to life also places public authorities under a duty to make sure that families are involved in the inquest process. They should have access to information they need in order to find out what happened to their family members, and be considered for legal aid to fund representation for the inquest hearing.

Confidentiality and access to information

Relevant right: *Right to respect for private life.*

An older person's medical records and information about their treatment is part of their private life, and any disclosure of this information should take the right to respect for private life into account. Instances of sensitive information being discussed openly where other patients and staff can overhear may raise issues under the right to respect for private life.

By contrast, Help the Aged noted in their submission to the JCHR inquiry that older people and their families/carers (in particular where the older person does not have capacity) can be exposed to unnecessary risks if staff apply the principle of confidentiality too strictly and do not disclose

important medical information.¹⁹ If staff do not have a legitimate reason for withholding information this may also raise issues under the right to respect for private life.

Care home placements

Relevant rights: *Right to respect for private and family life; Right to respect for home.*

Placement of older people in care homes providing residential or nursing care can raise a number of issues with regards to family life, private life and home.

Separating older couples by sending them to different care homes or by moving a person into a care home but not allowing their partner to join them clearly raises issues under the right to respect for family life. The right to respect for private life also needs to be considered when older people are forced to move into a residential care home when they would prefer to remain living at home.

A husband and wife had lived together for over 65 years. He was unable to walk unaided and relied on his wife to help him move around. She was blind and used her husband as her eyes. They were separated after he fell ill and was moved into a residential care home. She asked to come with him, but was told by the local authority that she did not fit the criteria. Speaking to the media, she said 'We have never been separated in all our years and for it to happen now, when we need each other so much, is so upsetting. I am lost without him – we were a partnership.' A public campaign launched by the family, supported by the media and various human rights experts and older people's organisations, argued that the local authority had breached the couple's right to respect for family life. The authority agreed to reverse its decision and offered the wife a subsidised place so that she could join her husband in the care home.

Source: BIHR: The Human Rights Act – Changing Lives, 2nd Edition, 2008

If an older person has been living in a hospital or care home for a significant period of time, it may be considered to be their 'home' in relation to this right. Therefore, any decision to move an older person to a different care home or hospital or close a care home needs to take their right to respect for home into account.

¹⁹ Help the Aged Submission to the JCHR Inquiry into the Human Rights of Older People in Healthcare, para 1.20.

The right to respect for private life also needs to be considered, since moving an older person from a care home or hospital where they have been resident for a long time is likely to have a serious impact on their way of life, and may mean they lose the company of friends among staff and residents.

A local authority in Plymouth was considering closing a residential care home for the elderly, for financial reasons. The residents brought a case against the authority claiming that the closure of the home would be a breach of their human rights including their right to respect for private life, family life and home. They argued that they had a reasonable expectation that the home would be their home for life. The panel deciding their case agreed and the home was not closed. The panel said that people's age should not be used as a justification for restricting their rights.

R (on the application of Cowl and others) v Plymouth City Council (2001)

Quality of life in residential care/hospitals

Relevant rights: *Right to respect for private and family life; Right to freedom of thought, conscience and religion.*

The right to respect for private life can be used to ensure that older people are able to maintain fulfilling and active lives and make their own choices as far as possible when in residential care or hospital. Issues that may be particularly relevant for older people include:

- Respect for older people's choices in their every day activities
- Provision of social and recreational activities and/or support to access such activities
- Ability to form or maintain personal and sexual relationships
- Respect for cultural needs such as religious practices or dietary requirements (these kinds of issues may also fall under freedom of thought, conscience and religion)

The right to respect for family life may also apply if restrictions are placed on family life while in residential care or hospital – for example restricting family visits or not allowing older couples to share rooms.

An NHS nursing home in London had a practice of routinely placing residents in special 'tilt back' wheelchairs, regardless of their mobility needs. As a consequence, residents who were able to walk unaided were stopped from doing so. This had a severe impact on their ability to make choices about everyday activities, as well as their capacity to feed themselves and use the bathroom. A consultant pointed out to staff that their failure to consider the different mobility needs of individual residents was contrary to human rights principles. She drew particular attention to the right to respect for private life, which emphasises the importance of dignity and autonomy, and the right not to be treated in a degrading way. The practice was stopped as a result. Residents who could walk were taken out of the chairs and encouraged to maintain their walking skills.

Source: BIHR: The Human Rights Act – Changing Lives, 2nd Edition, 2008

Discrimination and disadvantaged groups

Relevant rights: *Right not to be discriminated against – in relation to any of the other rights.*

The right not to be discriminated against may be used to challenge disadvantage faced by older people in a range of contexts, e.g. health and social care housing, employment, immigration, etc. Older people may also face discrimination for reasons other than, or in addition to their age, e.g. race, religion or belief, mental health, disability, etc. Older people who face multiple issues may experience heightened disadvantage because of their age – for example, older people with existing mental health problems face particular difficulties as mental health services for people over 65 tend to focus on dementia. It is important to remember that the right not to be discriminated against that is contained in the European Convention is not a freestanding right, but a right not to be discriminated against in relation to the other rights contained in the Convention (see page 15 for more details).

The project may want to explore the particular human rights issues faced by older people who also fall under one or more of the other equality 'strands' protected by legislation, i.e.:

- Disability
- Religion or belief
- Gender
- Race
- Sexual orientation

Mrs M suffers from depression following bereavement. For five years she has attended a drop-in centre where her condition improved, but now she is 65 and she has been asked to leave because the service is only for people of 'working age'. She has discovered that mental health services for the over 65s are mainly targeted at people with dementia.

Source: Age Concern – On the Right Track?, 2008

The project may also want to explore human rights issues faced by older people within particular areas or with particular characteristics, but who are not covered by the above groups, for example:

- Older carers
- Older refugees and asylum seekers
- Older people within the criminal justice system
- Older homeless people

Human rights may have a particular value in providing protection for those who are not protected by existing equalities legislation, or for those who face multiple discrimination.

Social exclusion and access to services

Relevant rights: *Right to respect for private life; Right not to be discriminated against.*

It is well documented that older people often face isolation and social exclusion. Many older people are disconnected from their community, have little contact with family or friends and have difficulties in accessing (or are unable to access) social, cultural and leisure activities as well as basic public services.

The broad scope of the right to respect for private life extends to social relations and active participation in the wider life of the community, and therefore this right has potential to empower older people to remain full and involved members of the community and influence the delivery of services and formulation of policies that affect them. Participation is also an underpinning principle of the international human rights system, and is one of the five key headings of the UN Principles for Older Persons.

The right not to be discriminated against may also apply if activities or services are unsuitable or difficult for older people to access, or if older people are prevented from accessing them because of their age.

Examples might include a lack of adequate transport, a particular problem in rural areas, preventing older people from accessing public services and activities; or a lack of provision of social or recreational activities that are available/accessible for older people.

It may not always be possible to identify a specific right under the European Convention that is engaged, or a public authority on whom responsibility can be placed, which could limit the applicability of the Human Rights Act. The extent to which public authorities can be held responsible for social exclusion issues may be an area that could be explored in the project.

Poverty

Relevant rights: *Right to an adequate standard of living; Right not to be treated in an inhuman or degrading way; Right to life.*

More than one in five pensioners still lives below the poverty line, and deep poverty afflicts 1.2 million older people. It is now generally accepted that human rights violations are both a cause and consequence of poverty; in other words, human rights violations are ‘part of what it means to be poor’.²⁰ There are a range of international human rights standards that are relevant to poverty, in particular those contained in the International Covenant on Economic, Social and Cultural Rights.

The potential application of the Human Rights Act to poverty is demonstrated by the recent *Limbuela*²¹ case, where the right not to be treated in an inhuman or degrading way was successfully used to challenge the extreme destitution of asylum seekers. Fuel poverty is currently a key issue facing older people in the UK that may have potential to be framed in human rights terms – the National Pensioner’s Convention estimates that last year over the winter period more than nine older people died every hour due to cold related illnesses.²² Failure by the government to tackle this issue could potentially be viewed as a violation of the right to life.

²⁰ BIHR and Oxfam, *Human Rights and Poverty – Roundtable Pre-briefing*, January 2008, available at www.bihhr.org.uk.

²¹ *R (Limbuela) v Secretary of State for the Home Department* [2005] UKHL 66.

²² See www.npcuk.org.

Housing

Relevant rights: *Right to an adequate standard of living; Right to respect for private life; Right not to be treated in an inhuman or degrading way.*

If older people are provided with inadequate or unsuitable accommodation in care homes, sheltered accommodation or social housing, this may engage the right to respect for private life, and in extreme circumstances, the right not to be treated in an inhuman or degrading way. This may apply to older people in particular if their changing needs require their housing to be adapted according to their specific requirements, for example an older person who is no longer able to use stairs but has no toilet or washing facilities on the ground floor of their home. However, the applicability of the Human Rights Act to housing issues has been limited, in particular because the definition of public authority does not cover private landlords and there is a lack of clarity over whether it applies to Registered Social Landlords, and also because the European Convention does not contain a specific right to housing. There may be more scope for applying international standards to housing issues such as Principle 5 of the UN Principles for Older Persons and Article 11 of the ICESCR.

Learning and skills

Relevant rights: *Right to education; Right not to be discriminated against.*

There may be potential to use the right to education to stimulate government and public authorities to provide suitable education and learning opportunities for older people. The right to education may also be able to be used alongside the right not to be discriminated against, if an older person is unable to attend a particular course due to a lack of accessibility and a lack of alternative arrangements, or if they are not given a place on a course because of their age.

Employment and pensions

Relevant rights: *Right to work and other employment rights; Right not to be discriminated against; Right to peaceful enjoyment of possessions.*

The application of the Human Rights Act to employment is limited as private employers do not fall under the scope of the Act. However, the Human Rights Act does still apply to public sector employers.

In addition, the provisions of the Human Rights Act and international human rights standards may have potential to be applied to wider government policy, including:

- **Retirement:** Forced retirement is still lawful in the UK, where older people can be forced to retire from work after the age of 65. This is clearly at odds with the UN Principles.
- **Flexible working:** There may be scope to use human rights language to encourage flexible working policies, giving older people more choice and flexibility in their working lives.
- **Pensions and welfare benefits:** Pensions and benefits have been found to fall under the scope of Article 1, Protocol 1 of the Human Rights Act, the right to peaceful enjoyment of possessions. The application so far of this Article to older people with regards to pensions and benefits has been somewhat limited²³, but there may be some scope for Article 1 Protocol 1 to be applied to pensions and benefits issues, particularly if used in conjunction with Article 14, the right not to be discriminated against in relation to other rights.
- **Discriminatory measures:** Discrimination in the workplace may largely be dealt with under equalities legislation;²⁴ however, there may be some scope for the right not to be discriminated against to be used in relation to employment measures alongside equalities legislation, or where equalities legislation does not apply.

²³ See e.g. *Carson v UK*, 2008; *Stec v United Kingdom* (2006); *R (Wilkinson) v Inland Revenue Commissioners* [2005] UKHL 30.

²⁴ In addition to UK legislation, see in particular the EU 'Employment Equality Directive (2000/78/EC) by the Council of the European Union, available at http://ec.europa.eu/employment_social/fundamental_rights/pdf/legisln/2000_78_en.pdf.

4 Engaging older people in human rights issues in the UK

Research carried out for this report has been unable to identify any projects that specifically seek to engage older people themselves in human rights issues in the UK, beyond previous work carried out by Age Concern and BIHR. A small number of projects and organisations have been identified from which there may be some useful learning for the project, and these are summarised here. It should be noted, however, that this research is not necessarily exhaustive, and it is possible that there are existing projects which have been missed. If any are identified during the course of the project, it is recommended that this report is updated accordingly. It should also be noted that there is an increasing amount of work being undertaken on human rights issues by organisations working with older people. To date, however, this has been more policy and research-oriented than practice-oriented, and the main outputs have been research and policy briefings/reports rather than direct work with older people. A range of these briefings/reports have been used to inform this report, and are listed in the Appendix.

Age Concern

Age Concern England has published a range of publications regarding human rights and older people (see Appendix for a list of publications). These publications have acted as a basis for section 3 of this report, and together provide a very useful overview of the kinds of human rights issues faced by older people. Age Concern has explored the views of older people in the production of these publications, notably commissioning the Institute for Public Policy Research (IPPR) to carry out qualitative research on attitudes of older people towards human rights for *'Rights for Real: older people, human rights and the CEHR'*, May 2006. The research project was on a small scale, involving interviews with only 28 older people, but nevertheless provides an extremely useful insight into the attitudes of older people towards human rights.

The research identifies five key barriers to older people making use of human rights:

- 1 The Human Rights Act is about political correctness, not the treatment of older people
- 2 Human rights are an issue in dictatorships, not Britain

- 3 People should not have to use legal rights to get action
- 4 Lack of faith that using the Act will make any difference
- 5 Lack of information and system navigation skills

However, the report also found that the values older people hold most dear are consistent with, and often support, the concept of human rights. In particular, respect was seen to be at the heart of a decent society. In addition, the report found that once older people are provided with clear and accurate information about human rights, they can see a great deal of potential. The rights to life, liberty, freedom from inhuman and degrading treatment, respect for private and family life and freedom from discrimination in relation to rights were seen as being highly relevant and potentially of direct use.

Age Concern England has also developed a new volunteer advocacy service for older people who lack mental capacity, working through four local Age Concerns. The Mental Capacity Advocacy Project (MCAP) for older people is a three year pilot project funded by the Department of Health and Age Concern England.²⁵ The project's aim is 'To develop, explore and evaluate a volunteer advocacy service for older people who lack mental capacity', and it acknowledges human rights values as underpinning the origins of advocacy. The project has a particular focus on life transitions, such as discharge from hospital and transfer to sheltered housing.

BIHR training and capacity-building

BIHR has delivered its 'human rights and older people' training course to over 50 organisations working with older people since 2003, including local, regional and national voluntary and community sector advocates, carers groups, campaigners and service providers. While the training is not designed directly for older people, but for the organisations working with them, a number of older people have attended the training courses and found them to be extremely useful. BIHR's training course therefore provides a useful model on which to build for the training to be developed and delivered by this project.

BIHR's training has inspired a number of individuals to use human rights to challenge poor treatment of older people in using public services.

²⁵ See www.ageconcern.org.uk/AgeConcern/mhap.asp.

For example:

An older woman was staying in hospital following a number of strokes. She had been interned as a Japanese prisoner of war during the Second World War and suffered a range of trauma related mental health problems. She was observed re-enacting various behaviours from this period including washing her clothes with rocks and hanging them to dry on the hospital fences. Against her wishes, the hospital sought to discharge her and move her into residential care on cost grounds. Her advocate was concerned that being in an institution was what was causing this regression. After receiving BIHR training, he used human rights language to argue that she should not be placed in residential care and that she should instead be allowed to return home in accordance with her wishes. As a result, funding was secured to support her care at home.

This and other similar examples, many of which also feature older people, can be found in BIHR's report *'The Human Rights Act – Changing Lives', Second Edition 2008*. The report provides useful learning of how individuals have been able to improve lives once equipped with information about human rights.

Individuals from a number of local Age Concerns have attended BIHR 'human rights and older people' training sessions, including:

- Age Concern North Wales Central
- Age Concern North East Wales
- Age Concern Gwent
- Age Concern Cymru
- Age Concern Waltham Forest
- Age Concern Islington
- Age Concern Kingston
- Age Concern New Malden
- Age Concern Tower Hamlets
- Age Concern – Black and Minority Ethnic (BME) Elders Forum

The BME Elders Forum training is of particular note – the training was tailored for this particular group and a number of older people attended.

BIHR has just started a 2-year 'human rights and poverty' project that will explore how human rights can be used to tackle poverty in the UK. As the project develops there may be useful learning that could be applied to the Older People and Human Rights Project.

Information resources

While there is an increasing number of publications regarding human rights and older people in the UK (see Appendix), there is a significant lack of publications or resources that are specifically aimed at older people themselves. In order to address this gap BIHR published 'Your Human Rights – a guide for older people' in 2006. This guide was written directly for older people, and provides practical information about human rights and their relevance to older people. It has been extremely popular, and all 4000 copies have now been distributed. The National Pensioners Convention (NPC) has published a short leaflet on human rights and older people. Other than this, no other human rights resources have been identified that are written directly for older people in the UK.

Lack of access to information about human rights is a clear barrier to older people being able to use their human rights. The older people who are engaged in the project will therefore need to be provided with clear, relevant and accurate information about their rights. There are plans to update and reprint BIHR's guide to be used during the project. It will be important to also consider whether any additional information resources should be produced during the project, in particular to accompany the training sessions. Participants in the project may feel they need either more detailed or simpler information.

Joint Committee on Human Rights Inquiry into the Human Rights of Older People in Healthcare

In 2007, the Joint Committee on Human Rights published its report on the Human Rights of Older People in Healthcare.²⁶ In its inquiry, the Joint Committee called for evidence in particular on how human rights principles could be applied, by healthcare providers and inspectorates alike, to ensure that older people are treated with greater dignity and respect when being cared for. The Committee received evidence from many organisations and some individuals, and visited hospitals and care homes in North London.

While this inquiry is not a project or initiative seeking to engage older people themselves in human rights issues, it has been referenced in this section of the report as a key example of organisations and individuals that work with older people engaging in human rights issues. The inquiry received 39 written submissions.

²⁶ Available at www.parliament.uk/parliamentary_committees/joint_committee_on_human_rights.cfm.

This demonstrates that, while there may currently be a lack of human rights initiatives engaging older people directly in the UK, there are a number of voluntary and community and public sector organisations that are working on the human rights issues facing older people. Age Concern's publication *Rights for Real*²⁷ was a stimulus for this inquiry. Age Concern has also produced a follow up report, *On the Right Track*²⁸, tracking progress against the recommendations that the JCHR made in its inquiry report.

Dignity and Older Europeans Project

The 'Dignity and Older Europeans' Project is a three year research project funded by the European Commission. It involved health care professionals, social scientists and philosophers from the UK, Spain, Slovakia, Ireland, Sweden and France. The project identifies the importance and experience of dignity in the lives of older people, particularly when they need help from health or social care services. The project sought to engage older people and health and social care professionals through a number of focus groups. The findings from these groups were used to develop an operational model of human dignity, policy recommendations and educational materials, including '*Dignity and Older Europeans – A Multi-disciplinary Workbook*'.²⁹

This project is interesting in that it explores what are very clearly human rights issues, focusing on the key human rights principle of dignity, but does not at any point reference human rights. This is symptomatic of the fact that many projects and publications, including but not limited to those specifically for older people, engage human rights issues but contain little or no explicit reference to human rights. This is despite the fact that the human rights framework would very often be a useful model for considering these issues.

HelpAge International

Help Age International is an international NGO that supports older people and their organisations to strengthen the representation and mobilisation of older people to claim their rights. Supporting older people to participate in the development of their communities and the debates that shape their lives is a core aspect of their work.

²⁷ Frances Butler, *Rights for Real: Older people, human rights and the CEHR* (London: Age Concern, 2006).

²⁸ Age Concern, *On the right track? A progress review of the human rights of older people in health and social care* (London: Age Concern, 2008).

²⁹ Dignity and Older Europeans Consortium, *Educating for Dignity – A multi-disciplinary workbook* (Cardiff: Dignity and Older Europeans Consortium, 2005).

They have set up a number of projects that engage older people directly in human rights issues outside of the UK. A particular methodology they use is 'Older Citizens Monitoring', which they define as 'a process in which older people monitor the delivery of government services and engage in dialogue to improve policy and practice benefiting disadvantaged older people.' They support older people's groups to:

- Discuss things that matter to them and become aware of their rights
- Link these concerns to policies
- Collect information to monitor delivery of services
- Use this evidence to dialogue with service providers and policy makers
- Contribute to improved policy and implementation
- Build skills and confidence to take action – personally and collectively

Countries that HelpAge International has worked in include Moldova, Bangladesh, Bolivia, Kenya, Jamaica and Tanzania.

The work of HelpAge International clearly has strong parallels with the aims of the Older People and Human Rights Project and could provide useful learning for the way the project proceeds.

More information about their work can be found on their website at <http://www.helpage.org/Researchandpolicy/Rights-1>

They have produced a useful toolkit, 'Advocacy with older people: some practical suggestions', which explores ways of increasing the engagement of older people in policy processes, and which may provide useful learning for the project. This is also available on their website.

Appendix – Bibliography

Publications

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Websites/organisations

Action on Elder Abuse www.elderabuse.org.uk

Age Concern www.ageconcern.org.uk

Alzheimer's Society www.alzheimers.org.uk

Association of Directors of Adult Social Services www.adss.org.uk

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

British Geriatrics Society www.bgs.org.uk

Christian Council on Ageing www.ccoa.org.uk

Commission for Social Care Inspection www.csci.org.uk

Department of Health www.dh.gov.uk

Faculty of Old Age Psychiatry of the Royal College of Psychiatrists
www.rcpsych.ac.uk/college/faculties/oldage.aspx

Help the Aged www.helptheaged.org.uk

HelpAge International www.helpage.org

Mind www.mind.org.uk

National Pensioners Convention www.npcuk.org

NHS Confederation www.nhsconfed.org

Residents and Relatives Association www.relres.org

Royal College of Nursing www.rcn.org.uk

The British Psychological Society www.bps.org.uk

The Royal College of Physicians of Edinburgh www.rcpe.ac.uk

Age Concern is a federation of registered charities. Age Concern England (charity number 261794) has merged with Help the Aged (charity number 272786) to form Age UK, a charitable company limited by guarantee and registered in England: registered office address 207–221 Pentonville Road, London, N1 9UZ, company number 6825798, registered charity number 1128267. Age Concern and Help the Aged are brands of Age UK. The three national Age Concerns in Scotland, Northern Ireland and Wales have also merged with Help the Aged in these nations to form three registered charities: Age Scotland, Age NI, Age Cymru.

The British Institute of Human Rights, registered charity number 1101575