



**Equality and
Human Rights
Commission**

Using human rights to promote the dignity of older people

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What this presentation will cover

- About the Equality and Human Rights Commission (EHRC)
- Does UK law protect human rights?
- Does British law prohibit age discrimination?
- EHRC's formal inquiry into older people and human rights in home care

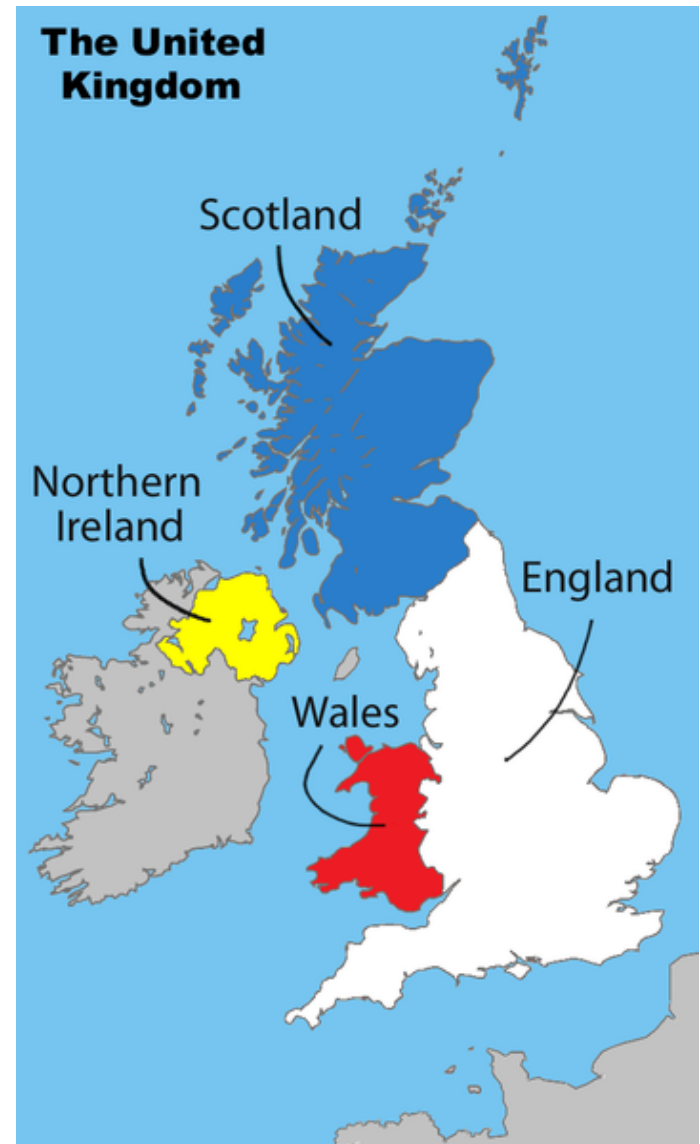
About the Equality and Human Rights Commission

- Established in 2007 by legislation (Equality Act 2006)
- ‘Non-departmental public body’ (that is, set up by legislation, but independent of government)
- Mandate:
 - To promote equality and eliminate discrimination
 - To promote and protect human rights
 - To foster good relations between groups
- Accredited as ‘Category A’ national human rights institution



Equality and Human Rights Commission

- The United Kingdom consists of 4 nations:
- The EHRC covers England and Wales....
- ...partly covers Scotland...
- but does not cover Northern Ireland



Legal powers of the EHRC

- To help individuals taking anti-discrimination cases (but *not* human rights cases unless discrimination is also involved)
- To bring cases against public authorities ('judicial review proceedings') in our own name
- To 'intervene' as a third party in other cases (we need the court's permission to do this)
- To conduct formal inquiries and investigations – which may lead to further legal action

Does UK law protect human rights?

- UK has ratified all UN human rights treaties (but not Migrant Workers' Convention)
- Genocide Convention and Convention against Torture are *partly* incorporated into domestic law
- European Convention on Human Rights (ECHR) on civil and political rights ratified by UK in 1951
- ECHR incorporated into domestic law by Human Rights Act 1998, which took effect in 2000

European Convention on Human Rights includes:

- Article 2 – right to life
- Article 3 – freedom from torture, inhuman or degrading treatment
- Article 5 – right to liberty
- Article 6 – right to a fair trial or fair hearing
- Article 8 – right to respect for private and family life, home and correspondence
- Article 14 – freedom from discrimination in enjoyment of rights

Human Rights Act 1998 (HRA)

- Requires all public authorities to comply with the ECHR when carrying out their powers and duties
- HRA also applies to other bodies (eg private businesses/NGOs) carrying out ‘public functions’
- A person who thinks their ECHR rights have been infringed can bring a case in the domestic courts
- (If this case fails, the person can still go to the European Court of Human Rights in Strasbourg)

Does British law prohibit age discrimination?

- In employment and vocational training, age discrimination was banned in 2006
- This law was first introduced because of a directive from the European Union....
- ... now consolidated into Equality Act 2010
- An exception allowed forced retirement at 65, but now abolished except for special cases

- When receiving goods and services, there is evidence that older people still get less favourable treatment:
 - in health and social care
 - in financial services, especially insurance
 - In clubs, volunteering, public life etc
- But some age-based practices can be objectively justified (for example, public health programmes aimed at older people)

An example:

Lucy, aged 91, who is frail and suffers from dementia, was admitted to hospital with an infection. She needed help to eat her food but the hospital workers did not have the training to understand her needs, or the time to attend to them. On many occasions Lucy's food was taken away untouched. Her daughter was very distressed to see how much weight Lucy had lost during her stay in hospital.

- Equality Act 2010 has legal framework to ban age discrimination in goods and services....
- but this ban has not yet been introduced
- The financial services industry wants to continue its age-based business practices!
- Government still has not resolved how to frame the exceptions to the ban
- Possibly the ban will take effect October 2012

Public sector equality duty

- Equality Act 2010 introduced a new integrated public sector duty as from April 2011
- General duty to eliminate discrimination, advance equality and foster good relations
- Duty applies to seven 'protected characteristics' - age, disability, gender reassignment, race, religion or belief, sex, sexual orientation
- Authorities must plan for democratic change?

EHRC's formal inquiry into older people and human rights in home care

- Launched November 2010, final report Nov 2011
- Inquiry (England only) conducted under formal legal powers - Section 16 Equality Act 2006
- Broad evidence base: 1,254 individuals, local authorities, care providers, other organisations
- We invited written evidence, conducted surveys and focus groups, carried out interviews

- Inquiry devised a framework for analysing evidence
- Based on human rights – ECHR, UN Disability Convention, UN Principles for older persons
- Our framework sets out four broad headings
 - Dignity and Security
 - Autonomy and choice
 - Privacy
 - Social and Civic Participation
- This helped provide a human rights approach to the inquiry and its recommendations

The home care system in England

- Local authority has a legal duty to assess the needs of anyone appearing to need services
- If care needs meet the local ‘eligibility criteria’, the person then has a financial assessment....
- ... which decides whether the local authority pays for home care (a) in full (b) partly (c) not at all
- If someone is entitled to full or partial support, they can choose to have direct cash payment

- Local authorities outsource most home care to private or third sector organisations
- These organisations (probably) operate outside the HRA when providing home care – because of court decisions interpreting HRA
- Local authorities often commission home care to be provided to people in 15 minute ‘slots’
- Providers have to complete set tasks within the allocated time

Inquiry findings

- Many older people are very happy with the home care service they receive

“Both my parents have been enabled to stay independent as long as they can due to the care they have been provided with... [They] are able to enjoy a dignified life, in their communities, at little cost to the state, and remain in control and as independent as they can be.”

(Daughter whose parents receive home care)

But many causes for concern, including:

- Older people not getting support to eat and drink
- Physical abuse and neglect of personal care
- Financial abuse
- Disregard for personal privacy and dignity (eg talking over older people while working)
- Little attention to older people's choices
- Risks to personal security – new care workers

Our inquiry found many human rights breaches!

Neglect of personal care

“ One time, care workers decided not to do any of [my mum’s] washing any more, even though it was included in her care plan, leading to my mum being left in filthy nightwear and clothes and bedding. They did not inform the agency or me as her family”

Daughter of woman in her 80s, London

Lack of autonomy and choice

*“The carers get mum ready for bed at 4.30pm....
This does not always work: last week one
carer arrived at 2.45pm to get her ready for
bed. Apart from loss of dignity, she needs her
[medical] stockings on longer.”*

**Daughter of woman in her 90s, North of
England, part-funded by local authority**

Pervasive social isolation and loneliness

“I’m stuck here all day long, and I look at the sun and I think, I wish I could get out there ... if you’re stuck between four walls of a day, every day, that is like living in a box being squeezed in.”

(Woman, 78, lives alone, local authority funded)

What caused these human rights breaches?

- We found a number of other interlinked factors:
 - Differential treatment related to age (younger disabled adults have more generous care packages)
 - Inadequate information for older people and their families on options for obtaining care.
 - Inadequate information, advocacy and support
 - Low wages and poor training of care workers
 - Older people are reluctant to complain

What do home care providers think?

- Dislike having to compete for work at low rates

“We just are not prepared to reduce what we feel are our essential quality standards to be cheaper.”

Manager, small third sector provider

- Prefer a ‘partnership’ approach to commissioning

“Rather than just saying, ‘There you go, go and do that’, they ask us first, ‘Do you think this will work? What are the best ways to do it?’”

Small private sector provider

Positive human rights obligations

- The HRA gives local authorities positive obligations to promote and protect human rights.
- Local authorities should do more to actively promote/protect older people's human rights:
 - in the way home care is commissioned
 - In the way home care contracts are procured and monitored
- Clear need for supportive senior leadership, with proper understanding of human rights obligations

A human rights approach to home care

- More than just providing legal entitlements, the HRA was also intended to foster a ‘culture of respect for human rights’
- A ‘human rights approach’ to services helps drive up standards, supports person-centred decision-making; rights should only be restricted where proportionate and necessary
- A human rights approach can also give guidance on how to balance conflicting rights and duties where there is a conflict
- But a human rights approach must be matched with a clear understanding of enforceable legal obligations under HRA

Specific recommendations of the inquiry

1. Proper legal protection:

- ✓ All home care arranged by public authorities should be covered by the HRA
- ✓ Age discrimination in services should be banned

2. More effective commissioning/monitoring:

- ✓ Local authorities should build human rights into commissioning and monitoring of services
- ✓ The Care Quality Commission (the sector's regulator) should listen more to the views of service users

3. Better guidance on human rights

- ✓ More information to help older people and their families make informed choices on home care
- ✓ More guidance for local authorities, especially on positive human rights obligations and on a human rights approach to home care

4. Detecting threats to human rights

- ✓ More support for individual complaints
- ✓ Care Quality Commission should be more proactive
- ✓ It should be easier for care workers to ‘whistleblow’



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Close to Home: An inquiry into older people and human rights in home care

The final report and executive summary are available from EHRC's website at:

<http://www.equalityhumanrights.com/legal-and-policy/inquiries-and-assessments/inquiry-into-home-care-of-older-people/>