

# Human Rights

## United Kingdom

February 2020

Human rights standards provide vital protection for older people by helping to change practice and procedure, culture and attitudes, and offering redress when breaches of human rights have taken place.



Many older people experience infringements of their human rights in later life. This can take the form of abuse and degrading treatment; unwarranted deprivation of liberty in the social care setting; loss of autonomy; lack of protection for family and private life; and routine discrimination. Often these human rights breaches are not recognised as such. For example, not being given proper help with eating or drinking contravenes the right to be free from inhuman or degrading treatment; detaining and deporting members of the Windrush generation was a contravention of their right to liberty and their right to family life.

### Key facts

#### 1.5 million

Older people have difficulty with daily living activities such as eating, bathing and taking their medication, severely limiting their ability to live independently and with dignity.<sup>i</sup>

#### Dignity in death

Research shows that many older people experience unnecessary pain and other symptoms, being treated with a lack of dignity and respect, and many people do not die where they would choose to.<sup>ii</sup>

#### 240,455 applications for deprivation of liberty

Too many older people who lack mental capacity are being unlawfully deprived of their liberty in care and health settings through a misuse of measures available under mental capacity legislation.<sup>iii</sup>

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## Human rights legislation<sup>iv</sup>

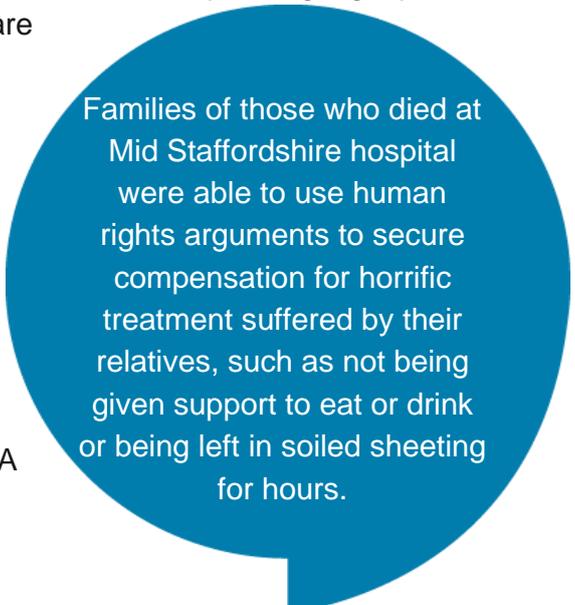
The Human Rights Act 1998 (the HRA, which incorporates the European Convention on Human Rights into domestic law) has greatly benefited older people in the UK, expanding legal protection and reinforcing the remedies that exist when these rights are breached. Evidence shows that it helps to safeguard the dignity and safety of older people at times when they may be at their most vulnerable and heavily reliant on public services. For example, on several occasions residents have successfully challenged care home closures on the basis that the authority has not taken into account how their right to life or right to respect for private life would be affected.

However, there are many older people who are not in a position to hold public authorities to account under the HRA as they face multiple barriers to doing so including mental and physical ill health, and fear of repercussions. Public authorities could be doing much more to meet their obligations under the HRA to act preventatively, by adopting human rights frameworks and ensuring that the right systems are in place.

It continues to be a matter of serious concern across the UK that not all older people are accorded the protections of the HRA. Users of regulated care services who are paying for their own care are not covered (unless their care has been arranged by a local authority or in Northern Ireland, Health & Social Care Trust).

Since its inception, the HRA has been criticised for the perception that it gives some people too many rights, preventing the state from taking reasonable action. Age UK believes that the HRA already embodies a balance of rights and responsibilities and that it is in the best interests of older people to maintain and strengthen the existing legislation. The HRA provides a strong foundation for preventing abuses of older people's rights and should be improved and strengthened.

In Northern Ireland, under the terms of the Belfast (Good Friday) Agreement 1998, the NI Human Rights Commission was asked to advise on a Bill of Rights for Northern Ireland. Age NI supports a strong and inclusive Bill of Rights which should include rights supplementary to those in the ECHR, reflect the particular circumstances of Northern Ireland and have recognisable gains for the most vulnerable in our society. In January 2020, *New Decade, New Approach* was published as the Northern Ireland Executive was restored and includes plans to establish an Ad-Hoc Assembly Committee to consider a Bill of Rights.



Families of those who died at Mid Staffordshire hospital were able to use human rights arguments to secure compensation for horrific treatment suffered by their relatives, such as not being given support to eat or drink or being left in soiled sheeting for hours.

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## Brexit

The UK's withdrawal from the EU will not automatically affect the UK's status as a signatory to the European Convention on Human Rights (ECHR). The ECHR is an international treaty distinct from the EU treaties and EU Charter on Fundamental Rights.

UK citizens are still able to rely on their rights in the ECHR in domestic courts and can still take cases to the European Court of Human Rights. In addition, they are protected by the UN Convention on the Rights of Persons with Disabilities. However, they will no longer be able to rely on the European Charter of Fundamental Rights (CFR) which in particular includes many wider social and economic rights, such as the rights to fair and just working conditions, to healthcare and to have personal data protected. In Northern Ireland, the Common Travel Area, containing reciprocal rights between UK and Irish citizens, along with the entitlement of people born in Northern Ireland, their spouses and children, to hold both UK and Irish passports and be treated as EU citizens, may impact on protections there.

## A new UN Convention?

Under a mandate from the UN General Assembly, an Open-Ended Working Group on Ageing (OEWGA) has been considering how to strengthen the protection of the human rights of older people. It has a mandate to examine the existing international framework in relation to the human rights of older people, and to identify possible gaps and how best to address them, including through considering the possibility of a new Convention on the rights of older persons.



Age UK and Age International firmly believe that a UN Convention on the rights of older persons would provide a framework and focus to guide policy responses to ageing based on rights, equity and social justice. It also has the potential to create a shift from older people being considered as passive recipients of welfare, to older people as active rights holders and to reduce the level of abuse, neglect and discrimination experienced by many older people.

There are large gaps in the international standards that allow older people's rights to be largely ignored. This is undermining progress in terms of older people being treated with dignity and respect, can shut them out of decision-making and can lead to further abuses of their human rights in all areas of life.

A new international convention for older people would transform how governments and citizens respond to the rapidly evolving needs of older people globally.

## Public Policy Proposals

- Any future human rights legislation must protect and strengthen the rights and freedoms in the European Convention on Human Rights and must not undermine the effectiveness or scope of the Human Rights Act 1998 (HRA) or the potential for enforcing it across the United Kingdom.
- Governments must ensure that the national human rights institutions<sup>v</sup> have the powers, constitutional independence and sufficient resources to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote the human rights of everyone in the United Kingdom.
- There is an urgent need to reframe the debate on human rights, emphasising the valuable protection it provides to older people when they may be at their most vulnerable. Governments, national human rights institutions and civil society should place a high priority on promoting awareness, understanding and protection of human rights, in relation to older people.
- Governments, national human rights institutions, and civil society organisations should all seek to influence public bodies to take a human rights based approach to their work, ensuring that all of their policies and procedures are framed with reference to human rights.
- The Government must extend HRA protections to all older people by ensuring that all providers of regulated care services are regarded as public authorities for the purposes of the Act, regardless of who is funding the service provided.
- Governments must continue to be global leaders in the promotion and protection of the rights of older people by playing a positive and active role in the United Nations Open-Ended Working Group on Ageing, encouraging the development of new human rights instruments for protecting the rights of older people, including the possibility of a new Convention.
- A distinct Bill of Rights for Northern Ireland should be developed to conform with the provisions of the Belfast /Good Friday Agreement. Age NI supports a strong and inclusive Bill of Rights for Northern Ireland, which should include rights supplementary to those in the ECHR, reflect the particular circumstances of Northern Ireland and have recognisable gains for the most vulnerable in society.

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## Want to find out more?

Age UK has agreed policy positions on a wide range of public policy issues, covering money matters, health and wellbeing, care and support, housing and communities. There are also some crosscutting themes, such as age equality and human rights, age-friendly government and information and advice.

### Further information

You can read our policy positions here; [www.ageuk.org.uk/our-impact/policy-research/policypositions/](http://www.ageuk.org.uk/our-impact/policy-research/policypositions/)  
Individuals can contact us for information or advice here; <https://www.ageuk.org.uk/informationadvice/> or call us on 0800 169 8787

**Further information** *Also see our policy position on Ageism and Age Equality*

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<sup>i</sup> Age UK, *Why call it care when nobody cares?* 2019

<sup>ii</sup> Age UK, [End of life evidence review](#), 2013 and Offices for National Statistics, [National Survey of Bereaved People \(VOICES\)](#), 2014

<sup>iii</sup> NHS Digital, Mental Capacity Act 2005, Deprivation of Liberty Safeguards England, 2018-19

<sup>iv</sup> UK human rights legislation covers the whole of the United Kingdom but enforcement is devolved.

<sup>v</sup> The Equality and Human Rights Commission, the Northern Ireland Human Rights Commission, the Equality Commission in Northern Ireland and the Scottish Human Rights Commission.