

Human Rights: CIW's commitment to promoting and upholding the rights of people who use care and support services

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Human Rights: Our commitment to promoting and upholding the rights of people who use care and support services

As a regulator, Care Inspectorate Wales' (CIW) primary responsibility is to ensure that the law in relation to the running of care services is upheld. The laws governing care services are primarily reflected through “regulations” and these have been carefully developed to incorporate human rights principles and legal requirements. The legal framework governing care anticipates and reflects people’s rights. Therefore by assessing registrations, undertaking inspections and pursuing compliance with “regulations” we actively promote and seek to uphold people’s legal human rights.

We also recognise that human rights legislation and practice is constantly evolving, moving beyond the point when regulations may have been made and that this needs to be reflected in the way we undertake our work. We have therefore developed inspection frameworks with guidance for our inspectors to place additional emphasis on the relevance and importance of human rights within our work.

In particular we have identified key lines of enquiry within our inspection framework to consider human rights principles, and have set out examples of what is unacceptable care and considered to be a breach of people’s rights and a breach of care regulations.

Where care is unacceptable we will always take enforcement action.

The basic framework of human rights:

The concept of a set of basic human rights is relatively simple one; however, human rights law and practice is complex and changing. Not all rights are absolute, some are limited and others qualified and should be applied proportionately.

In addition in the areas we regulate and inspect there have been the development of additional law, charters and conventions, for example in relation to people with diverse backgrounds, children, people with disabilities, people who lack mental capacity and older people. Many of these re-state fundamental human rights as set out in the European Convention of Human Rights, providing additional interpretation or additional areas for consideration.

We have developed a new inspection framework for regulated services based upon the principles of the Social Services and Well-being Act and the legal definition of “well-being”. This definition includes the rights and protection of individuals. In future inspectors will undertake their inspections considering and reporting on four themes; People’s Well-being, Quality of Care, Quality of Leadership and Management, and Quality of the Environment where services are “setting” based.

The basic rights most applicable to social care in the European Convention are set out below, mapped with reference to our inspection framework for regulated services.

Article	Inspection theme and potential lines of enquiry
Article 2: Right to life	<p>Well-being:</p> <ul style="list-style-type: none"> • Safe care • Adequate nutrition and hydration • Proper medical care • End of life planning and care <p>Quality of care:</p> <ul style="list-style-type: none"> • End of life planning and care <p>Quality of leadership and management:</p> <ul style="list-style-type: none"> • Steps taken to safeguard lives of people • Risk management; in all aspects but including infection control, behaviour management, management of self-harm.
Article 3: Not to be subjected to torture, inhuman or degrading treatment or punishment	<p>Quality of care:</p> <ul style="list-style-type: none"> • Proper medical care; esp. pressure area care • Continence care • The use of restraint • Quality of staff interactions <p>Quality of leadership and management:</p> <ul style="list-style-type: none"> • Culture of care • Response to complaints and whistleblowing • Safeguarding arrangements
Article 5: Right to liberty and security	<p>Quality of leadership and management:</p> <ul style="list-style-type: none"> • Proper application of Deprivation of Liberty Safeguards (DoLS) <p>Quality of environment:</p> <ul style="list-style-type: none"> • Opportunities for freedom of movement and arrangements for security

<p>Article 6: Right to a fair trial</p>	<p>Quality of leadership and management:</p> <ul style="list-style-type: none"> • Fair application of staff disciplinary processes • Fair handling of complaints about people using service • Availability of advocacy
<p>Article 8: Right to private and family life</p>	<p>Well-being:</p> <ul style="list-style-type: none"> • People’s ability to have choice and control; personal autonomy • Privacy when people need/ want it • People’s ability to be independent and live as normal a life as possible • People’s ability to maintain relationships and links with the community <p>Quality of care:</p> <ul style="list-style-type: none"> • Experience of person centred and person directed care • Culture of enablement <p>Quality of leadership and management:</p> <ul style="list-style-type: none"> • Confidentiality and handling of personal data
<p>Article 9: Right to freedom of thought, conscience and religion</p>	<p>Well-being:</p> <ul style="list-style-type: none"> • People’s ability to practice beliefs and follow religious practices
<p>Article 14: Right of protection from discrimination</p>	<p>Well-being:</p> <ul style="list-style-type: none"> • People’s experience of discrimination, feeling valued and respected. • Support for cultural needs, diet, language, activities <p>Quality of care:</p> <ul style="list-style-type: none"> • Equality of access to care and support • Communication needs anticipated; language medium (Welsh and other languages) <p>Quality of leadership and management:</p> <ul style="list-style-type: none"> • Culture which promotes diversity and is responsive to differing needs <p>Quality of environment:</p> <ul style="list-style-type: none"> • Access and support arrangements

We have also set out what we believe are examples of good care as a result of people’s rights being respected. The list is not exhaustive, but is illustrative of some of the more common concerns which arise.

Article	Examples of unacceptable care	Examples of good care
Article 2: Right to life	<p>People suffering from malnutrition or dehydration</p> <p>People suffering serious harm or dying because of inadequate care or failure to manage risks</p> <p>People not being able to receive medical care when they need it</p>	<p>Supporting well-being: People feeling and being safe and protected from harm or neglect.</p> <p>People enjoying appropriate, healthy and nutritious meals and drinks. Mealtimes are appropriately spaced and flexible to meet people’s needs. People supported to have enough to eat and drink.</p> <p>Quality of care and support: People being safe and as well as they can be because they receive proactive, preventative care and their wide range of needs are anticipated. Referrals made in a timely way to relevant health and social care professionals when people’s needs change.</p>
Article 3: Not to be subjected to torture, inhuman or degrading treatment or punishment	<p>People living in unnecessary pain</p> <p>People being shouted at, verbally abused or physically or sexually assaulted</p> <p>People being mocked or made the subject of jokes</p>	<p>Supporting well-being: People being encouraged to speak, express themselves and if necessary having advocacy support, are enabled to make choices, are being treated with dignity and respect and having their individual identities and routines recognised and valued.</p> <p>People’s best interests being understood and promoted. People’s independence being maximised by positive risk taking.</p> <p>Quality of care and support: People treated with kindness and compassion in their day to day care.</p> <p>People are offered warmth, encouragement and emotional support.</p>

<p>Article 5: Right to liberty and security</p>	<p>People being restrained or locked in without proper authorisation</p> <p>People being sedated unnecessarily</p> <p>People's belongings being stolen or misused</p>	<p>Leadership and management: DoLS is used appropriately.</p> <p>There are robust, transparent systems in place to assess the quality of the service in relation to outcomes for people which includes feedback from people using the service and their representatives.</p> <p>Environment: There are opportunities for freedom of movement and arrangements for security.</p> <p>People are cared for in safe, secure, warm and well maintained surroundings. The need for privacy and confidentiality is anticipated and respected</p>
<p>Article 6: Right to a fair trial</p>	<p>People being given notice without justification or a fair hearing</p>	<p>Leadership and management: Complaints are handled fairly, people living and working in or visiting the home know how to raise concerns, are supported to do so and these are acted upon.</p>
<p>Article 8: Right to private and family life</p>	<p>Intimate personal care being given in public view</p> <p>People not being supported to be well groomed and presented</p> <p>People not being consulted about the care and support they receive</p> <p>People not being afforded privacy when they need or request it</p> <p>People being denied visitors unless there is a good reason</p> <p>People's confidential information and data being shared inappropriately</p>	<p>Supporting well-being: People being encouraged to speak, express themselves and if necessary having advocacy support, are enabled to make choices, are being treated with dignity and respect and having their individual identities and routines recognised and valued.</p> <p>Quality of care and support: People are fully involved in making decisions about the service they receive and the way they spend their time.</p> <p>Leadership and management: Are able to demonstrate that they consistently act with due diligence and care, have clear delegation of responsibilities and effective administration systems.</p>
<p>Article 9: Right to freedom of thought, conscience and religion</p>	<p>People being mocked or criticised for their religious beliefs</p>	<p>Supporting well-being: People being encouraged to speak, express themselves and if necessary having advocacy support, are enabled to make choices, are being treated with</p>

	<p>People not being given appropriate opportunities to follow their faith</p> <p>People's being given food not in keeping with their faith traditions</p>	<p>dignity and respect and having their individual identities and routines recognised and valued.</p> <p>People being enabled to do things for themselves, maintain, recover and develop their individual skills, interests and beliefs.</p>
<p>Article 14: Right of protection from discrimination</p>	<p>People suffering discrimination to a point where proper care is denied or they receive unfair, unequal treatment.</p> <p>People being mocked or criticised for their cultural background, sexual orientation or disabilities.</p>	<p>Supporting well-being: People being encouraged to speak, express themselves and if necessary having advocacy support, are enabled to make choices, are being treated with dignity and respect and having their individual identities and routines recognised and valued.</p>