

RIGHTS IN ROLES RESOURCE PACK COMMISSIONING



b rap

CONTENTS

INTRODUCTION	5
TOOLKIT 1	7
Introduction	7
TIP SHEET 1A	9
Introduction	9
Prompt questions	9
TOOLKIT 2	11
Introduction	11
TOOLKIT 2, PART 1	12
Introduction	12
TIP SHEET 2A	13
Introduction	13
Do.....	14
Don't.....	14
Possible questions	14
Engaging with providers of residential care.....	16
TIP SHEET 2B	18
How to use this tip sheet	18
Questions for providers	18
TIP SHEET 2C	19
Introduction	19
Questions for learning and development.....	19
TOOLKIT 2, PART 2	21
Introduction	21
TIP SHEET 2D	22
Introduction	22
Top tips	22
Opening Statements.....	22
Outcomes.....	23
Service Standards.....	23

TIP SHEET 2E	24
Introduction	24
Top tips	24
TIP SHEET 2F	25
Introduction	25
Top tips	25
TOOLKIT 3	26
Introduction	26
Does this sound familiar?	26
TIP SHEET 3A	28
Introduction	28
Top tips	28
Monitoring for protection of particular human rights	28
Sources of evidence	28
TIP SHEET 3B	30
Introduction	30
Exercise for commissioning teams	30
Exercise	30
Observing provision of care: Top tips	31
TIP SHEET 3C	32
Introduction	32
Top tips	32
NOTES	33
OTHER USEFUL RESOURCES	34

INTRODUCTION

This is one of five resource packs published by brap (funded by the Equality & Human Rights Commission) (EHRC) on the subject of human rights in residential care for older people. The five resource packs are:

- Human Rights in Residential Care for Older People: Commissioning.
- Human Rights in Residential Care for Older People: Leadership.
- Human Rights in Residential Care for Older People: Resident Engagement.
- Human Rights in Residential Care for Older People: Managing Risk Positively.
- Human Rights: An Overview for Residential Care Staff.

In recent years human rights have been incorporated into the Care Quality Commission's (CQC) inspection regime. We produced these resource packs because so far little practical guidance has been issued relating specifically to human rights in residential care for older people and that which has, has focused primarily on legal compliance.

The resource packs were developed with the active participation of care commissioners, care home staff and managers, and residents and their families and carers. Each consists of commentary, tip sheets and exercises aimed at providing practical help, suggestions and guidance to ensure that human rights are better embedded in the routine daily concerns of providing residential care for older people.

The resource packs are aimed at managers, leaders and frontline staff, commissioners of care and residents and their families, in short, anyone involved in the provision of residential care who wants to better understand the daily, practical implementation of human rights in this context. The exercises are designed for use in a variety of contexts: personal use, staff team development sessions, and even, where appropriate (e.g. in the resident engagement resource pack) with residents and their families.

This resource pack aims to help commissioners of residential care for older people make the most of market development, service design, and management and monitoring by using these functions to support and promote the human rights of care users.

It is in three parts and covers the following:

TOOLKIT 1 Market development

- Exploring ways in which commissioners' market-development role can be used to promote the development of a local residential care economy that has the protection and promotion of human rights at its centre.

TOOLKIT 2 Designing Services

- Developing a more nuanced understanding of how to design services that better protect and promote human rights.

TOOLKIT 3 Management and monitoring

- Identifying whether human rights are being protected and promoted by the providers you commission and will support mutual learning and development with care providers on this topic.

TOOLKIT 1

MARKET DEVELOPMENT

Introduction

This toolkit will help you develop a better understanding of:

- How commissioners' market making activities can be used to reinforce shared expectations regarding the protection and promotion of human rights in residential care for older people.
- How to encourage providers to compete with each other to demonstrate best practice in the promotion and advancement of human rights.

It includes the following tip sheet:

- Tip Sheet 1: an exercise for commissioning teams to help them to think through how to develop the local residential care market in a way that helps to protect and promote human rights.

In complex systems like residential care there will always be a need to assess and review whether residents' needs are met and their human rights promoted. The evidence suggests that this can best be achieved through dialogue, using the principle and practice of 'appreciative enquiry', identifying what is working well in current provision and considering how this could be improved in the future to maximise protection of residents' human rights. There are examples of commissioning teams that have worked with providers to do this in the context of promoting relationship-centred care¹.

A cross-party agreement between providers, residents and commissioners on the key questions and risks involved in the provision of residential care can create a secure platform to set, build and sustain standards over time. Achieving this change requires time and commitment from all parties.

For commissioners of residential care for older people, 'market-development' is about using their influence (e.g. through the tendering process) to encourage a high quality, competitive and diverse market of providers that can deliver good quality and cost-effective care for older people. Market-development activities offer commissioners a prime opportunity to reinforce shared expectations regarding the protection and promotion of human rights in residential care for older people and to

¹ Granville et. al. (2014) *Commissioning relationship-centred care in Essex: An evaluation*, York: JRF

encourage providers to compete with each other to demonstrate best practice in the promotion and advancement of human rights.

TIP SHEET 1A

EXERCISE FOR COMMISSIONING TEAMS: MARKET DEVELOPMENT

Introduction

These general prompt questions can be used as part of a team development session to help you think through the opportunities you have to proactively manage your residential care market in a way that drives up quality and upholds human rights.

Prompt questions

- ? Does our local 'Market Position Statement' communicate the things that providers need to know about our commitment to human rights? Does it describe our aspirations for improved practice and quality relating to human rights? Does it describe our assessment of current performance regarding compliance and protection of human rights in residential care?
- ? Are our messages to providers regarding what we expect in relation to human rights protection consistent?
- ? Are our messages sufficiently nuanced to make sense for residential care, other forms of housing with care and home care?
- ? How do we incentivise and nurture innovation in human rights in residential care? Do we relate funding to the achievement of human rights outcomes? Do we publicise and share new and exciting practice with other providers? Are we encouraging providers to 'compete' to demonstrate that they are modelling best practice in upholding human rights?
- ? Do we create platforms to help share best practice amongst providers and reduce the risks of human rights violations (e.g. in relation to safeguarding protocols around Deprivation of Liberty)?
- ? What types of training and development are currently made available to residential care providers in the local area? Does it provide sufficient practical coverage of human rights?

- ? Are providers aware that effective practice in human rights is valued, rewarded and will help them to secure future business?
- ? What can we do to ensure that a provider's reputation as an effective human rights-focused provider is seen as important in our local market?
- ? Does our current funding model (e.g. balance between cost and quality at tendering stage) support this type of approach?

TOOLKIT 2

DESIGNING SERVICES

Introduction

When preparing Pre-Qualification Questionnaires (PQQs), Invitations to Tender (ITTs), specifications, or contracts and framework agreements for residential care for older people, commissioners have key opportunities to protect and promote compliance with human rights. The Equality & Human Rights Commission's inquiry into home care (2014)² found that such opportunities were often overlooked.

Amongst commissioners we spoke to there was a clear desire to understand more about how expectations regarding human rights protection could be written into service specifications and contracts. They wanted to get behind the meaning of 'catch all' words like 'dignity' and 'respect' to reflect some of the specific human rights issues at stake in residential care settings.

Improving human rights outcomes comes as part of a dialogue with providers and service users which is based on mutual respect and learning.³ Such dialogue will help develop shared expectations for how human rights should be upheld and protected and what 'high quality care' should look like.

This toolkit is in two parts, reflecting key aspects of the service design process:

Part 1 focuses on how consultation and engagement with residents and their families, with providers and with other commissioning colleagues can help develop a shared understanding of how human rights are to be protected and promoted in residential care commissioning.

Part 2 focuses on how commissioning documents can help spell out expectations regarding the protection of human rights for older people receiving residential care services.

² <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/inquiries-and-assessments/inquiry-home-care-older-people>

³ See for example, Granville et. al. (2014) *Commissioning relationship-centred care in Essex: An evaluation*, York: JRF

TOOLKIT 2, PART 1

CONSULTATION AND ENGAGEMENT

Introduction

This toolkit will help you develop a better understanding of how to improve engagement with older residents and their families and carers, and with providers of residential care and with other commissioning colleagues in your local area.

It contains the following tip sheets:

- Tip Sheet 2A – designed to help commissioners develop consultation and engagement activities that will help involve residents, their families and carers in discussions about the protection and promotion of compliance with human rights.
- Tip Sheet 2B – prompt questions for commissioners to use when consulting with providers.
- Tip Sheet 2C – to help leaders of commissioning teams engage colleagues in discussions about how human rights might be best protected.

You are likely to be already in dialogue with local providers as well as engaging regularly with residents and independent care scrutiny bodies such as Healthwatch, Health and Wellbeing Boards and the Care Quality Commission (CQC) to gather views as part of care service design. Yet how often are these discussions or the questions you ask of stakeholders framed in a way that can help protect and promote human rights? The three tip sheets here are intended to help plug this gap.

TIP SHEET 2A

ENGAGING WITH RESIDENTS, FAMILIES, AND CARERS

Imagine that you are establishing the first care home in the land for older people. No one has ever lived in a care home before, it is a totally new idea. There are no pre-existing ideas about how to do this, no laws and no rules about how people should live together and be supported in this home.

You and those around you are going to be its first occupants and you recognise that some 'rules' and 'expectations' will be needed to guide how you are going to live together and be cared for.

Can you create two wish lists:

1. The most important rights that you think should be protected for everyone in the home.
2. The most important rules (these could be behaviours or values) that you think those that care for you should adhere to.

Take feedback from the group. The facilitator can link relevant examples to actual human rights.

Introduction

This tip sheet is designed to help commissioners develop consultation and engagement activities that will involve residents, their families and carers in discussions about the protection and promotion of human rights in residential care for older people. It can be used when you are planning new consultation and engagement activities or to help improve existing practice. (See also 'Resident Engagement' in this series for more tips designed for care providers).

Members of the public may sometimes need help to understand the human rights to which they or their loved ones are entitled and what these rights mean in practice in residential care. Consultation is often far more productive when participants are supported in this way. Group discussions and facilitated focus groups will often encourage older people to share any concerns they have much more effectively than a survey or questionnaire will.

Here are some ideas for running such sessions...

Do....

- ✓ **Establish ground rules for the discussion** (e.g. listening to other people's views, not judging people for what they say, confidentiality).
- ✓ **Explain what you mean by human rights.**

You could run an exercise like this:

- ✓ **Give some easy to understand examples** of how human rights apply in residential care for older people (see Toolkit 1/Tip Sheet 1).
- ✓ **Ask open questions that allow people** to describe what is important to them in the receipt of residential care (see below for some possible questions).

Don't....

- × **Don't use over-technical or legalistic language.**
- × **Don't let individual experiences dominate the conversation** – help people to think about things that may apply to others too rather than just to themselves.
- × **Don't avoid 'tricky' issues** such as views about cultural entitlements, sexual relationships, or alcohol consumption.
- × **Don't see representatives or family members as the only people who can offer their views.**

Possible questions

You may want to tailor these to focus on priorities you have identified for the protection of particular human rights.

- ? What, in your experience, do residential care providers do well in ensuring that the human rights of older people are protected?
- ? What, in your experience, could be improved in the way residential care providers protect the human rights of older people?

A range of prompts could be used to help run these discussions, for example cards that describe particular human rights or components of a right – such as 'treated with dignity when being helped to wash or dress'; 'feel that you are understood and listened to'; 'feel that you have a say in decisions relating to care'.

- ? How easy is it to raise concerns when the human rights of older people in residential care are at risk?
- ? What happens after those concerns have been raised?
- ? What could others (e.g. the local authority) do better to ensure residential care providers are helping to protect the human rights of residents?

Engaging with providers of residential care

Developing honest and equal relationships with providers based on mutual respect for each other's expertise and experience can help you collect useful information about how commissioning processes are currently working and what needs to be done to improve compliance with and effective protection of human rights.

A recent study of the residential care commissioning team in Essex County Council (Granville et. al. 2014) found that working with providers to discuss not just their concerns but also their aspirations for care provided an excellent foundation for a new quality improvement plan in the county focused on relationship-centred care.

Commissioners used a set of principles based on work by My Home Life to frame a discussion with care home managers about the core principles of quality in residential care for older people. These principles were then used to inform various commissioning and contract documents to ensure providers were clear about expectations around delivery and quality. These are copied below as an example.

You could use something like this to initiate a conversation with care home managers to help you develop your own set of principles at a local level.

- **Managing transitions:** supporting people to manage both the loss and upheaval associated with going into a home and protecting people's private and family life to prevent unnecessary interferences in the process of transition).
- **Maintaining identity:** working creatively with residents to maintain their sense of personal identity and engage in meaningful activity.
- **Creating community:** optimising relationships between and across staff, residents, family, friends and the wider community.
- **Sharing decision-making:** facilitating informed risk taking and the involvement of residents, relatives and staff in shared decision-making in all aspects of home life.
- **Improving health and healthcare:** ensuring equal and adequate access to healthcare and promoting health ensuring that people are not discriminated in their enjoyment of human rights – or discriminated against on the basis of protected characteristics such as their disability, race and gender).
- **Supporting a good end of life:** valuing the 'living' and the 'dying' in care homes.

- **Keeping a workforce fit for purpose:** identifying and meeting ever-changing training needs within the care home workforce.
- **Promoting a positive culture:** developing leadership, management and expertise to deliver a culture of care where care homes are seen as a positive option⁴.

⁴ Essex County Council, 2014. Taken from Granville et. al., 2014, 'Commissioning Relationship-Centred Care in Essex: An Evaluation, York: JRF). Adapted slightly.

TIP SHEET 2B

ENGAGING WITH RESIDENTIAL CARE PROVIDERS

How to use this tip sheet

The following questions are designed for commissioners to use when they have an opportunity to consult with providers. They are designed to help commissioners and providers alike develop a shared understanding of what high quality care should look like, how this relates to the protection of human rights, and how they could be best supported to deliver that type of high quality care.

Before you start the questions, it may be useful to explain very briefly what human rights are and how they relate to residential care.

Questions for providers

- ? What do you think residents most value about the care you provide?
- ? What do you think residents most value about the care you provide?
- ? Are those aspects of care valued in the commissioning and quality monitoring process?
- ? Which, if any, human rights do you think are at risk of not being protected in residential care for older people?
- ? Are there any ways that we as commissioners could better understand what you are doing to protect and promote human rights and how we might assess whether this is being done?
- ? Are there other agencies that are already asking you for information about human rights protection (e.g. Care Quality Commission or Healthwatch) and how might we reduce repetition?
- ? Is there anything that gets in the way of providers protecting the human rights of residents?

E.g. have we got the balance right between quality and cost in the way we commission residential care services? Are safeguarding systems appropriate and responsive?

TIP SHEET 2C

ENGAGING COMMISSIONING COLLEAGUES IN DISCUSSIONS ABOUT HUMAN RIGHTS

Introduction

This tip sheet is designed to help leaders of commissioning teams engage colleagues in discussions about how human rights might be best protected and promoted in residential care for older people. It includes questions which can be used to initiate discussions with colleagues at a relevant time (e.g. a team meeting or an away day).

The consultation and engagement activities discussed in tip sheets 3A and 3B of this toolkit will also help commissioning teams get a sense of priorities for protecting human rights in their commissioning role.

Questions for learning and development

The following are key development questions which could be used internally by leaders of commissioning teams to help discuss their team's approach to the protection and promotion of human rights. These can help to make sure everybody is on the same page and to identify any gaps in knowledge that need to be filled prior to future commissioning.

Relationships

- ? Do we, as commissioners, have a shared idea of the best possible relationship that we might have with our providers – the kind and quality of dialogue and communications; the kind and quality of problem-solving that would most benefit our business interests and our joint interest in improving lives?

Understanding human rights

- ? Have we developed a shared understanding across the system about those areas where human rights are most likely to be infringed, whether to the detriment of individuals, groups or the 'culture' of care?
- ? Do we know whether what older people most value and what we most value are aspirations shared by our providers?
- ? Do we have a clear and shared view of what we mean by general descriptions such as 'dignity', 'respect' and 'autonomy' in different situations in the residential care environment?

Upholding human rights

- ? Do we commission for outcomes that demonstrate that the human rights of residents are paramount, and that the maintenance of those human rights is the norm – i.e. not a minimum standard, not a maximum, simply ‘the standard’?
- ? Do we demonstrate that we are willing to learn from past experience of human rights protection (both good and bad practice) when developing specifications for new work?

TOOLKIT 2, PART 2

COMMISSIONING DOCUMENTS: IMPROVING PROTECTION AND PROMOTION OF HUMAN RIGHTS

Introduction

This toolkit will help you develop a better understanding of how you can use the paperwork associated with commissioning (such as contracts and service specifications) proactively to help to protect and uphold the human rights of people who use residential care for older people services.

It contains the following Tip Sheets:

- Tip Sheet 2D – to help commissioners incorporate consideration of human rights issues when creating or amending existing service specifications.
- Tip Sheet 2E – to help commissioners to incorporate consideration of human rights issues when creating or amending existing pre-qualification questionnaires and invitations to tender.
- Tip Sheet 2F – to help commissioners to incorporate consideration of human rights issues when creating or amending existing contracts

Some of the commissioners we spoke to said they use established quality frameworks (such as the Adult Social Care Outcomes Framework or CQC fundamental standards) to define the ‘care standards’ described in service specification documents and do not usually consider human rights separately because they assumed these frameworks would do so by default.

This section starts from the view that there is benefit in considering human rights separately because this helps to affirm their central role in defining the acceptable standard and norm of care.

The three tip sheets below include examples of how commissioning documents could be adapted to better ensure human rights are protected and promoted through the commissioning process. They include tips on: Service Specifications; Pre-Qualification Questionnaires and Invitations to Tender; and Contracts.

TIP SHEET 2D

SERVICE SPECIFICATIONS

Introduction

This tip sheet is designed to help commissioners incorporate consideration of human rights issues when creating or amending existing service specifications for provision of residential care for older people.

Top tips

Opening Statements

Opening statements in service specifications are a great opportunity to describe your commitment to human rights up-front and to set the tone for subsequent coverage of human rights in additional commissioning documents. These will work best when they are informed by key values and priorities that you and other stakeholders in your local feel are important in high quality residential care. Here's an example of a statement that could be included:

At County Council we take our duty to comply with and uphold human rights very seriously. We work with providers to ensure that people receiving residential care support achieve the very best outcomes and that their rights and entitlements are respected at each step of their care journey.

This is why this service specification and accompanying commissioning documents all make clear references to the need to meet obligations under the Human Rights Act and we encourage providers to tell us how they are doing this.

For example, we have a shared expectation with contracted providers that they will not interfere with residents' privacy unless it is completely necessary.

We expect providers to maintain people's dignity when they are being helped to wash or dress.

We expect providers to respect the religious and non-religious beliefs of residents.

We expect providers to ensure that the rights of residents are protected equally irrespective of their background or identity (e.g. disability, age or sexual orientation).

We expect providers to promote the autonomy and choice of residents when communicating with them and to adopt a positive, enabling approach to care.

Outcomes

Service specifications usually include some reference to relevant outcomes for residents but these can at times be quite general – e.g. “improving the quality of life for residents with care and support needs”. There are opportunities to be much more explicit about human rights outcomes for residents. Here is an example of a human rights-focused outcome:

Residents are able to live in their home in dignity and security. In particular, they are free from physical abuse and neglect, from financial abuse and from psychological and emotional abuse (e.g. bullying, threatening or humiliating treatment). Their autonomy and independence is promoted as much as possible in the context of the caring environment.

When considering how you describe outcomes in service specifications it's worth noting that discussion of human rights in residential care for older people is often associated only with the most extreme of 'poor outcomes', such as neglectful application of personal care or illegal restraint. Developing a better understanding of how to protect and promote human rights in residential care can improve what should be staple ingredients of any effective care environment. For example, paying due attention to the right to private and family life and enabling residents to engage with friends, family and the wider community can help to reduce loneliness.

Service Standards

Service specifications will typically include important care standards identified through numerous commissioning cycles, for example, 'enabling access to interpreters', or 'enabling residents to engage in recreational activities outside of the residential care setting'.

Clear, practical standards like this are useful to providers as it helps them to understand the behaviours that are expected of them. Such standards of provision sometimes also refer to important components of human rights duties. For example, private and family life includes reference to respect for social relationships and links with the community. Thus the standard of 'enabling residents to engage in recreational activities outside the residential care setting' can be a useful approach to protecting a component of this right.

Clearly, there is also a balance to be struck. Specifications cannot include hundreds of service standards. Nonetheless, it is useful to review service standards and ensure that every opportunity is taken to protect and promote the full scope of human rights that residents should enjoy.

TIP SHEET 2E

PRE-QUALIFICATION QUESTIONNAIRES AND INVITATIONS TO TENDER

Introduction

This tip sheet is designed to help commissioners to incorporate consideration of human rights issues when creating or amending existing pre-qualification questionnaires and invitations to tender for provision of residential care for older people.

Top tips

- ♥ Ask providers to explain how their organisation protects specific human rights that you know are relevant in the context of residential care (e.g. freedom from inhuman and degrading treatment, the right to privacy and family life, the right to liberty, the right to life and the prohibition of discrimination).
- ♥ Ask providers to share examples of where they have done this and what sort of evidence they use to demonstrate that these human rights have been protected.
- ♥ Ask providers whether they have received training in relation to human rights.
- ♥ Ask providers how issues of human rights are discussed when new care staff are inducted into the home (see Tip Sheet 1C in Human Rights in Residential Care for Older People: Leadership for more tips on this).
- ♥ Ask providers to identify any areas of human rights protection that they would like to improve in the future and how they plan to do this.

TIP SHEET 2F

CONTRACTS

Introduction

This tip sheet is designed to help commissioners to incorporate consideration of human rights issues when creating or amending existing contracts for provision of residential care for older people.

Top tips

- ♥ In the same way that many commissioners establish contractual obligations regarding promoting equality (Equality Act 2010) and complying with the Mental Capacity Act 2005, there are benefits to establishing clear contractual obligations regarding the human rights of residents.
- ♥ In the same way that many commissioners establish contractual obligations regarding promoting equality (Equality Act 2010) and complying with the Mental Capacity Act 2005, there are benefits to establishing clear contractual obligations regarding the human rights of residents.
- ♥ Commissioners will need to decide the level of detail they wish to include in relation to these obligations, but clear references to protection of the right to life and freedom from inhuman and degrading treatment are a good foundation.
- ♥ Commissioners may also wish to spell out expectations regarding the right to liberty and security (deprivation of liberty safeguards) prohibition of discrimination respect for residents' right to private and family life and to summarise the limited circumstances in which restrictions of these rights are permitted (see Toolkit 1).
- ♥ In addition to these contractual obligations, additional contract terms can also be included to help ensure that the human rights of residents are considered as a matter of course in the core delivery of the service. For instance, a commissioning authority may want to include a reference to 'recognising and promoting the individuality and personal preferences of residents' in the delivery of services.

TOOLKIT 3

CONTRACT MANAGEMENT AND MONITORING

Introduction

Does this sound familiar?

This is the second time Mrs Smith has come in to discuss her concerns about her father's care. Her father is unhappy and she's worried he is being forgotten about in his room. On your last monitoring visit you raised a similar concern with the manager of the care home who did say, in very positive terms, she would take steps to ensure Mr Smith was included more in day to day activities in the home (though she also said, 'he likes to keep himself to himself').

All of the home's paperwork is in order, its self-assessment forms indicate that good quality care is being provided and resident feedback surveys are largely positive.

Nonetheless, reading between the lines there is a possibility there are problems with the way residents are treated – Mrs Smith's is not the first complaint about this particular provider.

You have provided advice for Mrs Smith about her rights and the Council will probably be able to arrange a move for Mr Smith as this appears to be what he and his daughter would like, but you have a lingering concern that something may not be quite right.

Commissioning staff that we spoke to said that sometimes they receive letters or phone calls from concerned residents, often before the resident has raised the issue with relevant residential care staff. In such cases commissioners are justifiably concerned that issues haven't been picked up and dealt with earlier by care providers themselves.

Commissioners also described feeling a 'confidence gap' between 'paperwork' and 'implementation of care'. They asked for support and advice on how management and monitoring arrangements with providers might be changed to give greater confidence and assurance regarding protection of human rights.

'Performance' is commonly seen as the responsibility of provider organisations. A human rights-approach to commissioning takes this a stage further and encourages commissioners to support providers in a collective effort to protect human rights.

This toolkit starts from the position that positive and trusting relationships with providers are central to the job of quality improvement and stimulating the local market to offer better care in the future. The emphasis is on a quality improvement model based on appreciative inquiry as opposed to a monitoring model that has blame attribution at its heart. In an appreciative inquiry approach, commissioners and providers recognise that there is a shared accountability for getting things right for residents and that a shared benefit can be gained from tackling known and emerging human rights-related risks together.

This toolkit contains the following tip sheets:

- Tip sheet 3A – to support commissioners in their management and monitoring of contracts.
- Tip sheet 3B – to help commissioning teams reflect on their approach to conducting provider visits.
- Tip sheet 3C – some quick ideas for commissioners on how they might help to support a learning culture in relation to human rights at a local level.

TIP SHEET 3A

MANAGEMENT AND MONITORING PRACTICE

Introduction

This tip sheet is designed to support commissioners in their management and monitoring of residential care for older people contracts. It includes an exercise that could be used by commissioning staff teams to help agree shared and consistent approaches on this topic.

Top tips

Contract management processes offer commissioners a number of opportunities to understand how care providers are protecting human rights and can help to identify human rights-related risks that may require a response. Commissioning agencies have obligations to uphold human rights. This might include, for instance:

Monitoring for protection of particular human rights

- ♥ Many contracts include references to terms like 'freedom', 'dignity', 'respect' or 'privacy', but performance indicators do not always explain how these relate to particular human rights or particular contexts within the care home. In the case of 'privacy', for example, a more specific and measurable indicator might include "percentage of residents who report that their privacy is respected and their dignity maintained when being helped to wash or dress". Commissioning documents are an important opportunity to be clear about monitoring and quality expectations prior to contracting (see Toolkit 2).

Sources of evidence

- ♥ Due to limited time and resources many commissioners tend to focus on one main source of evidence to assess performance, largely self-assessment based paperwork completed by the provider. But other important sources of information should also be considered. For example:
 - ♥ Local organisations, users' advocacy groups and patients' organisations.
 - ♥ Social workers that support residents in the home.
 - ♥ Staff working in the residential care sector.
 - ♥ Local adult safeguarding staff.
 - ♥ CQC inspectors.

- ♥ Clinical Commissioning Groups that commission the health services provided in residential care.
 - ♥ Residents, their families and carers.
-
- ♥ There are opportunities to ask these wider stakeholders specific questions about how, in their experience, they have seen human rights being protected, and any concerns or good practice they are aware of relating to particular providers. This should include clear guidance regarding complaints and whistle-blowing.
 - ♥ Commissioners can also use providers' monitoring reports to help assess human rights protections in more methodical ways, for example, by reviewing complaints through a human rights 'lens' to identify whether they relate to particular human rights-related risks.
 - ♥ Commissioners should also develop a sense of how the concerns or complaints of residents, their families and carers are handled. A provider that protects human rights will treat concerns as an opportunity to learn and improve care. It will encourage staff to share any concerns they have without fear of blame or disciplinary action and will respond to complaints transparently and honestly.

TIP SHEET 3B

VISITING CARE PROVIDERS

Introduction

This tip sheet is designed to help commissioning teams reflect on their approach to conducting provider visits. It includes an exercise which can be used by commissioning teams to discuss how provider visits can be used to enhance the protection of the human rights of residents, their families and carers.

Exercise for commissioning teams

As part of the commissioning process, a local authority arranges periodic visits to care providers to discuss issues of contract management. Though these visits are principally focused on compliance and assurance mechanisms, commissioning staff also have a limited chance to observe care first hand. While the incident described below might not in itself be a human rights issue, it is an important sign that follow-up questions needed to be asked of the provider to identify whether this example was symptomatic of wider neglect of residents.

The following example and questions could be printed out and used in a commissioning team meeting or away day to discuss the options open to you when visiting a provider. Do staff agree on the best approach to take? Do team members require any additional support or development to enable them to respond more effectively in situations like this?

Exercise

I walked into the room and it was clear that she had spilt her drink over herself and the floor and couldn't reach it and couldn't clean herself up. Though the resident's care chart said she required regular checking and access to a drink it looked like she'd been left in that state for hours.

- When visiting providers what are the 'signs' that you look for to understand whether human rights are being protected?
- What would you have asked in this situation?
- What would you have done?

Observing provision of care: Top tips

Despite the time and resource pressures on commissioners, additional evidence may sometimes be required where there is an indication that residents' rights are at risk of infringement, particularly if existing sources, such as CQC inspection reports, haven't covered the issues that concern you. Other ways of gathering evidence, in addition to paperwork and feedback from users and partner agencies, include:

- ♥ Observing care in practice at different times of the day (excluding intimate personal care).
- ♥ Tracking what happens to residents on their journey through care pathways.
- ♥ Observing the physical environment of residential care providers, including individual and communal rooms.

TIP SHEET 3C

PROMOTING A LEARNING CULTURE AROUND HUMAN RIGHTS

Introduction

In addition to the monitoring and management of individual contracts, commissioners also have opportunities to help build the local care workforce's capacity and skills to respond to human rights duties. This tip sheet is designed to provide some quick ideas for commissioners on how they might help to support a learning culture in relation to human rights at a local level.

Top tips

- ♥ The role of care home managers can at times be highly stressful and lonely. Many would welcome the chance to discuss the issues they face openly with their peers in a 'safe space' where sensitive and challenging dilemmas could be aired constructively. A relatively small investment in peer learning and information-sharing networks for residential care managers in your local area could help encourage dialogue, best practice and skills exchange regarding human rights.
- ♥ Enabling leaders to share what they have learnt with colleagues can be an effective way to cascade learning and development. Where funds allow, run dedicated leadership development activities on human rights topics. (See also: Human Rights in Residential Care for Older People: Leadership.
- ♥ Emphasise at every opportunity that promoting human rights is a shared endeavour. There needs to be an acknowledgement that the 'systemic risks' associated with the care sector, as well as responsibility for addressing these, are shared by commissioners and providers alike. When commissioners invest in learning and development activities and reward innovation in this field, they send a clear message that this is the case.

OTHER USEFUL RESOURCES

brap

Equality objectives and public authorities: tips, hints, and bright ideas

www.brap.org.uk/about-us/blog/421-making-and-shaping-equality-objectives

British Institute for Human Rights

The difference it makes: putting human rights at the heart of health and social care

www.bihhr.org.uk/differenceitmakes

Equality and Human Rights Commission

Guidance on human rights for commissioners of home care

www.equalityhumanrights.com/publication/guidance-human-rights-commissioners-home-care

Equality and Human Rights Commission

Commissioning for human rights in home care for older people

www.equalityhumanrights.com/private-and-public-sector-guidance/public-sector-providers/human-rights-health-and-social-care/commissioning-human-rights-home-care-older-people

Joseph Rowntree Foundation

Commissioning relationship-centred care in Essex: an evaluation

www.jrf.org.uk/publications/commissioning-relationship-centred-care-essex-evaluation

Local Government Improvement and Development

Not another consultation! Making community engagement informal and fun

www.involve.org.uk/wp-content/uploads/2011/09/Not-Another-Consultation.pdf

Social Care Institute for Excellence

A commissioner's guide to developing and sustaining user-led organisations

www.scie.org.uk/publications/guides/guide36/index.asp

February 2016

brap is transforming the way we think and do equality. We support organisations, communities, and cities with meaningful approaches to learning, change, research, and engagement. We are a partner and friend to anyone who believes in the rights and potential of all human beings.

brap

making equality work for **everyone**

The Arch, Unit F1, First Floor, 48-52 Floodgate Street, Birmingham, B5 5SL

Email: brap@brap.org.uk | Telephone: 0121 272 8450

www.brap.org.uk | Twitter: [@braphumanrights](https://twitter.com/braphumanrights) | Facebook: [brap.human.rights](https://www.facebook.com/brap.human.rights)

Registered Charity Number: 1115990 | UK Registered Company Number: 03693499