

Human Rights Policy

NHS Cheshire Clinical Commissioning Group (CCG)

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Human Rights Policy	
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1.0 Policy Statement:

To ensure that all employees, patient and public groups are protected by human rights legislation. To ensure that the organisation meets its obligations under the Human Rights Act 1998 and staff have an understanding of how this applies in their everyday work.

1.1 Who the policy applies to:

Employer, office holders and employees.

2.0 Introduction:

This policy is applicable to employees of the organisation. A separate Equality Strategy is available and should be read in conjunction with this policy.

2.1 Interdependencies:

- Equality and Diversity Policy and Strategy
- Human Resources Policies
- Safeguarding Policies

As an employer NHS Cheshire CCG expects high standards of performance and behaviour from its employees and is committed to equality and upholding human rights. The seriousness of this commitment is reflected in its policies and procedures. The CCG recognises that any breach of human rights is unacceptable and unlawful

This policy has been developed in accordance with the following legislation:

- Human Rights Act 1998
- Equality Act 2010
- Equality Delivery System2
- The Health and Social Care Act 2012
- Mental Capacity Act 2005
- Mental Health Act 1983, amended 2007
- Care Act 2014
- The Children's Act 2004
- PREVENT Strategy
- Modern Slavery Act 2015

2.2 Purpose / Rationale:

To provide a framework to ensure that all employees and prospective employees are following the legal obligations as set out in the Human Rights Act 1998 and Equality Act 2010.

2.3 Responsibilities:

The Accountable Officer will be accountable for the implementation of this policy.

In cases where an employee makes a complaint of a human rights breach, the Human Resources Team will support an investigation. In cases where a patient or patient's representative makes a complaint of a human rights breach, the Customer Care Team will support an investigation.

Managers and supervisors are responsible for:

- Ensuring that this policy is implemented throughout their areas of responsibility and in assisting monitoring for mandated requirements
- Monitoring of mandated contract requirements for commissioned services relating to the Human Rights Act
- Ensuring that all the staff for whom they are responsible are aware of their responsibilities under this policy
- Promoting a culture where discrimination is unacceptable and equality and human rights are promoted
- Ensuring that mandated equality legislation is implemented within NHS Cheshire CCG.

All employees are responsible for:

- Familiarising themselves with the Human Rights Policy and related Equality and Diversity Policy and Strategy and for complying with it
- Informing their line manager or following the Reporting a Concern Policy / Safeguarding Policies if they know or suspect that human rights breaches are occurring
- Familiarising themselves with the [Managing Safeguarding Allegations Against Staff Policy and Procedure](#), [Safeguarding Children Policy](#) and [Safeguarding Children Training Strategy Policy](#)
- Not inducing or attempting to induce other employees to practise discrimination

3.0 Human rights

3.1 Background to human rights legislation:

The Human Rights Act 1998 sets universal standards to ensure that a person's basic needs as a human being are recognised and met. The act includes 16 basic rights. The rights relating to healthcare and commissioning are as follows:

- The right to life
- The right not to be tortured or treated in an inhuman or degrading way
- The right to be free from slavery or forced labour
- The right to liberty
- The right to a fair trial
- The right to respect private and family life, home and correspondence
- The right to freedom of thought, conscience and religion
- The right not to be discriminated against in relation to the enjoyment of any of the rights contained in the European Convention.

Human rights belong to everyone. They are the basic rights that enable us to live our lives in safety, and with dignity and respect, regardless of our backgrounds. Human rights enable us to choose how we live our life. Human rights are based on a number of core values including:

- **Fairness**
- **Respect**
- **Equality**
- **Dignity**
- **Autonomy**

These values are referred to as the FREDA principles.

Human rights are important in the NHS as the majority of people will come into contact with NHS services at some point in their life – usually when they are most vulnerable.

Putting human rights at the centre of policy development, employment and service provision and commissioning decisions ensures that services are designed and delivered for everyone, ensuring that patients', relatives', carers' and staff experiences reflect the core values of fairness, respect, equality, dignity and autonomy. This secures compliance with the Human Rights Act and reduces complaints and risk of legal challenge.

Development of current human rights legislation dates back to 1948 when the United Nations proclaimed its Declaration of Human Rights. Within this, the international community agreed a range of human rights treaties. These covered civil, political, economic, social, cultural and environmental rights. Following this, the European Convention on Human Rights further developed rights under the European Convention of Human Rights in 1950.

In terms of UK law, the Human Rights Act 1998 incorporated most of the rights within the European Convention on Human Rights. It was developed to bring a 'human rights culture' to public services. A main change was that people no longer had to take their complaints to the European Court of Human Rights but could take challenges through UK courts.

3.2 Types of rights:

Human rights can be categorised within three types:

1. Absolute rights

These cannot be limited or interfered with by any organisations (including the NHS).

2. Unqualified rights

These can be limited in specific circumstances where there is a clear reason and may be linked with other legislation such as: the Mental Health Act 1983 (amended 2007), Mental Capacity Act 2005 and decisions by the Court of Protection.

3. Qualified rights

These can be limited by a wide range of circumstances which may include where the protection of rights affects the rights of others.

In addition to human rights, the UK has ratified a number of international human rights treaties, many covering economic, social and cultural rights as well as civil and political rights. Although these are not part of domestic law, they help guide policies and interpretation of existing legislation.

3.3 Human Rights Articles most relevant in healthcare

NHS Cheshire CCG has a duty to comply with the Human Rights Act to provide protection to:

- Article 2: Right to life.
This is an unqualified right. The State has a duty to not take away anyone's life and a positive duty to take reasonable steps to protect life. In healthcare, decisions regarding Do Not Attempt Cardio Pulmonary Resuscitation (DNACPR resuscitation policies and procedures) and the withdrawal of nutrition and hydration to end life may be authorised through the Court of Protection.
- Article 3:
This duty is an absolute right. The State has a positive duty to protect people from inhuman and degrading treatment.
- Article 5: Right to liberty.
This is a qualified right which can be breached in certain and very specific circumstances.
- Article 6: Right to a fair trial.
This article focuses on how decisions are made. It helps processes and decisions to be scrutinised.
- Article 8: Right to a private and family life, home and correspondence.
This is a qualified right which has to be balanced against the rights of others and needs of society. It protects the four areas of interest – family life, private life, home and correspondence. The State has an obligation to protect this right.
- Article 14: Right to non-discrimination.
This is linked to other rights and prohibits discrimination on any grounds – these may include but are not limited to: disability, gender, race, political views, carer status, marital status or being HIV positive.

Appendix B provides further information on examples of human rights in healthcare settings and examples of possible violations and CCG action.

3.4 Human rights treaties most relevant in healthcare:

These treaties provide guiding principles for public policy making. Public services have a duty to comply with the following treaties:

- United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- United Nations Convention on the Rights of the Child
- United Nations Convention on the Rights of Persons with Disabilities
- The 1951 Refugee Convention.

Links are provided for each of these treaties in the References Section.

4.0 Human rights and healthcare commissioning

There are a range of circumstances where human rights need to be considered. These are not exclusive but include:

4.1.1 Policy development work:

- Development and review of commissioning policies (clinical and non-clinical policies, procedures and processes) that impact NHS providers and patients, carers and their families
- Development and review of policies, procedures, processes and strategies that impact employees
- Policies affecting employees and protecting employees from violence and abusive patients.

All policy development work should follow processes for carrying out an equality impact risk assessment. Staff undertaking any impact assessment work should have access to assessment training or support from the NHS Midlands and Lancashire Commissioning Support Unit (MLCSU) Equality and Inclusion Team.

All staff are expected to undertake equality and inclusion mandated training.

4.1.2 Provider level:

- Commissioners are responsible for:
- Monitoring provider compliance with the Human Rights Act and related equality legislation
- Monitoring provider compliance with contract monitoring and quality performance indicators
- Ensuring reporting processes are in place and followed by teams including Quality and Safeguarding, Performance and Contracting
- Ensuring that patients receive care that is safe and does not breach human rights
- Sharing concerns with the relevant organisations such as NHS England, Care Quality Commission, local authorities and the police
- Sharing concerns with the provider, as appropriate.

Processes and lines of communication should be in place between the commissioner, providers and other organisations for reporting any human rights concerns. Any such concerns should be reported to the Lead Commissioner, Head of Quality, Designated Nurse and Head of Safeguarding (if appropriate) for action. Concerns should be added to the organisation's risk register where appropriate. (See Appendix A for reporting protocols).

Arrangements may vary for communicating concerns between organisations and the CCG. However, any such arrangements should be robust, consistent and transparent.

4.1.3 System changes at scale

These include:

- Integrated Care Partnerships and integrated care systems involving multiple organisations working in partnership – this may include reviewing services and decision making that affects communities
- Involvement of communities to inform decision making for health and social care services.

Processes need to be in place to define responsibilities for carrying out initial human rights

assessment work. This may form part of the equality impact and risk assessment work. Any identified human rights concerns may require a full Human Rights Assessment.

Employees of partner organisations involved in undertaking impact assessment work should have access to assessment training or support. Staff should have undertaken equality and inclusion mandated training and have access to relevant templates.

4.2 Taking action which interferes with rights

An NHS organisation may take action that results in interfering with limited or qualified rights where:

- There is a pursuit of a legitimate aim such as protecting the rights of others or the protection of health
- There is existing legislation
- The action is necessary and proportionate.

Commissioners should ensure that any decision making interfering with human rights is fully documented in order to demonstrate that there is a legitimate aim and that action is necessary and proportionate.

This should be documented within a Human Rights Assessment and decision-making meetings. Any identified risks should be added to the risk register where appropriate.

Where identified risk is significant, NHS Cheshire CCG may consider seeking advice from an independent legal advisor.

4.3 Reporting human right violations

Where the CCG is aware of a human rights violation, it should be reported to NHS England and the Parliamentary and Health Service Ombudsman (PHSO). If the concern constitutes a safeguarding concern, you should consult your safeguarding policies for children and adults and seek advice from your Designated Nurse who may require consultation with the local Safeguarding Board.

5.0 Glossary of terms:

Human rights – these are rights and freedoms that belong to all individuals regardless of their nationality and citizenship. They are fundamentally important in maintaining a fair and civilised society.

Discrimination – In this policy discrimination is used as an overarching term and covers both direct and indirect discrimination.

Direct discrimination – Is when one person receives less favourable treatment than another person because of a protected characteristic, for example, refusing to employ someone because of their colour, race, marital status or disability.

Direct discrimination by association – This means that the law also gives protection from

less favourable treatment because the person is associated with someone who has a protected characteristic.

Indirect discrimination – When there's a practice, policy or rule which applies to everyone in the same way but has a worse effect on some people than others.

Harassment – The standard definition for harassment is unwanted conduct on the grounds of a protected characteristic (e.g. race, gender, sexual orientation) which has the purpose or effect of either violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

Proportionality - Proportionate action is where the response to a problem is appropriate and not excessive. This enables competing interests to be considered. When considering decisions which interfere with human rights the following factors should be taken into account:

- Check that the right is not absolute
- What rights are left for the person if a decision is taken?
- Have alternative approaches with fewer impacts been considered?

Victimisation – the victimisation provisions within the Equality Act are there to protect people from retribution for:

- using or intending to use their rights under the Act
- supporting another person's rights under the Act
- doing something else connected to the Act.

Victimisation occurs if person A subjects person B to a detriment because B has either carried out a protected act or A believes that B has carried out or may carry out a protected act. Protected acts are:

- Bringing legal proceedings under the Equality Act
- Giving evidence or information in connection with this Act
- Making an allegation that A or another person has breached this Act.

The Parliamentary and Health Service Ombudsman - investigates complaints that individuals have been treated unfairly or have received poor service from government departments and other public organisations and the NHS in England.

6.0 References

http://www.hscbusiness.hscni.net/pdf/Human_rights_in_healthcare_short_intro.pdf

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

Equality and Human Rights Commission www.equalityhumanrights.com

<https://www.legislation.gov.uk/ukpga/1998/42/contents>

<https://www.unicef.org.uk/what-we-do/un-convention-child-rights/>

Treaties:

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:
<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

Convention on the Rights of the Child:
<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

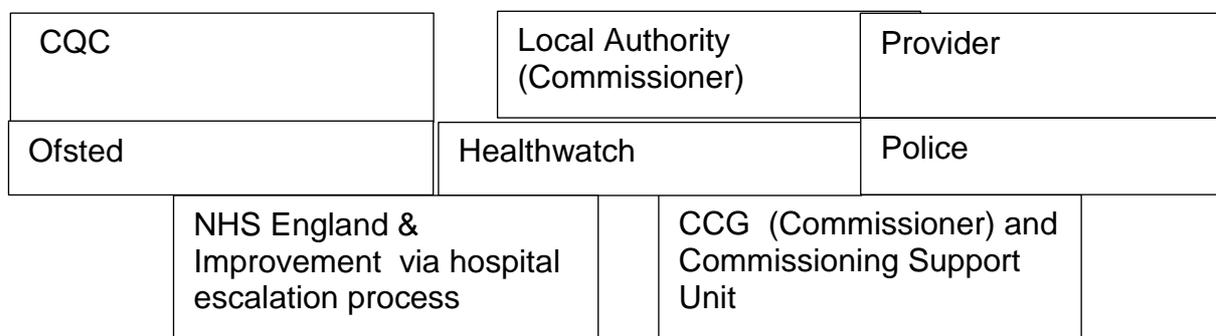
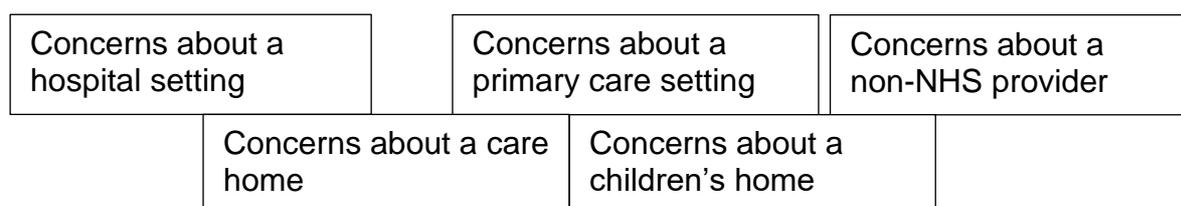
Convention on the Rights of Persons with Disabilities:
<https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx>

The 1951 Refugee Convention:
<http://www.unhcr.org/pages/49da0e466.html>

7.0 Appendix

Appendix A:

Reporting routes for information flows when someone raises a human rights concern:



If any of the above concerns constitute a safeguarding concern, consult your safeguarding policies and procedures. Discuss with the appropriate safeguarding leads.

Appendix B:

Table A showing where human rights are most relevant to health care – adapted from Human Rights in Healthcare, Department of Health.

Human Right	Relevant issues	Potential CCG actions
<p>The right to life (Article 2)</p> <ul style="list-style-type: none"> • Duty not to take away anyone’s life (apart from in certain limited circumstances). • Positive duty to take reasonable steps to protect life. 	<p>Commissioning services that are safe from harm.</p> <p>Ensuring that vulnerable patients are treated in safe environments and staff are working in safe environments.</p> <p>Do Not Resuscitate orders.</p> <p>Withdrawal of nutrition and hydration to end life – authorised through Court of Protection.</p> <p>This duty does not include right to Euthanasia - practice of intentionally ending a life to relieve pain and suffering.</p>	<p>CCG monitoring on serious incidents where loss of life could be prevented.</p> <p>Provider policies and procedures in place to provide safe practices and protection.</p> <p>High rates of mortality levels within a department are monitored. A recent spike is reported for immediate action and investigation.</p> <p>Decommissioning services which may impact on the state to prevent loss of life.</p>
<p>The right not to be tortured or treated in an inhuman or degrading way (Article 3)</p> <ul style="list-style-type: none"> • Inhuman treatment means treatment causing severe mental or physical suffering. • Degrading treatment means treatment that is grossly humiliating and undignified. This is an absolute right. Inhuman or degrading treatment does not have to be inflicted deliberately. 	<ul style="list-style-type: none"> • Physical or mental abuse. • Soiled, unchanged sheets. • Leaving trays of food without helping patients to eat when they are too frail to feed themselves. • Excessive force used to restrain patients. • Staff not being protected from violent or abusive patients. 	<p>CCG have monitoring procedures in place to report any incidents of concern.</p> <p>Staff training in place and safeguarding / whistle blowing policies in place and monitored.</p>
<p>The right to respect for</p>	<ul style="list-style-type: none"> • Privacy on wards and in 	<p>CCG policies which affect</p>

Human Right	Relevant issues	Potential CCG actions
<p>private and family life, home and correspondence (Article 8)</p> <p>This right is very wide ranging. It protects four broad categories of interests:</p> <ul style="list-style-type: none"> • Family life is interpreted broadly. It does not just cover blood or formalised relationships. Includes the right to develop normal family relationships • Private life is also interpreted broadly. It covers more than just privacy, including issues such as personal choices, relationships, physical and mental well-being, access to personal information and participation in community life. Includes right to physical and psychological integrity, and right to form and maintain relationships with other people. • The right to respect for home is not a right to housing, but a right to respect for the home someone already has. Care homes or hospital wards may be a person's home. • Correspondence covers all forms of communication including phone calls, letters, faxes, emails etc. This right is a qualified right and may be interfered with if the interference has a basis in law, pursues a 	<p>care homes.</p> <ul style="list-style-type: none"> • Family visits and refusal to visits / contact whilst in hospital / care. • Sexual and other relationships. • Participation in social and recreational activities. • Personal records – including medical, financial – Governance policies. • Independent living. • Closure of residential care homes or hospitals. • Separation of families due to residential care placements. 	<p>where patients receive their care – this may be far away from family and involve provider limitations on access to contact family.</p> <p>Behaviours of staff which potentially violate this right – such as staff discussing a trans woman gender reassignment treatment in front of other patients.</p> <p>The article does not include This right does not include the right to access assisted conception services.</p>

Human Right	Relevant issues	Potential CCG actions
<p>legitimate aim as set out in the Human Rights Act and is necessary and proportionate. One of the legitimate aims is the protection of the rights of others.</p>		
<p>The right to liberty (Article 5) The right to liberty is not a right to be free to do whatever you want. The right to liberty is a right not to be deprived of liberty in an arbitrary fashion. The right to liberty is a limited right. It can be limited in a number of specific circumstances, for example the lawful detention of someone who has mental health issues.</p> <p>Detention must be lawful and should end when the disorder ends and subject to periodic reviews.</p>	<ul style="list-style-type: none"> • Informal detention of patients who do not have the capacity to decide whether they would like to be admitted into hospital, e.g. those patients with learning disabilities or Alzheimer’s disease. • Delays in reviewing whether mental health patients who are detained under the Mental Health Act should still be detained. • Delays in releasing mental health patients once they have been discharged by the Mental Health Review Tribunal. • Excessive restraint of patients, e.g. tying them to their beds or chairs for long periods. Non-compliance with MCA/DoLs and the forthcoming Liberty Protection Safeguards (LPS) to replace DoLs. Implementation due Spring 2020. <p>A large number of patients throughout the UK who do not have capacity to make their own decisions but are not in a position to be detained under mental health legislation are informally admitted to and detained for treatment in</p>	<p>CCG’s safeguarding policies and seeking assurance from providers. Commissioning of mental health services and services for vulnerable patients such as people with Learning Disabilities, Brain Injuries, Cognitive impairment conditions.</p> <p>Reporting and assurance procedures in place for violations.</p>

Human Right	Relevant issues	Potential CCG actions
	<p>hospital. This kind of admission and detention has been ruled to breach the right to liberty, as there are no clear rules and procedures governing who decides that someone should be detained, and for what reasons.</p>	
<p>The right to a fair trial (Article 6) The right to a fair trial contains a number of principles that need to be considered at some stage during the decision making process when a person's civil rights or obligations or a criminal charge against a person comes to be decided upon. The person whose rights will be affected has the right to:</p> <ul style="list-style-type: none"> • an independent and impartial tribunal; • be given notice of the time and place of any proceedings; • a real opportunity to present their case before the decision is made; • disclosure of all relevant documents; • have their hearing take place within a reasonable time; and • be given reasons to enable them to understand the decision that has been made. 	<p>This article usually relates to criminal proceeding but can include Staff disciplinary proceedings and transparent decision making which could be applied within health care. May include:</p> <ul style="list-style-type: none"> • Compensation claims. • Independence of tribunals, e.g. the Mental Health Review Tribunal Care package assessments. • Staff tribunals. 	<p>Ensure that decision-making processes around an individual's care have considered range of factors – such as Individual Funding Requests and access for Continuing Health Care.</p> <p>In cases where patients have communication barriers they may need additional support to understand and communicate their wishes. This may include access to translators.</p> <p>Employees to be treated in a fair manner – following policies and procedures in cases of disciplinary.</p> <p>Ensure that there is a robust and fair process for dealing with any concerns about the professional conduct or performance of a healthcare professional.</p>
<p>The right not to be discriminated against (Article 14) This right is a right not to be discriminated against</p>	<ul style="list-style-type: none"> • Refusal of medical treatment to an older person solely because of their age. • Non-English speakers 	<p>Ensure that decision-making processes have identified any equality and human rights risks.</p>

Human Right	Relevant issues	Potential CCG actions
<p>in the enjoyment of the other human rights contained in the Human Rights Act. It is not a free standing right, so if no other right in the Human Rights Act is engaged, then this right will not come into play.</p> <p>Discrimination takes place when someone is treated in a different way compared with someone else in a similar situation. Indirect discrimination happens when someone is treated in the same way as others that does not take into account that person's different situation. However, an action or decision will only be considered discriminatory if the distinction in treatment cannot be reasonably and objectively justified.</p>	<p>being presented with health options without the use of an interpreter.</p> <ul style="list-style-type: none"> • Discrimination against NHS Trust staff on the basis of their caring responsibilities at home. 	<p>All staff undertake equality training.</p>
<p>The right to freedom of thought, conscience and religion (Article 9)</p> <p>This right gives people the right to put thoughts and beliefs into action. This also includes religious clothing and right to practise a belief. There may be situations where there are restrictions within this right.</p>	<p>Dress code policies for staff.</p> <p>Rooms available for people (staff and patients) who wish to pray and exercise their religious beliefs.</p>	<p>Policies and procedures to deal with requests relating to religion and belief.</p>
<p>The right to freedom of expression (Article 10)</p> <p>This right gives people the right to hold their own opinions and express themselves freely without government interference. There may be situations</p>	<p>Whistleblowing policies for staff.</p> <p>Clear ways of reporting concerns for patients and staff.</p>	<p>Policies and procedures around reporting concerns.</p>

Human Right	Relevant issues	Potential CCG actions
where there are restrictions within this right.		
The right to freedom of assembly and association (Article 11) This right gives people the right to be part of a trade union, political party or another association or voluntary group. There are some restrictions to this right.	Staff rights to join networks and Unions.	Procedures to provide information to staff on Union membership.
Treaty - Convention of the Rights of the Child 1990: The UK has agreed that public bodies should consider the best interests of children / young people (CYP) when decision making.	Provides CYP rights for expressing their views, right to health, privacy and family life.	Engagement work and access to health services.

Table B: At a glance CCG decisions which may require Human Rights Assessments and articles which should be considered:

Examples	Human Rights Articles					
	Article 2	Article 3	Article 5	Article 6	Article 8	Article 14
Medicines Management policies	✓					
Closure of hospital	✓					
Continuing Health Care policies	✓		✓	✓	✓	
Mental Health provision	✓		✓		✓	
Engagement Strategy				✓		✓
Information Governance policies				✓		
Cancer Services	✓					
CCG monitoring of	✓	✓	✓	✓	✓	✓

	Human Rights Articles					
Examples	Article 2	Article 3	Article 5	Article 6	Article 8	Article 14
serious incidents						
Staff policy on disciplinary				✓	✓	

Seek advice from your Equality and Inclusion Lead

This policy was developed by the MLCSU Equality and Inclusion Team. Legal advice was sought on Article 2. An Equality Impact Assessment has been completed on this policy.