House of Lords
House of Commons
Joint Committee on Human Rights


First Report of Session 2007–08

Report, together with formal minutes and appendix

Ordered by The House of Commons to be printed 12 November 2007
Ordered by The House of Lords to be printed 12 November 2007
Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

Current Membership

<table>
<thead>
<tr>
<th>HOUSE OF LORDS</th>
<th>HOUSE OF COMMONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lord Fraser of Carmyllie</td>
<td>John Austin MP (Labour, Erith &amp; Thamesmead)</td>
</tr>
<tr>
<td>Lord Judd</td>
<td>Mr Douglas Carswell MP (Conservative, Harwich)</td>
</tr>
<tr>
<td>Lord Lester of Herne Hill</td>
<td>Mr Andrew Dismore MP (Labour, Hendon) (Chairman)</td>
</tr>
<tr>
<td>The Earl of Onslow</td>
<td>Dr Evan Harris MP (Liberal Democrat, Oxford West &amp; Abingdon)</td>
</tr>
<tr>
<td>Lord Plant of Highfield</td>
<td>Virendra Sharma MP (Labour, Ealing, Southall)</td>
</tr>
<tr>
<td>Baroness Stern</td>
<td>Mr Richard Shepherd MP (Conservative, Aldridge-Brownhills)</td>
</tr>
</tbody>
</table>

Powers

The Committee has the power to require the submission of written evidence and documents, to examine witnesses, to meet at any time (except when Parliament is prorogued or dissolved), to adjourn from place to place, to appoint specialist advisers, and to make Reports to both Houses. The Lords Committee has power to agree with the Commons in the appointment of a Chairman.

Publications

The Reports and evidence of the Joint Committee are published by The Stationery Office by Order of the two Houses. All publications of the Committee (including press notices) are on the internet at www.parliament.uk/commons/selcom/hrhome.htm.

Current Staff

The current staff of the Committee are: Mark Egan (Commons Clerk), Bill Sinton (Lords Clerk), Murray Hunt (Legal Adviser), Angela Patrick and Joanne Sawyer (Committee Specialists), Jackie Recardo (Committee Assistant), Suzanne Moezzi (Committee Secretary) and Jacqueline Baker (Senior Office Clerk).

Contacts

All correspondence should be addressed to The Clerk of the Joint Committee on Human Rights, Committee Office, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general inquiries is: 020 7219 2467; the Committee’s e-mail address is jchr@parliament.uk.
## Contents

<table>
<thead>
<tr>
<th>Report</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Report</td>
<td>3</td>
</tr>
<tr>
<td>Appendix</td>
<td>5</td>
</tr>
<tr>
<td>Memorandum from the Department of Health</td>
<td>5</td>
</tr>
<tr>
<td>Formal Minutes</td>
<td>22</td>
</tr>
</tbody>
</table>

Reports from the Joint Committee on Human Rights in this Parliament 23
1 **Report**

1. Shortly before the end of the last parliamentary session we received from Ivan Lewis MP, Parliamentary Under Secretary of State, Department of Health, the Government’s Response to our Eighteenth Report of Session 2006-07, The Human Rights of Older People in Healthcare (HL Paper 156-I, HC 378-I). We publish this Response as an Appendix to this Report.

2. As with several of our previous thematic inquiries, we intend to follow-up our Report by seeking a debate on older people in healthcare in Westminster Hall and by pursuing some of the specific issues we have raised with the Government. In particular, we will wish to press the Government to ensure that human rights are integral to policy-making by the Department of Health as well as to the planning and implementation of services in hospitals and care homes; human rights underpin the work of the proposed new health and social care inspectorate; front-line staff in healthcare receive appropriate education and training in human rights; and that there is no discrimination on the grounds of age in the provision of healthcare to older people.

3. We also intend to scrutinise the Government’s response to the judgment of the House of Lords in the *YL* case, in which it was found that private sector care homes were not public authorities for the purposes of the Human Rights Act.
Appendix

Memorandum from the Department of Health

Introduction

The Joint Committee on Human Rights (the Committee) published its report *The Human Rights of Older People in Healthcare*\(^1\) on 15 August 2007. This memorandum sets out the Government’s response to the conclusions and recommendations in that report.

The Government introduced the Human Rights Act to ensure that Human Rights were enshrined in UK law, and enforceable in the UK Courts. It offers protection to individuals and the Government recognises that it is often the most vulnerable in our society who have the greatest need for such protection.

The Committee’s report includes 36 recommendations for action by Government, the Department of Health, the Commission for Equality and Human Rights, the National Institute for Health and Clinical Excellence, the health and social care inspectorates and other organisations. In this response, those recommendations are numbered according to the order they appear in pages 92 to 99 of the Committee’s report.

Treatment of Older People in Hospitals and Care Homes

Recommendations 1 and 2

We recommend the Government amend the Delayed Discharge Regulations to allow for flexibility in applying the time-period so as to ensure that the Article 8 ECHR rights of older people are respected. (Paragraph 40)

We also recommend that the Government issue guidance for hospitals and local authorities on the application of the Regulations to ensure respect for the Article 8 rights of older people. (Paragraph 40)

The Government believes that there already is flexibility in the arrangements and is therefore surprised that so many who gave evidence to the Committee understood that discharge from hospital is routinely compressed into a mere two days, offering little room for individuals to exercise choice.

The evidence to the Committee included “the current Regulations require social services to arrange a discharge placement within two working days of notification by the NHS Trust that an acute patient is clinically ready for discharge”.

The Department’s own evidence to the Committee stressed that good discharge planning typically begins on the day of admission, although – for planned admissions for what is generally referred to as elective care – this initial notification that a person may require an

\(^{1}\) HL Paper 156-1/HC 378-1.
assessment of their need for social care upon discharge may be issued up to eight days before admission.

Where patients and carers may need to postpone a decision on a future package of care, they should be given fair and balanced information with which to make the best choice of care package available to them. Options for interim care should be considered and offered based on assessed needs, with a full explanation of the terms of the interim package. Councils should take all reasonable steps to gain an individual’s agreement to an interim care package; that is, to provide a care package with which the individual is satisfied. Councils must make reasonable efforts to take account of the individual’s desires and preferences. In doing this, councils must ascertain all relevant facts and take into account all the circumstances relevant to the person, and ensure that the individual (and their family or carers) understands the consequences of failing to come to an agreement.

It is important to note that the Regulations and guidance make it clear that ‘clinically ready’ is not the only criterion for deciding whether discharge is delayed.

There are a number of circumstances in which, although a person is clinically ready to leave hospital, a delay occurs that does not trigger re-imbursement by the social services authority, including where:

- there is any delay in completing an assessment of eligibility for NHS Continuing Healthcare, or
- transfer is delayed due to awaiting Nursing/Residential home placement, because of the lack of availability of a suitable place to meet their assessed care needs, or
- the person has refused a reasonable offer of services.

That is why it is also a requirement that a multi-disciplinary team decision has been made that the patient is ready for transfer and the patient is safe to discharge. It is only at this point that a NHS Trust may issue a second notification to advise the responsible social services authority that a discharge will be counted as delayed from the third day after this second notice, and that the trust will seek re-imbursement. This notice must include a statement:

- that the NHS body has complied with the consultation requirements in section 2(4) of the Act;
- that the NHS body has considered whether or not to provide the patient with continuing NHS care and of the result of that consideration; and
- whether the patient or any carer has objected to the giving of the notice.

Section 2(4) of the Community Care (Delayed Discharges) Act referred to above will require, where appropriate, an assessment of any carer’s own needs under the Carers and Disabled Children Act. Unmet needs for carer support may make it unsafe for the patient to be discharged.

Whilst most people are able, with suitable rehabilitation and ongoing support, to return to supported living in the community, there is minority of patients for whom transfer directly
from an acute setting to a registered care home may be the agreed care plan. Where this is the case, Directions\(^2\) and guidance make clear that councils must honour individual preferences for a particular home providing:

- The accommodation is suitable in relation to the individual’s assessed needs;
- To do so would not cost the council more than it would usually expect to pay having regard to the individual’s assessed needs;
- The preferred accommodation is available;
- The person in charge of the accommodation is willing to provide accommodation subject to the council’s usual terms and conditions for such accommodation.

Where a place is not available in the individual’s preferred care home, the guidance makes it clear that remaining in an acute setting (once a multi-disciplinary assessment has confirmed that the patient is medically fit and safe to transfer) is undesirable for the patient’s welfare. There are particular risks of increasing dependency and acquiring infections. In addition, the acute provision is needed for others with acute care needs. The Directions make it clear that, as long as an interim placement meets the needs of an individual, it is acceptable for a person to move from an acute setting to an interim placement until a permanent/alternative choice becomes available. These general principles also apply to patients who are self-funders who should be encouraged to find suitable interim care if their first choice of home is not available.

**Recommendations 3 and 4**

*We are convinced that the existing legislation does not sufficiently protect and promote the rights of older people in healthcare. We recommend that there should be a positive duty on providers of health and residential care to promote equality for older people.* (Paragraph 64)

*We also recommend that the current prohibition on age discrimination in the workplace be extended to the provision of goods, facilities and services, so as to encompass (amongst other activities) the provision of healthcare.* (Paragraph 64)

The Government is committed to introducing an Equality Bill during this Parliament, in line with its manifesto commitment. It published a consultation document, *A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain*\(^3\) in June 2007. The consultation closed on 4 September 2007 and over 4,000 responses have been received. In the light of the responses to the consultation, the Government is now carefully considering whether to extend the proposed single public sector duty to cover age, and whether there is a case for prohibiting age discrimination in the provision of goods and services. The Government will publish its response to the consultation in due course.

---


Recommendation 5

We recommend that the Commission for Equality and Human Rights monitors the implementation of human rights and equality legislation in healthcare for older people and reports on this in its State of the Nation report. (Paragraph 65)

The duties of the Commission for Equality and Human Rights (CEHR) in respect of both equality and diversity, and human rights, are set out in some detail in the Equality Act 2006. The Commission is a new body, having only come into existence on 1 October 2007. Its key priority so far has been to ensure a successful transition from the three former ‘legacy commissions’ (the Commission for Racial Equality, the Equal Opportunities Commission and the Disability Rights Commission) and that the services they have provided are carried forward successfully. The CEHR is currently planning its strategy for taking forward its wider responsibilities under the Act and this will be done in consultation with stakeholders. It will certainly be giving close consideration to the Committee’s recommendations and will respond directly in due course.

Understanding How the Human Rights Act Applies to Older People in Healthcare

Recommendation 6

We recommend that the Government, other public bodies and voluntary organisations should publicly champion an understanding of how the recognition of human rights principles can underpin a transformation of health and social care services. This should lead to a greater understanding of human rights in civil society and more effective implementation of the Human Rights Act within public authorities. (Paragraph 94)

The Government will champion an understanding of how human rights principles can transform services.

The Department of Health has already published Human Rights in Healthcare – A Framework for Local Action, which sets out the relevance and benefits of human rights in healthcare and provides some practical examples of how NHS trusts could use a human rights based approach in the planning and delivery of public services. The framework was launched by the Minister of State for Health Services in March 2007 and then publicised in the NHS.

In addition, the Ministry of Justice has distributed two publications Making Sense of Human Rights: A Short Introduction and Human Rights: Human Lives – A Handbook for Public Authorities widely across the NHS and Social Care and also hosted a number of high profile conferences on human rights in public services.

---

Recommendation 7

We recommend that the Commission for Equality and Human Rights in fulfilment of its duty to “promote understanding of the importance of human rights” should ensure that such an understanding is widely disseminated. (Paragraph 95)

The Government notes the recommendation, which is for CEHR. The Commission has significant statutory responsibilities for the promotion and encouragement of good practice in relation to human rights. In fulfilling these responsibilities, it will be able to build on the significant programme of work undertaken by the Government over the past year in giving effect to recommendations of the Review of the Implementation of the Human Rights Act, published in July 2006.

Department of Health’s Leadership

Recommendation 8

We urge the Department of Health to maintain the clear political leadership that it has recently shown on the importance of human rights in health and social care. We recommend that in any constitution or statement of purpose which the Department of Health might draw up next year to celebrate sixty years of the NHS, a statement about the importance of human rights to the provision of health services should be included. (Paragraph 107)

The Department of Health will explore appropriate opportunities for promoting the importance of considering human rights in the provision of healthcare in any forthcoming celebrations of sixty years of the NHS.

Recommendation 9

We recommend that the Department of Health draw up and publish a strategy setting out how it intends to make the Human Rights Act integral to policy-making in health and social care across the whole department. (Paragraph 122)

The Department of Health is committed to excellence in policymaking, and has produced Better Policy Making, a guide, sponsored by the Permanent Secretary, which policy makers, across all areas of the Department’s work, should follow. This emphasises the importance of policy making as a series of inter-related activities, where thinking through issues as a policy is being shaped, is critical to future success. This includes addressing equality issues during the development and implementation of new policy.

We believe human rights considerations should be reflected in all policy making and will review our policy making processes to ensure that this is the case.

Recommendation 10

We also recommend that the Department of Health publish an evaluation of the pilot project undertaken by the British Institute of Human Rights and five NHS trusts on
using a human rights approach in healthcare. Using its normal channels of communication, it should distribute copies of Human Rights in Healthcare – A Framework for Local Action to all NHS trusts. (Paragraph 123)

The Department of Health has already used the normal channel of communication with the NHS - the Chief Executive Bulletin - to make organisations aware of Human Rights in Healthcare and provided a web link to the document and details of how to obtain paper copies. The Department undertakes to promote Human Rights in Healthcare to our 1,200 Dignity Champions.

The Department of Health continues to take forward the Human Rights in Healthcare project in conjunction with five NHS Trusts, the British Institute of Human Rights and ROI Operations Management Limited.

Currently, an independent evaluation of the project is being sought in order to look at the benefits to NHS organisations of using human rights-based approaches. We will publish the evaluation as part of guidance that we will issue in due course.

**Implementation of the Human Rights Act by Providers of Services**

**Recommendation 11**

We recommend that the Department of Health and representatives of health and social care bodies provide guidance to hospitals and care homes on implementing a human rights approach in the planning and delivery of public services. Such guidance should emphasise that implementation should not be exclusively legalistic and should avoid being merely a tick-box exercise. (Paragraph 137)

The Department of Health has already published Human Rights in Healthcare, which sets out the relevance and benefits of human rights in healthcare and provides some practical examples of how NHS trusts could use a human rights-based approach in the planning and delivery of public services. The Human Rights in Healthcare project is entering its second phase and has the aim of delivering practical human rights tools for the NHS staff, piloted by participant NHS trusts and independently evaluated to address issues such as training and policy development.

In addition, the Department has specifically commissioned a guide to legislation to support the Dignity in Care campaign called Promoting Dignity Within the Law, which will be available by the end of 2007. It will demonstrate the effects of the Human Rights Act on the care of service users. It is aimed at staff working in health and social care, as well as service users themselves, and will describe how this important piece of legislation translates into service user’s rights and the link to the dignity and respect agenda, using case studies of where individuals’ rights may be at risk of being breached.

The Government agrees with the Committee that legalistic and “tick box” approaches to this issue are not the most effective way to provide guidance.
Recommendation 12

We recommend that the Commission for Equality and Human Rights ensures that public authorities, particularly in health and social care services, are receiving the right kind of guidance to enable them to implement the Human Rights Act effectively. (Paragraph 138)

See the response to recommendation 7 above.

Recommendation 13

While recognising that there are problems of legal certainty, we recommend that the Government take the opportunity presented by its commitment to pass single equality legislation in this Parliament to make explicit that public authorities are under a positive duty to take active steps to protect and respect human rights where the Convention imposes a positive obligation to do so. (Paragraph 152)

Section 6 of the Human Rights Act makes explicit that it is unlawful for a public authority to act in a way which is incompatible with a Convention right. In addition, section (1)(d) of the Equality Act 2006 tasks the Equality and Human Rights Commission with encouraging public authorities to comply with section 6 of the Human Rights Act. Therefore, the Government is not persuaded that there is a need for additional legislation.

Recommendation 14

We recommend that the Commission for Equality and Human Rights makes sure that public authorities are fully aware of their positive obligations under human rights law and we anticipate that it will actively participate in debates about including “respect for human rights” in the proposed single equality duty. (Paragraph 153)

As previously noted, the Commission already has responsibility for engaging with public authorities about their duties under Human Rights Act. As of September 2007, some 100,000 copies of the toolkit, comprising of a handbook and summary booklet with a DVD, were distributed by the Ministry of Justice to Government Departments, their sponsored bodies and other wider public sector organisations. This guidance informs public authorities of their obligations under the Human Rights Act, including the right to respect, as articulated in Article 8 of the Convention.

Health and Social Care Inspectorates and Nice

Recommendation 15

Although the requirements in the healthcare standards to “respect human rights” and treat patients with “dignity and respect” are welcome, they lack specificity and we recommend that the Healthcare Commission provides guidance to NHS trusts on what is required of them to meet these standards in practice. (Paragraph 173)
In 2004, the Department of Health published *Standards for Better Health*\(^5\), a set of standards against which the Healthcare Commission assesses the performance of the NHS. Core standard 7e requires that “Healthcare organisations challenge discrimination, promote equality and respect human rights”. Core standard 14a requires that “Healthcare organisations have systems in place to ensure that staff treat patients, their relatives and carers with dignity and respect”.

Separate criteria support each standard. The criteria for assessing trusts performance in 2006/07 included, for core standard 7e require “The healthcare organisation challenges discrimination and respects human rights, including in accordance with the Human Rights Act 1998”, and for core standard 13a requires “The Healthcare organisation has systems in place to meet the needs and rights of different patient groups with regard to dignity and respect, including in accordance with the Disability Discrimination Act 1995 and Disability Discrimination Act 2005, the Race Relations Act 1976 (as amended) and the Human Rights Act 1998”.

The Healthcare Commission has recently sent a strong signal to the NHS about the importance it places on dignity and human rights through publication, on 27 September 2007, of its report *Caring for Dignity*\(^6\). The report sets out the Commission’s key findings following a dignity audit of twenty-three acute trusts, and makes recommendations and provides best practice guidance to support NHS trusts to meet the required standards on dignity. The report makes clear links between dignity and human rights, and the Commission has committed to ensuring that dignity and human rights are underlying principles informing its work.

**Recommendation 16**

In order to avoid the unfortunate impression that the human rights of people in care homes are less important and less enforceable than the human rights of patients in hospitals, we recommend that, following the current review, the human rights of residents be more explicitly spelt out in the care home standards. (Paragraph 178)

The review of National Minimum Standards for care homes has been subsumed within the Department’s development of the future regulatory system for health and adult social care, which was the subject of a public consultation launched in autumn 2006. The regulatory system will be based on registration requirements expressed in Regulations, and these requirements will be the subject of a further consultation this autumn. Compliance with the requirements will be assessed by the new health and adult social care regulator, based on criteria that the regulator will devise. It is our intention that human rights will be an important feature in the requirements, and we expect that they will also feature prominently in the regulator’s criteria.

---


Recommendation 17

Because of the recent court decision that private care homes are not public authorities under the Human Rights Act, we recommend, as an interim measure before legislation is passed, that the care standards regulations be amended to require, as the health standards do, that care homes respect residents’ human rights in accordance with the Human Rights Act. (Paragraph 179)

Given that we will shortly be introducing a new regulatory framework, we do not propose to make amendments to the current care homes regulations. But we will legislate to ensure that the new regulator can take into account any statute, including human rights legislation, in determining whether providers are able to retain registration.

Recommendation 18

We also recommend that when the health and social care inspectorates are merged, that the standards applicable to quality of care and other issues engaging the human rights of users of services should be the same for both NHS trusts and care homes. The unified standards should expressly require compliance with human rights standards by hospitals and care homes and state that patients and care home residents have the legal right to respect for and protection of their human rights. The newly established inspectorate should provide guidance to providers of services on the implications of such requirements. (Paragraph 180)

It is our intention to introduce an integrated registration system across health and adult social care based on a set of requirements that apply across all settings. The new regulator will be required to issue guidance on how it will assess compliance.

Recommendation 19

In our opinion, the Healthcare Commission should not view the Human Rights Act as “one of a large number of sets of regulations” to which it is subject. Instead it should regard the framework created by the Act as over-arching and fundamental to all its work. We recommend that the Healthcare Commission ensures that the Human Rights Act is explicitly used in its regulatory work. (Paragraph 184)

The Healthcare Commission considers human rights legislation of fundamental importance and takes it fully into account in its regulatory work. The Commission publishes guides to support the criteria used for assessing trusts’ performance against the standards in Standards for Better Health. The guides are published as a resource for Healthcare Commission assessment managers to use when carrying out inspections. Human rights legislation is explicitly referred to in several places in the 2006-07 inspection guide. The section on core standard 7e, for example, says:

It is unlawful for a healthcare organisation to act in a way which is incompatible with the Human Rights Act 1998. Healthcare organisations should have arrangements in place to ensure they comply with the Act. Such arrangements may include for example:
• A human rights policy or framework that puts an individual at the heart of the service;

• Policies or guidelines to protect a patient from unlawful detention (for example through regular reviews of circumstances requiring the detention of individuals with mental health problems or regular reviews of those detained as a means to prevent the spread of infectious disease);

• Provision of training and development for staff in relation to challenging discrimination, promoting equality and respect for human rights.

Recommendations 20, 21 and 22

We also recommend that the forthcoming merged inspectorate for health, social care and mental health adopt a human rights framework for all its work. (Paragraph 184)

We recommend that the forthcoming merged inspectorate for health, social care and mental health adopts a human rights framework with the intention that the framework informs all of the inspectorate’s work and so makes it more effective in fulfilling its statutory duties. (Paragraph 189)

We recommend that the newly established health and social care inspectorate surveys providers of health and social care services and reports on their levels of understanding of and compliance with the Human Rights Act within three years of the new commission starting operations. (Paragraph 190)

The Department of Health will not be specifying the precise work programme of the new regulator, but will expect compliance with the Human Rights Act to form an important element of its work, as it has for the regulatory bodies it supersedes.

Recommendation 23

We recommend that the National Institute for Health and Clinical Excellence demonstrates in all relevant publications that, in its decisions on clinical practice, it has expressly taken into account the Convention rights of any patients who may be affected, as required by the Human Rights Act. (Paragraph 198)

The National Institute for Health and Clinical Excellence (NICE) are currently updating their document Social Value Judgements, which helps those developing NICE guidance in making their decisions. NICE will take this recommendation into account when updating the document, and will be consulting publicly later this year.

The Role of Staff in Protecting Human Rights

Recommendations 24 and 25

In our view, human rights training should have been provided throughout hospitals and care homes and other public service organisations from 2000. We recommend that all staff working in healthcare (both clinical and non-clinical) receive targeted and
regular training in human rights principles and positive duties and how they apply to their work. (Paragraph 222)

We recommend that the Department of Health review, within three years, the extent to which training has taken place within healthcare and the effects of that training. (Paragraph 223)

The regulatory bodies have the statutory responsibility for setting the educational standards for pre and post registration education and training. They are independent of government. We will write to the Commission for Regulatory Excellence asking them to agree an approach with the regulators to take forward the Joint Committee on Human Right’s recommendations on education and training.

We will also raise the recommendations with Strategic Health Authority education commissioners and with Universities UK, the Council of Deans of UK University Faculties for Nursing and Health Professions and the Council of Medical Schools who represent universities that provide education and training programmes.

Recommendation 26

We also recommend that the Department of Health produce guidance, building on its pilot with the British Institute of Human Rights, including case studies and examples as appropriate, of best practice in training different groups of healthcare staff on human rights principles as they apply to their day to day work. (Paragraph 223)

The Human Rights in Healthcare project is entering its second phase and has the aim of delivering practical human rights tools for the NHS staff piloted by participant NHS Trusts and independently evaluated that address issues such as training and policy development.

In August 2007, the Department of Health asked the Social Care Institute for Excellence (SCIE) to update their best practice guide on Dignity in Care to cover mental health issues. The good practice guide includes a range of examples and case studies of how health and social care organisations can improve their services in respect to treating people with more dignity.

In addition, the Department has specifically commissioned a guide to legislation to support the Dignity in Care campaign called Promoting Dignity Within the Law, which will be available by the end of 2007. It will demonstrate the effects of the human rights Act on the care of service users. It is aimed at staff working in health and social care, as well as service users themselves, and will describe how this important piece of legislation translates into the rights of service users and the link to the dignity and respect agenda using clear case studies of where an individual’s rights may be at risk of being breached.

Recommendation 27

We also recommend that the reports on individual healthcare providers by the newly merged health and social care inspectorate should include details of the human rights training that has been provided to staff. (Paragraph 224)
The Department will not specify the content of reports by the regulator. Nevertheless, we intend that the registration requirements should reflect the importance of human rights and that staff are appropriately trained. This recommendation is for the new regulator to consider.

**Recommendation 28**

*Further, we recommend that the Commission on Equality and Human Rights monitors the extent to which hospitals and care homes include human rights principles in their staff training.* (Paragraph 224)

See response to recommendation 7.

**Recommendation 29**

*We recommend that a basic understanding of how the Human Rights Act requires the protection of basic principles such as dignity, fairness, respect and equality be included in qualifications, accreditation and re-licensing for health professionals.* (Paragraph 226)

We agree that the regulatory bodies responsible for the basic education curricula and codes of professional ethics should consider how best to ensure an understanding of the healthcare professional’s responsibilities in this area. We expect that the working groups we have set up to consider the introduction of the new appraisal and revalidation system (re-licensing), covering all health professionals in the UK, that was outlined in our White Paper, *Trust, Assurance & Safety - the Regulation of Health Professionals in the 21st Century* will also consider these matters so that the new processes provide adequate protection for patients.

**Recommendation 30**

*Whilst we do not want to increase the burdens on healthcare staff, we are conscious that they have a vital role to play in ensuring that all patients and residents with whom they come into contact are treated with dignity and respect and are not subjected to abuse. A duty to report suspected abuse is more than merely a moral duty and we consider that such a duty should be a requirement for all staff working in the NHS and in care homes. We therefore recommend that the Government include a requirement in both the Care Standards for Better Health and the National Minimum Standards for Care Homes for Older People (or, as we have already recommended, preferably in one set of integrated care standards) that hospitals and care homes should have a policy requiring all healthcare workers to report abuse or suspected abuse, with protection for whistle-blowing and confidentiality.* (Paragraph 232)

In developing the registration requirements for the new regulatory system, we intend to ensure appropriate requirements governing the reporting of suspected abuse. The new

---

regulator will devise the detailed criteria to judge compliance with registration requirements.

The Government is already committed to tackling and preventing abuse; we have taken and are taking a range of measures to safeguard vulnerable adults.

Government recently announced a review of *No Secrets*. *No Secrets* is statutory guidance, originally issued to local councils in 2000. It provides a complete definition of abuse and a framework for councils to work with the police, the NHS and regulators to tackle abuse and prevent it from occurring. We will hold a public consultation once we have undertaken assessments with stakeholders as to what changes to the guidance might be useful. The review will also consider the case for further legislation to safeguard vulnerable adults.

We are introducing a new centralised vetting and barring scheme for people working with children and vulnerable adults. This scheme, as set out in the *Safeguarding Vulnerable Groups Act*, will mark a significant step forward in the safeguarding of vulnerable adults. It will extend the coverage of the existing barring schemes and draw on wider sources of information to provide a more comprehensive and consistent measure of protection for vulnerable groups across a wide range of settings, including the whole of social care and the NHS. It will apply to those employed in either a paid or a voluntary capacity.

The new scheme will be proactive, with vetting taking place on an individual’s first application to work with children or vulnerable adults and will make it far more difficult for abusers to gain access to the most vulnerable groups in our society.

**Empowering Older People**

**Recommendation 31**

*We conclude that older people, especially those who are the most vulnerable, would greatly benefit from the assistance of independent advocates in order to secure their human rights on the same basis as the rest of society. We welcome the Minister’s support for independent advocates and recommend that he ensures that the Department provides sufficient independent advocacy services to older people, with particular priority being given to older people with mental health problems or who are unable to communicate in English. These advocates should have an understanding of human rights principles and the positive duties of service providers towards older people. (Paragraph 249)*

The Government shares the view that advocacy has an important role to play in the relationship between people and services and acknowledges that advocates can help ensure that vulnerable older people are supported to live the lives they want to, with dignity and respect.

On 9 October 2007, the Comprehensive Spending Review settlement for health and social care was announced. Overall local authority funding - from which adult social care is funded - is to increase by £2.6 billion by 2010-11. In addition, direct funding from the Department of Health for social care for older people and support services for carers will
increase by £190m to £1.4 billion by 2010. This will support delivering the vision set out in the White Paper *Our Health, Our Care, Our Say* through, amongst other things, the provision of advocacy and information services for people who use services in every local authority.

The Government believes that older people in a range of circumstances should have access to advocacy services to assist them in the choices they wish to make to lead as full lives as possible, whatever the setting. Ensuring vulnerable older people have access to the advocacy they need is part of the Government’s vision for a fair, modern health and care economy.

Advocacy services are provided largely by independent voluntary organisations. There is widespread provision of advocacy, and it is estimated that over 600 organisations are providing advocacy in England. Many advocacy organisations work with one specific client group of people only, for example, people with mental health needs, people with learning disabilities or those for whom English is not their first language.

The Mental Capacity Act 2005, now fully in force, has introduced statutory advocacy for those lacking capacity to be represented and supported in making major decisions involving either serious medical treatment, or accommodation moves or where abuse is suspected or proven. To support this, the Department is providing funding of £6.5m per annum for Independent Mental Capacity Advocates under the Mental Capacity Act.

The Mental Health Act has introduced independent mental health advocacy. People detained or being treated under that Act will, in the future, have an automatic right to the support of an advocate, including older people with mental health problems.

**Recommendation 32**

We welcome the Government’s consultation on the merger of the inspectorates, although we are concerned that the consultation suggests that the new inspectorate will not handle individual complaints. We were alarmed that the Minister was unable to guarantee that the new inspectorate would be able to investigate individual complaints at the appropriate point in the process. We are convinced that complaints, including those raising human rights concerns, need to be investigated by an independent third party, rather than by the organisation against which the complaint is made and where the older person may continue to live. We therefore recommend that the newly merged inspectorate be empowered to investigate individual complaints, as the Healthcare Commission is currently able to do. (Paragraph 258)

We recognise that individual complaints need addressing and this aspect will be considered as part of the integrated complaints procedure for Health and Social Care to be introduced in 2009. The proposed approach will make the whole experience of making a complaint easier, more user-friendly, more open and transparent, and much more responsive to people's needs. It will involve an appropriate independent element where required. It also emphasises that health and social care services should routinely learn from complaints, feeding into service improvement.
Separately, we will be establishing a new health and adult social care regulator. Whilst this new body will not have a direct role in the new complaints procedure, and will not have a role in following up individual complaints, the new regulator will draw on complaints information as just of the many data sources it will use to help assure that care is meeting national safety and quality of care requirements.

In our consultation document, *Making Experiences Count,* published on 18 June 2007, we explain that -

“the regulators of health and social care would have a role in looking at the outcomes from complaints, focusing on the standard of complaints handling and the implementation of learning from complaints. It would also ensure that all providers of NHS or adult social care services, whether public or independent sector, have proper and appropriate complaints systems in place.

“The new regulatory framework that is currently being developed, is intended to assure patients that services are safe, fit for purpose and deliver basic quality. The detailed requirements of regulation are likely to require all providers of NHS and adult social care services to have appropriate complaints processes in place.”

We do not believe it is either appropriate or desirable for the new regulator to investigate individual complaints. Lack of local knowledge and procedures, and the length of time taken to duplicate investigation of a complaint goes against our vision of providing swift, user-friendly and transparent resolution of a person’s complaint at local level. This approach enhances the prospect of effective organisational learning with resulting improvements in service delivery. It also avoids unnecessary duplication of activity, which removes valuable resources from front line services. However, our proposals for a reformed complaints process makes allowances for independent investigation of complaints at local level, in appropriate cases. As part of local resolution, users will be able to request their complaint is investigated by an independent third party.

If a person receiving publicly funded services remains dissatisfied with the response, they retain the right to take their complaint to the Parliamentary and Health Service Ombudsmen or the Local Government Ombudsman. The Ombudsmen are independent of Government and have statutory responsibilities and powers to report directly to Parliament. We are sympathetic to the situation of those people who self-fund, in care homes for example, and recognise the problem. We are currently considering this issue.

**Recommendation 33**

We consider that a dual approach is required: firstly, older people need information about their human rights; and secondly, institutions need to mainstream human rights within their work. We recommend that the Department of Health, the inspectorates, healthcare policy-makers and every provider of healthcare services make a public commitment to:

---

(a) embed a human rights approach in hospitals and care homes across the country and
(b) make sure that accessible information on human rights and how to use them are provided to patients, care home residents, relatives, carers and advocates, and the public as a whole. (Paragraph 276)

As already noted, section 6 of the Human Rights Act makes explicit that it is unlawful for a public authority to act in a way that is incompatible with a Convention right.

The Department has already made *Human Rights in Healthcare* available to all NHS organisations and the public, which provides accessible information on human rights in healthcare and what they mean in practice to patients and staff.

As already noted, approximately 100,000 copies of a toolkit comprising of a handbook and summary booklet with a DVD were distributed by the Ministry of Justice to Government Departments, their sponsored bodies and other wider public sector organisations. This guidance informs public authorities of their obligations under the HR Act, including the right to respect articulated in Article 8 of the Convention.

**Recommendation 34**

In addition, we recommend that the Commission for Equality and Human Rights, in partnership with organisations representing older people, assesses the quality of the information available to older people, their families and carers on the application of human rights principles to their lives and makes sure that the best information is widely disseminated. Independent advocates and advisors have a crucial role to play in assisting people to understand and apply these concepts. (Paragraph 277)

Government notes this recommendation, which is for CEHR. On 10 October 2007, H M Treasury published a number of Public Service Agreements (PSAs) including one produced by the Department for Work and Pensions, *Tackle Poverty and Promote Greater Independence and Well-being in Later Life*. Five indicators are to be used to measure the progress of this PSA, including ‘the extent to which people over 65 receive the support they need to live independently’. The Government's priority is to ensure that people are supported to live their lives they way in which they want to live and to ensure that there is greater opportunity for older people to shape the social care services and support they want.

**Recommendation 35**

We recommend that information on human rights be presented by the NHS in an appropriate way to older people. (Paragraph 282)

In taking forward *Human Rights in Healthcare*, the Department will recommend that when NHS organisations present human rights information that it is available in formats that take account of the needs of the audience.
Recommendation 36

We recommend that information on the human rights of older people and the duties of service providers as “public authorities” under the Human Rights Act be provided to older people, in an accessible form, on entry to the care home or hospital. The applicable care standards for hospitals and care homes should be revised to require that service providers make specific reference to an individual’s human rights and the avenue for making a complaint. (Paragraph 288)

As set out in our response to Recommendation 16, compliance with the registration requirements will be assessed by the new health and adult social care regulator, based on criteria which the regulator will devise. It is our intention that human rights will be an important feature in the regulator’s criteria.

As set out in response to Recommendation 26, the forthcoming guide Promoting Dignity Within the Law, which will be available by the end of 2007 will be aimed at staff working in health and social care, as well as service users.
Draft Report (Government Response to the Committee’s Eighteenth Report of Session 2006-07: The Human Rights of Older People in Healthcare), proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 3 read and agreed to.

A Paper was ordered to be appended to the Report.

Resolved, That the Report be the First Report of the Committee to each House.

Ordered, That the Chairman make the Report to the House of Commons and that Baroness Stern make the Report to the House of Lords.

[Adjourned till Monday 26 November at 4.00pm.]
Reports from the Joint Committee on Human Rights in this Parliament

The following reports have been produced

Session 2007-08


Session 2006–07

Second Report  Legislative Scrutiny: First Progress Report  HL Paper 34/HC 263
Fourth Report  Legislative Scrutiny: Mental Health Bill  HL Paper 40/HC 288
Fifth Report  Legislative Scrutiny: Third Progress Report  HL Paper 46/HC 303
Sixth Report  Legislative Scrutiny: Sexual Orientation Regulations  HL Paper 58/HC 350
Seventh Report  Deaths in Custody: Further Developments  HL Paper 59/HC 364
Tenth Report  The Treatment of Asylum Seekers: Volume II Oral and Written Evidence  HL Paper 81-II/HC 60-II
Twelfth Report  Legislative Scrutiny: Fifth Progress Report  HL Paper 91/HC 490
Thirteenth Report  Legislative Scrutiny: Sixth Progress Report  HL Paper 105/HC 538
Fifteenth Report  Legislative Scrutiny: Seventh Progress Report  HL Paper 112/HC 555
Seventeenth Report  Government Response to the Committee’s Tenth Report of this Session: The Treatment of Asylum Seekers  HL Paper 134/HC 790
Nineteenth Report  Counter-Terrorism Policy and Human Rights: 28  HL Paper 157/HC 394
<table>
<thead>
<tr>
<th>Report Number</th>
<th>Title</th>
<th>HL Paper Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>24</td>
<td>First Report of Session 2007-08</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>Twentieth Report High Skilled Migrants: Changes to the Immigration Rules</td>
<td>173/HC 993</td>
</tr>
<tr>
<td>21</td>
<td>Twenty-first Report Human Trafficking: Update</td>
<td>179/HC 1056</td>
</tr>
</tbody>
</table>

**Session 2005–06**

<table>
<thead>
<tr>
<th>Report Number</th>
<th>Title</th>
<th>HL Paper Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>First Report Legislative Scrutiny: First Progress Report</td>
<td>48/HC 560</td>
</tr>
<tr>
<td>4</td>
<td>Fourth Report Legislative Scrutiny: Equality Bill</td>
<td>89/HC 766</td>
</tr>
<tr>
<td>5</td>
<td>Fifth Report Legislative Scrutiny: Second Progress Report</td>
<td>90/HC 767</td>
</tr>
<tr>
<td>6</td>
<td>Sixth Report Legislative Scrutiny: Third Progress Report</td>
<td>96/HC 787</td>
</tr>
<tr>
<td>7</td>
<td>Seventh Report Legislative Scrutiny: Fourth Progress Report</td>
<td>98/HC 829</td>
</tr>
<tr>
<td>8</td>
<td>Eighth Report Government Responses to Reports from the Committee in the last Parliament</td>
<td>104/HC 850</td>
</tr>
<tr>
<td>9</td>
<td>Ninth Report Schools White Paper</td>
<td>113/HC 887</td>
</tr>
<tr>
<td>10</td>
<td>Tenth Report Government Response to the Committee’s Third Report of this Session: Counter-Terrorism Policy and Human Rights: Terrorism Bill and related matters</td>
<td>114/HC 888</td>
</tr>
<tr>
<td>11</td>
<td>Eleventh Report Legislative Scrutiny: Fifth Progress Report</td>
<td>115/HC 899</td>
</tr>
<tr>
<td>13</td>
<td>Thirteenth Report Implementation of Strasbourg Judgments: First Progress Report</td>
<td>133/HC 954</td>
</tr>
<tr>
<td>14</td>
<td>Fourteenth Report Legislative Scrutiny: Sixth Progress Report</td>
<td>134/HC 955</td>
</tr>
<tr>
<td>15</td>
<td>Fifteenth Report Legislative Scrutiny: Seventh Progress Report</td>
<td>144/HC 989</td>
</tr>
<tr>
<td>16</td>
<td>Sixteenth Report Proposal for a Draft Marriage Act 1949 (Remedial) Order 2006</td>
<td>154/HC 1022</td>
</tr>
<tr>
<td>17</td>
<td>Seventeenth Report Legislative Scrutiny: Eighth Progress Report</td>
<td>164/HC 1062</td>
</tr>
<tr>
<td>18</td>
<td>Eighteenth Report Legislative Scrutiny: Ninth Progress Report</td>
<td>177/HC 1098</td>
</tr>
<tr>
<td>19</td>
<td>Nineteenth Report The UN Convention Against Torture (UNCAT) Volume I Report and Formal Minutes</td>
<td>185-I/HC 701-I</td>
</tr>
<tr>
<td>20</td>
<td>Twentieth Report Legislative Scrutiny: Tenth Progress Report</td>
<td>186/HC 1138</td>
</tr>
<tr>
<td>21</td>
<td>Twenty-first Report Legislative Scrutiny: Eleventh Progress Report</td>
<td>201/HC 1216</td>
</tr>
<tr>
<td>22</td>
<td>Twenty-second Report Legislative Scrutiny: Twelfth Progress Report</td>
<td>233/HC 1547</td>
</tr>
<tr>
<td>23</td>
<td>Twenty-third Report The Committee’s Future Working Practices</td>
<td>239/HC 1575</td>
</tr>
<tr>
<td>24</td>
<td>Twenty-fourth Report Counter-Terrorism Policy and Human Rights: Prosecution and Pre-Charge Detention</td>
<td>240/HC 1576</td>
</tr>
<tr>
<td>25</td>
<td>Twenty-fifth Report Legislative Scrutiny: Thirteenth Progress Report</td>
<td>241/HC 1577</td>
</tr>
<tr>
<td>Twenty-sixth Report</td>
<td>Human trafficking</td>
<td>HL Paper 245-I/HC 1127-I</td>
</tr>
<tr>
<td>---------------------</td>
<td>------------------</td>
<td>-------------------------</td>
</tr>
<tr>
<td>Twenty-seventh Report</td>
<td>Legislative Scrutiny: Corporate Manslaughter and Corporate Homicide Bill</td>
<td>HL Paper 246/HC 1625</td>
</tr>
<tr>
<td>Twenty-eighth Report</td>
<td>Legislative Scrutiny: Fourteenth Progress Report</td>
<td>HL Paper 247/HC 1626</td>
</tr>
<tr>
<td>Thirtieth Report</td>
<td>Government Response to the Committee’s Nineteenth Report of this Session: The UN Convention Against Torture (UNCAT)</td>
<td>HL Paper 276/HC 1714</td>
</tr>
<tr>
<td>Thirty-first Report</td>
<td>Legislative Scrutiny: Final Progress Report</td>
<td>HL Paper 277/HC 1715</td>
</tr>
</tbody>
</table>