

# Human rights and the right to health



NHS Health Scotland is a national Health Board working with and through public, private and third sector organisations to reduce health inequalities and improve health. We are committed to working with others and we provide a range of services to help our stakeholders take the action required to reduce health inequalities and improve health.

## Key messages

- The delivery of health and social care services is at the core of protecting human rights.
- All services that impact on health and wellbeing should be available, accessible, acceptable, scientifically appropriate and of good quality.
- Reducing health inequalities is essential to protect the right to health.
- Applying a human rights-based approach (HRBA) will strengthen work to address health inequalities and improve health.
- An HRBA approach helps to focus on the people who need the most support to participate in society and lead a fulfilling life. It also places a greater emphasis on the duty of public services to do this.

## Key actions

- Apply an HRBA in your organisation and directly in the work you do.
- Help embed an HRBA in practical ways in all public policy and practice in Scotland.

## What is this briefing about?

This briefing is about the right to enjoy the highest attainable standard of physical and mental health. It sets out what the right to health is, what a human rights-based approach (HRBA) to health looks like and gives some suggestions as to how the approach can be used.

## What are health inequalities?

Health inequalities are the unfair differences in people's health across social groups and between different population groups. They are caused by an unequal distribution of income, power and wealth and can mean that factors that promote good health and well-being are not equally available, acceptable, appropriate or of good quality. Reducing health inequalities is essential to protect the right to health. Although the overall health of Scotland is continuing to improve, health inequalities persist. Health inequalities are not inevitable – they can be reduced through the political and social decisions we make.<sup>1</sup>

## Human rights and the right to health

Human rights belong to everyone, everywhere, throughout our lives, from birth until death.<sup>2</sup> They are the basic rights we all have because we are human, regardless of who we are, where we live or what we do. They cover many aspects of everyday life, ranging from the rights to an adequate standard of living (including food and housing), education and health, freedom of thought, religion and expression.<sup>3</sup>

Human rights gained their first modern expression in the Universal Declaration of Human Rights (1948),<sup>4</sup> which is described as 'a common standard of achievements for all peoples and all nations'. The right of everyone to the highest attainable standard of physical and mental health has been recognised formally in the UK since 1976 when the Government approved the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>5</sup>

When our human rights are fulfilled, we can live free from oppression, discrimination and poverty. When they are not, there can be consequences for our economy, our communities and for the health of our nation.

The existence of health inequalities in Scotland indicates that the right to health is not enjoyed equally.<sup>6</sup> To address this we need to tackle/overcome the fundamental causes of health inequalities, prevent the impact that they have on the wider environment and reduce the effects they have on the individual life experience.<sup>7</sup> This means that to be healthier, Scotland needs to be fairer. And it works the other way too. If Scotland is fairer, it will become healthier as more people are able to reap the health benefits associated with a fairer distribution of wealth, income and power.

The right to health is an inclusive right – it includes not only the right to health services, but to the wide range of factors that help us to achieve the highest attainable standard of health. The wider social determinants of health are:



The principles and elements of the right to health fit well with the ethos of public service reform. For example:

- The report of the Christie Commission<sup>8</sup> recognises the importance of participation and involvement.
- Public bodies are required to identify how improvements will be made for groups protected under the Equality Act 2010.<sup>9</sup>
- Health and Social Care Partnerships are required to understand the health needs of their communities and set out plans to meet the health and wellbeing outcomes set by the Scottish Government.<sup>10</sup>

The right to health provides a framework to ensure that practice does not drift from well-intentioned policy. By providing this framework, underpinned by international agreements, human rights could bring a common thread to public service reform and health and social care that will ensure everyone is given the opportunity to enjoy the highest possible standard of health.

Protecting, respecting and fulfilling human rights is therefore necessary if we are to address health inequalities and realise the right to health for everyone in Scotland. Embedding an HRBA approach in policy and practice will help us do this.

## Human rights-based approach

The law on human rights in Scotland is strong but the potential of human rights for public health goes far beyond the law. Human rights can make a difference in people's everyday lives and benefit individuals, communities and populations, by shaping policies, programmes and practical interventions.<sup>11</sup> The **PANEL** principles of an HRBA offer a way to help the public sector, the third sector, communities and individuals to put rights into practice.

## The PANEL principles are:



**Participation** – people should take part in decision-making and have a voice. Policies and practice should support people to participate in society and lead fulfilling lives.



**Accountability** – organisations and people are accountable for realising human rights.



**Non-discrimination** – everyone has the same rights (regardless of their ethnicity, gender, income, religion, etc.).



**Empowerment** – people, communities and groups should have power. They need to know and claim their rights in order to make a difference.



**Legality** – all decisions should comply with human rights legal standards.

Another useful framework is the **AAAQ** framework. This describes how all facilities, goods and services needed to enjoy the right to the highest attainable standard of health (health care, housing, work, food, income and so on) must be:

- **Available** in sufficient quantity.
- **Accessible** to everyone without discrimination, including being physically accessible and affordable.
- **Acceptable**, respecting issues of confidentiality and being sensitive to cultures, communities and gender.
- Scientifically **appropriate** and of **good quality**.

These are absolutely fundamental to the delivery of respectful and person-centred care.

There are a number of ways in which an HRBA can help us to equitably improve health and wellbeing, and some of these are outlined below. As we further embed this approach into our policy and practice in Scotland, **in the words of the First Minister, we will be able to do 'even more, even better'** (December 2015; event hosted by the SHRC marking international human rights day).

A human rights inquiry into emergency healthcare in Northern Ireland<sup>12</sup> is an example of an HRBA in practice. The inquiry was the first of its kind undertaken anywhere in the world. It was wide ranging and took evidence from ministers, the Department of Health, the Health and Social Care Boards, health and social care trust managers, clinicians and trade unions, and key voluntary organisations, alongside patients and families who are at the receiving end of services. The inquiry examined how well the human rights of patients were respected, protected and fulfilled, as well as spending on emergency departments. It made many recommendations, including: targets, standards, inspection, monitoring, workforce and participation in governance.

Example



## Participation

Participation in health-related decision-making at individual, community, national and international levels is essential to the right to health. It is also a key part of person-centred care. 'Healthy n Happy',<sup>13</sup> the community development trust for Cambuslang and Rutherglen, is a good example of this. Healthy n Happy is a community owned organisation, governed by local people and directed by local priorities, with a key focus on health and wellbeing. Healthy n Happy routinely involve people who use their service in its design and delivery.<sup>14</sup>



## Accountability

People have a right to the highest attainable standard of health, and public bodies have a duty to work towards this right for all, particularly those who are furthest away from experiencing this right. This means that it must be possible to hold people and systems to account at local, national and international levels. Effective ways to do this must be developed.

People should know what to expect, when, from whom and from what service, and what to do when standards fall short of these expectations. We should monitor how the right to health is being experienced by the population.

The recent review of the NHS complaints process shows an example of improving accountability. It has included clear work to raise staff awareness of how processes can be more human rights based by making sure they are participative, accessible, empowering, transparent and easy to follow.

Example



## Non-discrimination

All services, goods and facilities must be provided to everyone without discrimination. This does not mean that everyone should expect the same service or should be treated the same. Some groups in the population experience poorer health and lower life expectancy than average,<sup>7</sup> so work is needed to improve their health at a faster rate. In this instance, it may be necessary to provide specific services or treat people or groups differently in order to achieve the highest possible standard of health and wellbeing.

A participatory research study<sup>15</sup> carried out in partnership through the Scotland's National Action Plan for Human Rights (SNAP) Health and Social Care Action Group highlights how discrimination impacts on health. The research took a targeted approach to identifying the issues for homeless people and asylum seekers, finding that because they are marginalised groups they often had much worse health outcomes than the general population. They also found that they were themselves best placed to identify the issues and help address them.<sup>16</sup>

Working in this way also helps to direct resources to ensure policy and spending is not contributing to or prolonging health inequalities.



## Empowerment

Making human rights principles part of the policy and planning processes will help empower people who are experiencing inequalities. It will ensure that their voices are heard and they can inform decision-making.<sup>14</sup>

People must be supported to have choice and control over their life, and their health and well-being outcomes. Information about health should be timely and accessible. It means that

if people have access requirements, such as British Sign Language interpretation, these should be met as matter of course.

Empowerment in a health and social care context also means helping people to make positive health choices on topics such as physical activity, diet, alcohol and tobacco use. Where people live, the resources they have and the environment they live in all influence this.

If health and social care policy and practice is to be empowering, we must address those structural aspects so that people are free to make health-promoting choices. The Place Standard<sup>17</sup> is a practical tool that can help do this. It is designed to structure conversations about place. It allows you to think about the physical elements of a place (e.g. its buildings, spaces and transport links) as well as the social aspects (e.g. whether or not people feel they have a say in decision-making).

## Legality

People's ability to access services that are of a high quality and accessible to them is a legal right and not simply a matter of choice or preference. This principle should underpin all service provision in Scotland. The box below outlines how the law in Scotland means that public bodies and those carrying out public services must comply with human rights.

The right to health is progressive. This means that we need to take steps to realise this right for everyone and avoid actions that will have a detrimental impact on people's right to health. There is **a minimum floor below which standards should not fall** – particularly with regard to people expecting dignity, privacy, respect, information and involvement in decisions affecting them and having access to a minimum level of primary health care, food and housing. From there, the right to the highest possible standard of health should be understood as progressive and something that it is critical to attempt to achieve as quickly and effectively as possible.

### **The legal framework for human rights in Scotland**

In Scotland, the Human Rights Act 1998<sup>18</sup> and the Scotland Act 1998<sup>19</sup> set out our human rights. They place duties on public bodies to comply with human rights at all times. The Scotland Act sets out that all laws passed by the Scottish Parliament and everything that the Scottish Ministers do must to be compatible with the European Convention on Human Rights.<sup>20</sup> The Scotland Act also lets the Scottish Parliament implement commitments under international treaties that the UK sign up to. Together, the Scotland Act and the Human Rights Act give people in Scotland a direct route to enforce some international human rights through Scotland's own legal system.

### **International treaties and incorporation**

Some human rights are not yet part of Scotland's laws, but are included in binding international commitments made by the UK that apply to Scotland. These 'commitments' include treaties (known as conventions) drafted by the member states of the United Nations (UN). There are nine Core UN Human Rights Treaties. The UK has approved seven. You can read about them on the website of the United Nations Human Rights Office of the High Commissioner.<sup>21</sup>

The Scottish Human Rights Commission (SHRC) has stated that making the treaties part of the law in Scotland 'would empower the people of Scotland to hold the Scottish Government and public bodies to account, providing a legal basis for broader efforts to improve Scotland's human rights culture'.<sup>22</sup> A number of organisations recognise the importance of incorporating more international human rights in domestic law in Scotland.

## How human rights are being driven forward in Scotland

Scotland's National Action Plan for Human Rights (SNAP)<sup>23</sup> was launched by the (then) Deputy First Minister Nicola Sturgeon, the Chair of the SHRC and the Council of Europe Commissioner for Human Rights in December 2013. It was developed with a vision of a Scotland in which everyone is able to live with human dignity. Its aim was to help move from a relatively strong legal and policy base to seeing a human rights-based approach put into practice. SNAP actively promotes use of the **PANEL** principles above.

A number of groups have been formed to support the ambitions set out in the plan, including the Health and Social Care Action Group<sup>24</sup> which is co-convened by NHS Health Scotland and the ALLIANCE.<sup>25</sup> The group brings together the NHS, the voluntary sector, the SHRC and individuals to identify areas in health and social care which can be strengthened by an HRBA. Details about the work of the group is available online.<sup>24</sup>

## How you can drive human rights

- **Apply an HRBA in your organisation and in the work you do:**
  - learn about it and help develop an understanding of what it means in your setting
  - take a deliberate, inclusive, proactive and transparent approach to involving people and communities in your work
  - train your staff in human rights
  - work across all sectors to bring the knowledge and experience needed to get this right
  - build in effective accountability mechanisms to your work and services and involve people and communities in these. This will help ensure that services and policies are accessible, available, acceptable and of a high quality.
- **Help to embed an HRBA in practical ways in all public policy and practice in Scotland:**
  - tell people about what you have done and share practice across Scotland and beyond
  - take every opportunity to support the incorporation of more international human rights into domestic law and policy, as this will help further to realise a fairer and healthier Scotland.

## Conclusions and additional information

People who provide health and social care services are protecting human rights and the right to health because they are providing the fundamental care and support people need to participate in society. It also means simply remembering on a day-to-day basis that we are all human beings. We should use this as the guiding principle of how we design and deliver services and how we interact with each other.

There are a number of sources where you can access additional information.<sup>26-29</sup>

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## Collaboration with NHS Health Scotland

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