

Equality and Human Rights Commission  
Research report 89

# Older people and human rights in home care: Local authority responses to the ‘Close to home’ inquiry report

Lorna Adams, Christoph Koerbitz,  
Liz Murphy and Mark Tweddle

IFF Research Ltd



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Research Team  
Equality and Human Rights Commission  
Arndale House  
The Arndale Centre  
Manchester  
M4 3AQ

Email: [research@equalityhumanrights.com](mailto:research@equalityhumanrights.com)

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## Abbreviations

The following abbreviations are used in this report:

CQC	Care Quality Commission
ECHR	European Convention on Human Rights
EHRC	Equality and Human Rights Commission
EIA	Equality Impact Assessment
HRA	Human Rights Act 1998
NMW	National Minimum Wage
RAS	Resource Allocation System
PSED	Public Sector Equality Duties
SAQ	Support Assessment Questionnaire

## **Executive Summary**

### **Background and methodology**

This report presents the findings of research conducted on behalf of the Equality and Human Rights Commission (hereafter 'the Commission') on the progress that has been made in implementing some of the recommendations of the Commission's inquiry report 'Close to home'. That report was published in November 2011 and explored the degree to which the human rights of people aged 65 and over requiring or receiving home care services in England were being fully promoted and protected.

The 'Close to home' inquiry made 25 recommendations in total, nine of which applied specifically to local authorities. One of these recommendations required local authorities to review five areas of their care commissioning policies and practices while a second related to the steps that, following a change in the law in October 2012, they should have taken to ensure that certain aspects of these policies and practices did not contain any age-related biases that were not 'objectively justified'. The remaining seven recommendations related to how local authorities could better protect and promote the human rights of older people, and meet their more specific obligations under the Human Rights Act 1998 (HRA), by making changes to various aspects of their care commissioning practices and policies. This report looks at how local authorities have responded to these inquiry recommendations.

An online survey was used as the main method for collecting the information and local authorities in England with home care commissioning responsibilities were invited to participate. In addition to the survey, local authorities were also asked to submit documentary evidence to provide further support for their online responses. The survey was sent to 152 English local authorities who commission home care. 101 survey responses were received, giving an overall response rate of 66 per cent.

### **The reviews of commissioning policies and practices**

Three quarters of local authorities reported having taken action in response to the recommendation to review their care commissioning practices and policies. The number of authorities reviewing each of the five highlighted areas ranged from between 50 to 70. However, only 15 per cent of authorities had completed all five reviews. Around a fifth had not conducted any reviews, mainly because they already considered their policies and practices fully protected and promoted human rights.

Excluding those authorities who did not do any reviews, the proportion identifying an area that needed to be addressed to better promote and protect the human rights of older people ranged from 42 per cent (whether differential treatment linked to age is present) to 59 per cent (making complaints or overcoming concern-raising barriers).



Therefore, as a result of the reviews recommended by the 'Close to home' report, 65 per cent of the local authorities that responded to the survey, and 86 per cent of those who had conducted at least one review, had identified at least one area that needed addressing to better protect and promote the human rights of older people.

### **The new ban on age discrimination**

The 'Close to home' inquiry report recommendations included one which asked local authorities to identify and remove any remaining unlawful age-related biases with particular reference to any that might still exist in their home care policies and practices concerning resource allocation or care planning and community support.

Nearly 70 per cent of the local authorities who responded to the survey had taken action to ensure that any age-related biases in their resource allocation systems or policies for care planning and community participation were 'objectively justified' as is required by the new legislation outlawing age discrimination in services. The main reason given for not taking any action was where a local authority felt that their systems, policies and practices were already compliant with the change in the law.

Of the local authorities who had taken action with regard to the change in law, just over 70 per cent reported finding no unlawful age-related bias in either their resource allocation systems or care planning procedures. Of those local authorities who did identify such a bias, nine reported that it was in their resource allocation systems while eight authorities reported finding a bias in their care planning and community support policies. Several local authorities reported taking action to remove these biases. Of these, seven authorities had sought formal legal advice although only three of them had received it. Of these, two authorities reported that they had been advised that the biases so identified could be seen as being 'objectively justified'.

### **Supporting user choice**

The 'Close to home' report made three recommendations which related to how local authorities could better support user choice in home care services for older people. These related to how authorities could: better support service users who employ their own personal assistants; provide better information on the quality and range of local care providers; and promote the use of advocacy and brokerage services.

A majority of local authorities reported that they had either taken action, or were currently taking action, to address these recommendations. However, in the case of enhanced consumer information and the use of advocacy and brokerage services, most authorities reported that they had been taking the required actions already. Conversely, while 90 per cent of authorities reported they had taken action to better support older people who directly employ their own personal assistants, nearly half of these still did not provide a list of voluntary assistants working in their local area.

Some local authorities also provided examples of what they had done to address these recommendations. These included: working with user-led or third party organisations to provide more support to older people who employ personal assistants; the provision of web-based information relating to the quality of service providers; e-marketplace solutions that allowed service users to buy their own services; and the development of brokerage and guidance schemes to support older people using direct payments or to support those with more specific care needs.

### **Mainstreaming human rights**

'Close to home' also made three recommendations on how local authorities could better mainstream their human rights obligations into care commissioning practices. These related to: incorporating human rights obligations - including their positive obligations - into their decision-making, planning, commissioning and contracting processes; the provision of more specific human rights training for their elected members; and the inclusion of HRA obligations and 'third party' rights clauses in care contracts with providers to increase the legal protection available to service users.

Nearly three quarters of local authorities reported that they had taken, or were taking action, to better mainstream human rights obligations into their decision making and care planning processes while just over half had either taken action, or were in the process of taking action, to make greater use of human rights obligations and 'third party rights' clauses in their care contracts (while 38 per cent indicated they intended to take such actions in the future). But only a third of local authorities reported taking action, or being in the process of taking action, with regard to the provision of more human rights training for their elected members. Furthermore, while a further third of local authorities intended to act on this recommendation in the future, the remaining third reported that they had no intention of acting upon this recommendation.

Again, some local authorities who reported making changes in their policies and practices provided examples of what they had done. These included: building HRA obligations into their business plans, service specifications and contracts; making greater use of Equality Impact Assessments (EIAs); and the provision of additional training sessions, seminars and human rights engagement and awareness events.

While making references to HRA obligations in care contracts was generally seen as a standard practice, less than a quarter of local authorities reported having clauses relating to 'third party' rights prior to the inquiry report or of adding these to contracts in the year following its publication. This was mainly seen as being due to unresolved legal questions as how this might best be done. However, several authorities reported that they were in conversation with their legal teams with regard to this issue and half (50 per cent) intended to include such clauses in future care contracts.

**Rewarding and retaining care workers**

'Close to home' also made a recommendation concerning the steps local authorities could take to ensure their care commissioning practices balanced the resources required to meet assessed home care needs with the need to ensure that the contracted providers could pay at least the National Minimum Wage (NMW), including travel time, to care workers. Over 80 per cent of local authorities reported having taken action, or being in the process of taking action, with many claiming the requirement to pay workers at least the NMW was investigated during the tendering process. However, the complexity of care costing structures and monitoring processes varied widely and some local authorities did not seem to have the processes in place to check provider adherence to their contractual agreements.

**Other home care commissioning risk factors**

In addition to seeking evidence about how local authorities had responded to the specific recommendations made in 'Close to home', further information was also gathered on other aspects of their commissioning policies and practices that the inquiry had found could have an impact on the human rights of older people. These included the relative balance between cost and quality factors and the use of maximum and minimum pricing guidance in home care commissioning processes and the use of short care visits (i.e. of 15 minutes or less) to provide personal care.

This evidence suggested that: there had been a shift towards the greater relative use of quality as opposed to cost factors in local authorities care commissioning processes; in general, local authorities had not placed much downward pressure on providers in terms of what they would pay for care although there were some large variations, which were sometimes hard to understand, in the prices authorities were prepared to pay for these services; and that there had been some reduction in the number of local authorities commissioning care visits lasting 15 minutes or less, although not all local authorities were fully aware of how often these occurred.

**Local authorities own assessments of impact**

Finally, local authorities were asked to assess the overall impact of the 'Close to home' report. It should be noted that these ratings were based on local authorities own perceived understandings of these issues which, as the evidence referred to in the next section suggests, may not always be an adequate baseline for such an assessment. However, while an analysis of these ratings found that they could vary widely between local authorities, the comments they were asked to make in support of their individual assessments often suggested some common underlying themes.

In explaining their scores, many local authorities stated that the inquiry was valuable to them in terms of building upon their existing knowledge, validating current practices, focusing efforts on specific areas and helping them to consider how human rights obligations could be implemented more practically. But they also felt

that human rights principles and the inquiry recommendations were already largely embedded within their policies and practices. Furthermore, where only a limited impact was reported, some authorities cited the effects of other initiatives in this area, conflicting priorities and the difficult financial environment in which they operated. Some authorities also felt it was too early to assess the report's impact

### **Review of documentary evidence**

In addition to these survey responses, the documentary evidence submitted by some local authorities suggested they had recognised their legal obligations to protect human rights in the home care services they commissioned and had embedded these within their organisational culture so that they had become a foundation for service delivery, rather than just a separate issue or component. However, the total number of local authorities submitting such supporting documentation was low.

The documentary evidence that was submitted also indicated some variation in how some local authorities ensured that human rights were being practically implemented across their home care policies and practices and in their service delivery. In particular, two issues emerged which gives the Commission cause for concern.

First, it was apparent that 'human rights' was often used as a catch-all term. In particular, it was not always clear whether all aspects of human rights were being addressed in some local authorities commissioning policies and processes. For example, while it was often clear how the principles of dignity, security and autonomy and choice were considered, it was less so for the principles of social and civic participation and privacy. Likewise, some documents related to local authority 'equality and diversity' procedures and the apparent conflation of these with their human rights obligations may demonstrate an on-going lack of understanding of the nature and breadth of the latter. Finally, some authorities indicated a belief that adhering to other agendas that were consistent with, or seemed to enshrine, human rights principles was sufficient evidence of compliance with human rights obligations.

Second, this evidence did not always show how human rights obligations were being enforced and, instead, suggested heavy reliance was being placed upon contractual terms or written policies. In particular, these documents often did not say under what circumstances authorities would enforce their own policies, how contractual agreements were monitored, or how they obtained evidence of service providers' promotion and protection of human rights. While there was evidence that some local authorities had adopted a partnership approach to ensure that human rights are promoted and protected, some focussed solely on their own policies and procedures and not on whether service providers and other relevant agencies adhered to them.

These concerns may mean that local authorities own assessments of the impact of the inquiry (as reported above) need to be taken with a considerable degree of caution as they may, in some cases, be based on a failure to fully understand their legal obligations. This may, in turn, also indicate that some local authorities' interpretation of their HRA obligations do not, as yet, amount to full legal compliance.

### **Conclusions**

The survey evidence suggests that 'Close to home' has made an impact on local authorities' approach to the incorporation of human rights in the provision of home care for older people: many authorities reported having taken action to address the report's recommendations or that they are currently in the process of doing so.

The responses to the more specific recommendations were more mixed. In general the proportion of local authorities reporting having taken action was usually high but, in many cases, so too was the proportion of authorities who reported that their policies and practices already reflected the substance of the recommendations. This may suggest some inquiry recommendations reflected pre-existing care practices.

However, the evidence also found areas where further work may be required: many local authorities will need further persuasion if human rights training for their elected members is to become a widespread practice; some local authorities may need further legal clarification or assistance if the use of 'third party rights' in care contracts is to become routine; and more action will be required for local authorities to show sufficient regard to the inquiry recommendation about balancing the resources required to meet assessed needs with ensuring providers pay at least the NMW, including payment for travel time. At present, the attention paid by authorities to ensuring providers pay care staff at least the NMW often appeared to be limited to including clauses in provider contracts that were sometimes not clearly monitored.

More generally, and as was observed in the 2011 research which formed part of the 'Close to home' inquiry's evidence base, the documentary evidence submitted and some of the comments made by local authorities at various points in the online survey, suggests there is still a tendency for them to interpret their human rights obligations in quite different ways. Therefore this research again raises the question about whether some local authorities believe that, if they acknowledge the value of some human rights principles, they will have fulfilled all of their HRA obligations.



## 1. Introduction and methodology

### 1.1 Context and background

This report presents the findings of research conducted by IFF Research on behalf of the Equality and Human Rights Commission (hereafter 'the Commission'). The research focused on the progress that English local authorities have made towards implementing the recommendations specific to them which were laid out in the Commission's 'Close to home' inquiry report<sup>1</sup> relating to older people and home care.

The Commission published 'Close to home' in November 2011. That report set out the findings of a formal inquiry that explored the degree to which the human rights of people aged 65 and over who require or receive home care in England are being fully promoted and protected and local authorities' key role in ensuring this occurs. The main impetus for this inquiry was to ensure that, for the first time, the human rights position of older people requiring or receiving care in their own homes was systematically investigated and, in addition, to close the gap between what is known in this area compared to that for older people in more institutional care environments.

There were several other reasons for conducting the inquiry. One was changes in the statutory environment concerning the provision of home care. In particular, the European Convention on Human Rights (ECHR) was incorporated into UK law by the Human Rights Act 1998 (HRA). One effect of this incorporation is that local authorities must act compatibly with ECHR rights in relation to all of their functions. These functions include the provision of public services to individual users: for example, planning, commissioning and monitoring the provision of home care services. More specifically, it means local authority social services departments must exercise all their powers and duties in a way that is compatible with ECHR rights.

Furthermore, and because of the HRA, public authorities also have 'positive obligations' to actively promote and protect the rights guaranteed by the ECHR. These positive obligations include: taking active measures to prevent human rights breaches; responding to any human rights breaches that may occur through, for example, carrying out investigations; and providing information to individuals to explain the risk of their human rights being eroded, where it is clear that such a risk exists. Indeed, those local authorities that fail to fulfil these positive obligations may be failing to perform their statutory functions in a way that complies with the HRA.

However, while the HRA requires private and public sector organisations to comply with ECHR rights when they are performing public functions, because of the way the Act has been interpreted by the courts, publicly funded home care delivered by

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<sup>1</sup> <http://www.equalityhumanrights.com/legal-and-policy/inquiries-and-assessments/inquiry-into-home-care-of-older-people/close-to-home-report/>

private and voluntary sector organisations remains outside its scope leaving the majority of home care service users without the direct protection of the HRA.

This legal loophole is important because, over the last two decades, there has been a significant change in the provision of home care services, with the balance shifting from direct provision by local authorities to provision by private and voluntary care agencies. For example, while the private and voluntary sector provided 2 per cent of the total in 1992<sup>2</sup>, this proportion had increased to 84 per cent by 2009/10<sup>3</sup>. Another recent change with similar legal consequences is the increased use of personal budgets by service users to purchase home care services using direct payments.

The combined effect of these changes has been a widening discrepancy between the state's obligation to assess and provide care, which remains within the HRA's scope, and the actual delivery of care, the bulk of which the HRA does not cover.

## **1.2 The 'Close to home' inquiry report**

It was against the background of these major legal and supply-side changes in the provision of home care that the Commission launched its inquiry. In particular, the specific terms of reference of the inquiry were that it was to investigate:

'the extent to which the human rights of older people who require or receive home-based care and support, however funded, are promoted and protected by public authorities, working singly or with others, and the adequacy of the legal and regulatory framework within which they are required and empowered to do so.'<sup>4</sup>

The inquiry collected evidence from older people, their friends and relatives, local authorities and their elected members, organisations and individuals who provide home care, government, the voluntary sector and regulatory bodies. On the basis of this evidence-base the inquiry concluded that, while many older people were satisfied with the home care they received, a number of areas of real concern were also present, including several likely breaches of older peoples' human rights.

In particular, the inquiry concluded that some of these areas of risk to older peoples' human rights could be reduced if local authorities revised the ways in which they

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<sup>2</sup> Laing and Buisson (2011) Domiciliary Care UK Market Report 2011. London: Laing and Buisson.

<sup>3</sup> NHS Information Centre (2011) Community Care Statistics 2009-10, Social Services Activity Report, England.

<sup>4</sup> <http://www.equalityhumanrights.com/legal-and-policy/inquiries-and-assessments/inquiry-into-home-care-of-older-people/terms-of-reference/>



commissioned, procured and monitored home care, as there was evidence that these systems were not always being used effectively to consistently protect human rights. As a result, in the final inquiry report 'Close to home', the Commission made 25 recommendations that were aimed at improving the promotion and protection of the human rights of older people receiving home care. Several of these were aimed at local authorities and included the need to raise awareness and understanding of how their human rights obligations should be fulfilled, both within local authorities themselves, and via their contractual relationships with external service providers.

### **1.3 Aims and objectives**

The research sought to measure how English local authorities have responded to the inquiry and to gain further information on the actions they had taken in terms of their responses to the relevant recommendations. This is because local authorities have a legal duty to 'have regard' to all the relevant recommendations in the inquiry report<sup>5</sup>.

The research begins with recommendation 9 of the inquiry report. This recommendation set a deadline of October 2012, one year after the publication of 'Close to home', by which local authorities were expected to have reviewed their commissioning policies and practices with specific regard to the following five areas:

- Complaints processes
- Resource Allocation Systems (RAS)
- Age-related differential treatment in care planning and policies for community support and participation
- Meeting the diverse needs of older people
- Supporting workforce skills

The research looks at the extent to which local authorities have complied with this recommendation and assesses the outcomes of the five suggested review areas.

It should be borne in mind, however, that any statements of confidence made by local authorities about the adequacy of their existing practices and policies are essentially a form of self-assessment. However, 'Close to home' contained evidence from an earlier survey of local authorities<sup>6</sup> which suggested that such confidence might, in some cases, be misplaced particularly if it is based upon an incomplete understanding of their HRA obligations. This important caveat needs to be borne in mind when considering the survey results both here and in the chapters that follow.

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<sup>5</sup> Equality Act (2006), Schedule 2, Paragraph 18. "A person to whom a recommendation in the report of an inquiry, investigation or assessment is addressed shall have regard to it."

<sup>6</sup> [http://www.equalityhumanrights.com/uploaded\\_files/research/80\\_older\\_people\\_and\\_human\\_rights.pdf](http://www.equalityhumanrights.com/uploaded_files/research/80_older_people_and_human_rights.pdf)

The research then considers recommendation 3 of the inquiry report. This called on the government to implement the provisions in the Equality Act 2010 which were aimed at outlawing age discrimination in services and public functions. This ban came into force on 1 October 2012 - although the legislation still permits age-based rules and practices that can be 'objectively justified'<sup>7</sup>. As a result of this change, the Commission was keen to explore the actions taken by local authorities to ensure that any continued use of age-related criteria in their resource allocation systems and/or their policies for care planning and for supporting community participation satisfied the 'objective justification' test or, if not, had been amended accordingly.

The inquiry also made seven more specific recommendations about how local authorities could better protect the human rights of older people who require or receive home care. As a result, this research explores the progress local authorities have made in reviewing their policies and procedures and implementing these more specific inquiry recommendations in the year after the publication of 'Close to home'.

The seven more specific inquiry recommendations were that local authorities should:

- **Recommendation 5:** Develop ways of supporting older people who employ their own personal assistants.
- **Recommendation 8:** Take additional steps to mainstream human rights into decision making processes and plans.
- **Recommendation 11:** Enhance the leadership role of elected members in the commissioning of care for older people via additional human rights training.
- **Recommendation 13:** Give consideration to incorporating HRA obligations into contracts with care providers and include clauses to allow provision for "third party" rights to ensure maximum human rights protection.
- **Recommendation 14:** Ensure commissioning practices balance the allocation of resources required to meet assessed home care needs with the need to ensure contracted providers can pay at least the National Minimum Wage (NMW) to care workers, including payment for time spent travelling.
- **Recommendation 16:** Take steps to compile and make accessible more consumer information about the quality of care providers and their specialist areas.
- **Recommendation 17:** Put greater focus on developing advocacy, guidance and brokerage schemes for older people.

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<sup>7</sup> Under Section 13(2) Equality Act 2010, differential treatment because of age is lawful if it is a proportionate means of achieving a legitimate aim.

'Close to home' also identified and documented several aspects of local authority care commissioning practices and policies which may make the negative experiences that some older people described in their evidence to the inquiry more likely to happen. These included the use of 15 minute home care visits which include the provision of personal care and the relative balance between 'cost' and 'quality' factors in awarding future home care contracts. However, while the Commission chose not to make any specific recommendations about these areas in the inquiry report, it decided to use this research to gain additional information as to how local authority policies and practices were changing with regard to these issues, especially given the current (and expected) financial environment in which they now operate.

The Commission was also keen to gain local authority feedback on the usefulness of the inquiry report. As a consequence, the research included a series of questions that allowed local authorities to provide their own assessments of the impact 'Close to home' had made on their understanding of human rights, their policies and practices and quality of their service provision. But, as was noted above, these assessments assume that local authorities can make fully objective judgements.

Finally, because the Commission is keen to disseminate examples of good practice in protecting and promoting human rights, local authorities were asked to provide examples. Some of these are included as case studies at various points in the text.

In summary, in evaluating the steps taken by local authorities to meet their HRA obligations and the inquiry recommendations, the research specifically sought to:

- Assess the degree to which local authorities have "had regard" to the specific inquiry recommendations that were addressed at them;
- Explore whether any areas of improvement were identified when they reviewed their commissioning practices and policies;
- Establish the steps that they have already taken, or were planning to take in the future, to implement the inquiry's recommendations;
- Identify any areas of good practice to promote human rights in home care settings;
- Explore any recent changes, or planned future changes, relating to commissioning processes and contract content;
- Ascertain local authority's own assessments of the extent to which the Commission's inquiry report has impacted on their understanding, policies and practices and actual service provision with regard to human rights in the commissioning and provision of home care services for older people.

#### **1.4 Methodological approach**

An online survey was used as the core vehicle for collecting the required information from local authorities. This was because such an approach would allow respondents to complete the survey in several sittings and give them the opportunity to gather and confirm information, and to share and discuss its content with colleagues, prior to submission. In addition, it would also enable respondents to share the survey with others in their organisation and, if required, for different people to complete different parts of it. For reference, a copy of the survey questionnaire has been included as an Appendix to this report and responses to each question have been referenced in the relevant part of the text where appropriate. In addition to the main body of the survey, local authorities were also asked to submit documentary evidence at various points in the questionnaire in support of their responses to some of the questions.

The survey methodology comprised several stages:

1. An introductory letter to the Director of Adult Social Services in each local authority;
2. The sending to each of an email containing a unique link to the online survey;
3. Making telephone contact with all local authorities to confirm receipt of the link and to resolve any queries or perceived issues about how to access the online survey. This was done three days after the sending of the link;
4. A reminder email containing the unique link was sent two weeks into the fieldwork stage to those authorities who had not yet accessed the survey;
5. A telephone chasing exercise to remind those authorities who had still not accessed the survey to participate took place three weeks into the fieldwork stage; and
6. A Commission-led telephone chasing exercise, aimed at reminding and encouraging participation in the survey by authorities who had still not responded, occurred at the end of the extended fieldwork period.

Each of these stages is now described in more detail.

##### **Step 1**

Initial contact with local authorities was made through an introductory letter. This was sent to the Director of Adult Social Services in each authority as they were felt to be the most suitable person to either respond to the survey themselves or to identify an appropriate colleague to do so on their behalf. Following a sample building exercise, which involved gathering email addresses and telephoning switchboards, hard copy letters were then sent. This introduced local authorities to the main areas of the research with a view to encouraging their participation. In addition, this letter also notified the recipients that the survey would be administered via an email containing a unique link to a web-based survey thereby alerting them to expect the email.

### Step 2

The week following the posting of these letters, an email was sent to contacts containing an individualised survey link. As well as allowing respondents to complete the questionnaire in more than one sitting, this individualised link also enabled IFF to track which authorities had responded to the survey over time, so allowing a more tailored reminder process to be implemented in the later stages of the fieldwork.

### Step 3

Following the distribution of the survey link, a courtesy call was then made to ensure that the email containing the link had been received and to check whether the recipients either had any queries relating to the survey itself, or were experiencing any technical difficulties when trying to access or respond to it.

### Step 4

After two weeks of fieldwork, a reminder email was sent to all the local authority contacts who had not yet responded to the survey.

### Step 5

At the telephone chasing stage, those authorities that had not yet responded to the survey were given the opportunity to complete the survey over the telephone if they preferred or to have the link re-sent to them if this was required.

### Step 6

Towards the end of the fieldwork stage, and in order to encourage further responses, the Commission undertook a final telephone chasing exercise.

## 1.5 Questionnaire design

The online survey contained four main sections. At a general level, each section looked at the level of action taken by respondents to comply with the specific inquiry recommendations, any issues this had raised, and the steps taken by authorities to address them. The following provides a brief outline of the four main sections:

### Section A – Reviewing commissioning policies and practices

- Actions taken with regard to the reviews specified in recommendation 9
- Areas where policies and practices could be improved and any measures introduced or planned by local authorities to achieve this
- Requests for documentary evidence to provide additional support for, and further details of, the review processes conducted.

### Section B – Changes in the law on age discrimination

- The actions taken by local authorities to ensure their compliance with the provisions of the Equality Act that came into force in October 2012

- Any issues that were identified concerning age-related bias and the steps taken by authorities to address them
- A request for documentary evidence to support their compliance.

#### Section C – Complying with recommendations

- The level of action taken, if any, with regard to recommendations 5, 8, 11,13, 14, 16 and 17
- Where relevant, a description of any actions implemented or planned
- Any reasons for non-action where appropriate
- A request for documentary evidence to support any actions described
- Additional questions on changes to various local authority activities relating to these recommendations e.g. changes to the levels of advocacy funding, home care contracts and costing structures.

#### Section D – The impact of the ‘Close to home’ report

- Local authorities’ overall perceptions on the impact of the report on their understanding of human rights in home care, their policies and practices and actual service delivery
- The main drivers of these perceptions.

The background section to the online survey notified respondents of the level of confidentiality that would be afforded to them once they had completed it. This explained that the survey report would not state or imply that a particular local authority had committed an unlawful act, or include any information that could lead to a local authority being identified as having done so. It also explained that they would be notified if there was any intention to name them in the report in the context of any examples of good practice they had provided by way of their survey response.

Local authorities were also informed that the Commission would also identify those authorities that did not respond to the survey in a ‘one year on’ review of the inquiry.

### **1.6 Fieldwork dates**

Letters were sent out to contacts in mid-October 2012 and the survey was launched and distributed on 9 November 2012. The Commission started the final telephone chasing exercise on 3 January and the survey finally closed on 18 January 2013.

### **1.7 Response rate**

The online survey was sent out to 152 English local authorities with responsibility for commissioning home care services. In total, 101 responses were returned for analysis, yielding a response rate of 66 per cent. In addition to these individual responses, a single combined response was provided by three neighbouring authorities who adopt an integrated approach to provision of home care services.

This increased the response rate to 68 per cent. However, and to avoid difficulties in interpreting the statistics presented in the following chapters, this response has not been incorporated into the quantitative findings in the report. However, qualitative information from this response has been incorporated in this research and will inform the review of the Home Care inquiry that is to be published by the Commission.

In terms of the documentary evidence, the submission rate varied with the particular part of the survey with which it was concerned. In addition, there was quite a large gap between the number of local authorities who stated that they would be able to submit such evidence to support their responses and the number who actually did.

### **1.8 About this report**

The rest of this report presents the findings from the survey responses and any further evidence from the documents local authorities submitted in support of these.

The report presents the responses from the local authorities at an overall level before discussing any pertinent sub-group findings. An analysis of local authorities' verbatim responses with regards to actions they have taken in response to the inquiry's recommendations is presented throughout the report where appropriate.

The figures in the text, charts and tables are whole numbers unless otherwise stated. Where percentages are used these have been rounded to the nearest percentage point. For some questions, the base sizes were too small to conduct any meaningful quantitative analysis and, in these cases, the findings are presented qualitatively and should be treated as indicative only. This is highlighted in the text where appropriate.

The report is organised into five subsequent chapters:

- Chapter 3 explores whether, and how, local authorities have responded to recommendation 9 of the 'Close to home' report by reviewing their commissioning policies and practices;
- Chapter 4 focuses on local authorities' response to the changes in the law on age discrimination that came into force in 2012, whether any age-related biases were identified as a result, the steps taken to address them and any reasons for non-action;
- Chapter 5 explores the extent to which local authorities have had regard to the more specific recommendations directed at them by the inquiry report.
- Chapter 6 looks at the perceived impact of the inquiry by the authorities themselves. This looks at its impact on their understanding of human rights, their policies and practices and the quality of their service provision.
- Chapter 7 draws together the key messages arising from the research.

## 2. The reviews of home care commissioning policies and practices

### 2.1 Introduction

Recommendation 9 of the 'Close to home' report stated that:

**Before October 2012, local authorities should review their policies and practices in light of the inquiry's findings as to the causes of potential breaches of human rights in home care.**

As a minimum, the inquiry recommended that these reviews should include an examination of the following five aspects of local authority policies and practices:

1. The effectiveness of their systems to overcome any barriers that older people experience in raising concerns or making complaints.
2. The design and operation of their Resource Allocation Systems (RAS) with a view to identifying and removing any age-related biases that may exist.
3. The extent to which differential treatment linked to age is present in care planning and support for community participation.
4. Whether the diverse needs of older people are being met through their home care commissioning practices.
5. The extent to which their commissioning practices supports the delivery of care by a sufficiently skilled, supported and trained workforce.

Over three quarters (77) of the local authorities that responded to the survey reported that they had reviewed at least one of the suggested areas of policy and practice in the year following the publication of the 'Close to home' report. Of the remaining local authorities, 21 reported that they had not conducted any of the reviews while a further three did not know whether any reviews had taken place.

The local authorities who indicated that they had reviewed their policies and practices were then asked to specify which of the above aspects of their home care commissioning policies and practices had been reviewed since November 2011. The responses to this question are summarised in Table 2.1. This table shows the number of local authorities undertaking any such reviews, the numbers who had investigated each of the five policy and practice areas and the number of reviews that uncovered areas for improvement to better protect and promote human rights.



**Table 2.1 Responses of local authorities to recommendation 9: reviewing commissioning policies and practices (Questions A1, A2, A4 and A7)**

Policies and practices in relation to...	Base: all local authorities that responded to survey	Conducted no reviews at all	Don't know if any reviews conducted	Already reviewed / currently reviewing policies and practices			Have not reviewed specific areas because...		Plan to conduct a review in future
				Review has highlighted areas for improvement	Review has not highlighted areas for improvement (yet)	Do not know if review has highlighted areas for improvement	Confident that human rights are fully protected	Other reason	
Systems to overcome barriers that older people experience in raising concerns or making complaints	101	21	3	34	21	3	6	-	13
The design and operation of Resource Allocation Systems with a view to identifying and removing any age-related bias	101	21	3	26	26	7	4	1	13
The extent to which differential treatment linked to age is present in care planning and support for community participation	101	21	3	21	24	5	5	5	17
Whether commissioning practices recognise the diverse needs of older people	101	21	3	35	25	7	2	-	8
The extent to which commissioning ensures a sufficiently skilled, supported and trained workforce	101	21	3	40	24	6	2	-	5

Figures in absolutes.

Where local authorities had not acted on recommendation 9 at all, and had no plans to do so in the future, this was generally because these authorities were confident that their policies and practices already fully promote and protect human rights.

Likewise, where an authority had taken action with regard to recommendation 9 but where a particular review (or reviews) had not occurred and where there were no plans to do so in the future, the reasons given by authorities for this were as follows:

- All six local authorities that reported not reviewing their systems to overcome barriers in raising concerns or making complaints stated that they felt their policies and practices already fully promote and protect human rights.
- Of the five authorities that did not review, or did not plan to review, the design and operation of their RAS, four reported that their policies and practices were already compliant. The fifth local authority stated that they did not use a RAS.
- Of the ten authorities that reported they did not review, or plan to review, the extent to which differential treatment linked to age is present in care planning and support for community participation, six reported that they felt their policies and practices already fully promote and protect human rights. Of the remaining four, one cited financial constraints as preventing a review, one did not offer a particular reason and two felt that this issue would be addressed via other activities that were already underway within their authority.
- Both local authorities that did not review (and had no plans to review) whether the diverse needs of older people are being met through their commissioning practices and policies for community participation indicated that they felt their policies and practices already fully promote and protect human rights.
- Similarly, the two local authorities that did not review, or plan to review, the extent to which their commissioning practices support the delivery of care by a sufficiently skilled workforce both felt that their policies and practices already fully promote and protect human rights.

Of the five specific areas of policy and practice, the one most likely to have been reviewed, or to be under review at the time of the research, was the extent to which commissioning practices supported the delivery of care by a sufficiently skilled, supported and trained workforce: 70 local authorities reported having conducted this review. Conversely, the area least likely to have been reviewed was whether differential treatment linked to age was present in care planning and support for community participation. However, while only 50 of local authorities reported that they had, or were in the process of, reviewing their policies and practices in this area, a further 17 indicated that they had plans to do such a review in the future.

In terms of the number of the recommended reviews that had been conducted an analysis of the survey responses found that, in addition to those who had not

conducted any or who were unsure as to what had occurred, only a relatively small proportion of authorities (15 per cent) had reviewed all five suggested areas by the time of the survey. A majority of authorities (53 per cent) had conducted reviews in some of the areas of policy and practice while 9 per cent had not conducted any by the time of the survey but were intending to do so in the future. Thus there is scope for further areas for improvement to be identified by local authorities in the future.

## **2.2 Documentary evidence of the review processes**

Of the 77 local authorities that indicated they had undertaken at least one of the recommended reviews of their policies and practices, 51 said that they were able to submit documentary evidence to the Commission in relation to the review processes. However, only 20 local authorities actually submitted any documentary evidence to the Commission to further support the responses they had provided to the survey.

Furthermore, much of the documentary evidence that was submitted related to specific recommendations, i.e. the resulting outcomes of, or any revisions made, following a review, rather than any documents which related to the review process itself. Likewise, where evidence was submitted that specifically related to review processes, the types of documents provided were largely either notifications of the findings of the inquiry, their intentions to review specific policies and practices or details of the approaches used to identify the needs of service users in general. In addition, several authorities submitted commissioning documents in support of this and other recommendations, although it was not always clear which part of these materials had been reviewed or revised as a result of any specific review process.

In summary, much of the documentary evidence that was submitted was of limited value in determining whether local authorities had directly complied with the content of recommendation 9. However, it may reflect the tendency for the 'Close to home' recommendations to have helped support, clarify or add weight to review processes that were already planned or underway rather than them being the direct catalyst for such changes. This interpretation would be in line with some local authorities' own assessments of the overall impact of the inquiry described in chapter five below.

## **2.3 Issues highlighted through the review processes**

Those local authorities who specified that they had reviewed, or were in the process of reviewing, at least one of the five suggested areas were then asked if these review processes had highlighted any areas of policy and practice that needed to be addressed in order to better promote and protect the human rights of older people.

Of the 77 local authorities that stated they had undertaken a review in one or more of the highlighted areas, 66 indicated that, in at least one of these, they had identified an issue that needed addressing to better promote and protect the human rights of

older people. This meant that 86 per cent of the authorities that had conducted reviews, either in response to recommendation 9 or in response to other reviews with substantially the same purpose, had identified at least one area of policy or practice where the human rights of older people could be better promoted or protected.

The results of each of the individual review processes are now discussed in turn.

### **Areas for improvement: barriers to making complaints**

With regard to the 58 local authorities who had conducted a review of their systems to overcome the barriers that older people experience in raising concerns or making complaints, 59 per cent became aware of an area where their policy or practice could be improved. Conversely 36 per cent of local authorities who had conducted this review identified no such issues while 5 per cent were unsure of the outcome.

More specifically, many local authorities reported that this review had identified issues with older people not knowing enough about the processes of how to make a complaint. For example, one local authority's review highlighted issues with:

The ease and accessibility of information about making complaints and information which redresses fears of making complaints.

To address this issue, the authority had developed a number of initiatives:

[We have] planned a 'tell us what you think' day, recruited additional Volunteer Quality Monitors, produced a 'making a complaint' film, widely distributed complaints and comments leaflets to hospitals/GP surgeries and have invited complainants to be involved in overall engagement processes working towards service improvement.

Similarly, another local authority noted that:

Older people identified that they are not always aware of how to raise concerns and are anxious about raising concerns for fear of 'losing services' or 'getting carers into trouble'.

To address this issue, they specified that:

Direct face to face conversations with recipients of home care are now included as part of our quality monitoring arrangements. All social work reviews now include an opportunity for people to comment on their current service provision and this feedback is fed back to the quality monitoring team so that it forms part of our risk assessment of providers.

Another local authority had identified barriers to making complaints which specifically related to older people with learning difficulties:

We identified the need to ensure that older people with learning difficulties have complaints literature in Easy Read format. [To address this we] consulted with external agencies who designed an 'easy to read' leaflet which is now widely available.

### **Areas for Improvement: Resource Allocation Systems (RAS)**

Of the 59 local authorities who had conducted the review about whether there were any issues concerning age-related bias in the design and operation of their RAS, 44 per cent had identified such an issue, a similar proportion had not while 12 per cent of these authorities were unsure as to whether any such issue had been identified.

The main outcome of this review was that some local authorities recognised an imbalance in the allocation of resources between younger and older service users. This imbalance is highlighted by the following comments from two local authorities:

[There was a] Recognition when developing RAS that the historical imbalance in allocation of resources to younger and older customer groups needed to be addressed.

The RAS is based on price points according to client group. The RAS was identified for improvement because the older people price point is lower than some other price points.

### **Areas for improvement: Care planning and support for community participation**

Of the 50 local authorities who had reviewed whether differential treatment linked to age was present in their policies for care planning and support for community participation, 42 per cent had identified such an issue. Conversely, 48 per cent had not identified such a problem while 10 per cent of were unsure of the outcome.

Some local authorities stated that, as a result of this review, they became aware that support plans for home care users did not encourage activities outside the home.

For example, one local authority noted that:

Older people tended not to have support plans which helped them go outside their home. Most support plans were felt to be quite prescriptive around personal care tasks and the processes we used did not encourage flexible

planning to meet changing needs. This was an area we had been looking at for some time, but the Close to home report helped to add weight to the issues.

To address this, the local authority had implemented a series of measures:

We have introduced a Care Navigation Service which will work with people on referral and at the support planning stage to ensure people are fully involved in designing their own plans. This should help to deliver a more personalised support package for everyone. We have also refined the domestic care service specification to ensure it includes the option to support people outside the home.

Another authority had identified the problems experienced by older service users when agreeing that their support plans needed improving:

Focusing on assessing individual need and fully engaging and involving the person being assessed in agreeing outcomes they would like to achieve. Using external third sector organisations to support people develop their support plans to encourage community participation.

To address this issue, the local authority updated their assessment framework. More specifically:

A comprehensive assessment framework is now used which is needs and outcome-focussed. It is used to assess people that meet the Fair Access to Care Criteria in the borough. External support planners from a consortium of providers in the third sector are used to support all age groups develop their support plans if this type of support is required.

### **Areas for Improvement: Recognising and meeting the diverse needs of older people**

Of the 67 local authorities who had reviewed whether their policies and practices could be improved in relation to recognising the diverse needs of older people, 52 per cent had identified such an issue. Conversely, 37 per cent of authorities did not identify any such issue while 10 per cent were unsure as to the result of this review.

‘Close to home’ endorsed the Law Commission’s recommendation that services should be outcome-focussed<sup>8</sup> and, in line with this, some local authorities reported that they have changed their overall approach to commissioning home care services.

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<sup>8</sup> Law Commission (2011) Adult Social Care Recommendation 28.

For example, one local authority stated that:

Previously our services were commissioned based upon hours delivered. However, we have since commissioned a new service that delivers individual outcomes for customers with services no longer based upon hours of service but on the needs of customers.

Another local authority reported that they had also undergone a similar revision of their commissioning approach:

We have completely revised our service specification to address dignity issues and ensure an outcomes focus. We have updated our contract monitoring tools to incorporate dignity issues and continue to monitor delivery of the outcomes via regular contract monitoring which includes direct feedback from older people (and others) using domestic care services.

Likewise, a third authority had identified that their commissioning policies and practices could be improved by assisting older people to live more independently:

[We identified that our policies and practices could be improved by] developing a more preventative service to enable older people to remain fit and healthy for as long as possible and to support them to continue to live independently.

To address this issue, the local authority was amending its commissioning practices:

[We are] developing our commissioning strategies and market position statement with a view to encouraging more organisations to offer activities and day opportunities for older people. [We have also] retendered for a preferred provider list for day opportunities for older people.

### **Areas for Improvement: ensuring a sufficiently skilled workforce**

Finally, of the 70 local authorities who had reviewed whether their commissioning policies and practices ensured a sufficiently skilled, supported and trained workforce, 57 per cent had identified an area for improvement. Conversely, 34 per cent did not identify an area while 9 per cent of these authorities were unsure as to the outcome.

One authority reported their review had identified gaps in their Equalities training:

[We identified that our] corporate Equalities training did not focus specifically on social care issues. [To address this] we have now commissioned Equalities and human rights training specific to adult social care. Issues relating to older

people are incorporated alongside all other equality strands and this training has been made available to the independent sector providers.

Another local authority identified the need for training in skills which were specifically related to the needs of older people:

[We identified] a need to support [the] home care workforce with training programmes and to develop additional training in key areas such as improving independence, outcome based care provision and end of life care.

To address this issue the local authority stated that they would:

Maintain and develop training programmes that providers are able to access free of charge. Monitoring training data as part of contract monitoring arrangements for each provider. Requirements for providers to ensure staff are sufficiently trained, skilled and supported and monitored through contract monitoring arrangements. Working collaboratively with health colleagues and providers to develop protocols that support care workers to carry out more complex tasks safely. Working in local partnership with providers to improve profile of home care industry to attract a high calibre of care worker. Influence care providers to pay at least the local living wage as a starting salary for new care workers.

## **2.4 Summary**

In conclusion, the evidence presented in this Chapter suggests that, while recommendation 9 of the 'Close to home' report may not always have been the direct catalyst for all the reviews conducted by local authorities, the impact of such reviews, regardless of the reasons for doing them, has generally been positive in that a proportion of these have led to the identification of areas where local authority policies and practices could be improved to better protect and promote human rights.



### **3. Changes in the law on age discrimination**

#### **3.1 Eliminating age discrimination**

On 1 October 2012 the provisions contained in the Equality Act 2010 outlawing age discrimination in services and public functions came in to force. Under these provisions, age discrimination in the delivery of services became unlawful - apart from any age-differentiated treatment that can be 'objectively justified'. Subsequently, in circumstances where age-based criteria are still being used to determine the design or delivery of services (including home care), the commissioner or service provider must be able to demonstrate that their approach satisfies the objective justification test - i.e. that it is a proportionate means of achieving a legitimate aim.

Two specific areas that recommendation 9 of 'Close to home' had required local authorities to review prior to October 2012 were the design and operation of their RAS - with a view to identifying and removing any age-related bias that may exist - and the extent to which differential treatment linked to age is present in care planning and support for community participation. Both of these are also related to ensuring compliance with this change in legislation and, because local authorities have an obligation to comply with the change in law, the survey asked them a number of more specific questions relating to the steps they have taken to ensure compliance.

Of the local authorities that responded to the survey, 69 reported that they had taken action to ensure that any use of age-related criteria in their home care RAS and/or policies for care planning and for supporting community participation were objectively justified. Conversely, a quarter (26) of local authorities reported that no such actions had been taken while six authorities did not know if any such actions had occurred.

The 26 local authorities who stated they had not taken any action in relation to the change in law were then asked to give their reasons for this. Of these, 21 authorities stated that it was because they were confident that their RAS and their care and support policies and practices were compliant prior to the change in law, three stated that other issues had a higher priority while two local authorities stated that they had already reviewed their RAS. Three of these authorities also cited issues relating to staff resources, financial pressures and competing priorities for not taking any action.

Of the 69 local authorities who reported taking specific actions with regard to the change in law, 70 per cent stated that they had not identified any unlawful age-related bias while a further 10 per cent did not know whether such a bias had been identified. In contrast, 20 per cent (14) of these local authorities reported that an age-related bias had been identified. The local authorities who had identified a potentially unlawful age bias were then asked whether this had been present in their RAS, their policies for care planning and supporting community participation, or in both areas.

### **Biases in resource allocation**

Nine local authorities reported that they had identified a possible age-related bias within their RAS. Of these authorities, four stated that they had also completed the review of this area in response to recommendation 9 of the 'Close to home' report discussed in chapter 2, four stated that they were in the process of conducting this review while the remaining authority had not responded to this recommendation.

These nine authorities were then asked an open question about the nature of any age-related biases they had identified. Most stated that it occurred due to the use of differential price points or financial calculations for different groups of service users when allocating resources. These authorities were then also asked about the steps they had taken to address this bias. The actions which were reported here included reviewing and revising their RAS questionnaires and other similar processes, removing age splits and differentials and introducing 'needs-based' approaches.

Again, and in relation to any age-related biases in their RAS, two local authorities referred to the fact that the use of market rates and differences in service availability could result in an unintentional age-related bias. One local authority stated that:

The resource allocation system for home care is based on market prices available to meet the given need. There is not a specific age related bias, but where there are specialist skills needed, providers may charge more which may create an increase in personal budget allocation to meet the same level of need between different groups. For more expensive packages, the availability of residential accommodation at a lower rate for older people than for younger adults, means that for some older people residential care is the most cost effective means of meeting their needs and they are less likely to be maintained at home with high cost packages than younger adults.

To examine this issue further, the local authority had commissioned research and advice on the ways in which they could ensure that individual identity is taken account of fairly in their decision making processes. The local authority stated that:

As a result all protected characteristics are included on the assessment document, and a prompt to consider protected characteristics has been included in the decision grid used when determining how needs are met and the level of personal budget allocated following an assessment of need (both to be launched early 2013). Decisions on all cases are monitored and all those above a delegated limit formally discussed by a panel. This ensures that the most cost effective option is chosen and can be justified in terms of eligible needs, availability rather than an age based assumption.

### **Biases in care planning and support for community participation**

Eight local authorities reported identifying the potential for age-related bias within their policies for care planning and supporting community participation (of which three authorities had also identified a possible age-related bias within their RAS). In relation to this bias, two local authorities referred to the potential for not meeting older people's community access needs or for supporting them outside of the home.

For example, one local authority stated that:

We highlighted the fact that older people are less likely to be supported outside home by domiciliary care providers. Our definition of domiciliary care tended to be quite narrowly focused on personal care in the home environment.

In addition, two local authorities also made more general comments about the issues involved in differentiating between older people and other care service users.

The other authorities did not specify the types of issues that they had identified but, instead, gave brief explanations of how their practices had been revised. Finally, several authorities outlined, in more general terms, the systems they are putting into place to ensure a greater focus on providing more flexible and individualised support, enablement and independence to ensure any age-related bias has been removed.

### **3.2 Documentary evidence of compliance with legislative change**

As with their responses to recommendation 9, local authorities were again asked to submit documentary evidence in support of their answers, detailing how they have ensured their RAS and care planning and community support policies are compliant with the change in the law. Of the 26 authorities that indicated that documentary evidence would be submitted to the Commission, documents were received from 11.

Some of the documents received from local authorities in response to this request were policy documents relating to reviews of their RAS or, in one case, a RAS policy document that referenced the Equality Act 2010 and the HRA. One authority submitted a workbook providing guidance on how to use their RAS although there was no explicit mention in it of how age-related bias was to be safeguarded against.

More positively, some authorities submitted a Support Assessment Questionnaire (SAQ) that was specifically designed to avoid age discrimination and to promote equality in resource allocation. One example of an SAQ contained two components: a points allocation system which translated needs into points to reflect the relative scale of the resource needs; and a 'pounds per point' calculation that converted these points into a sum of money, known as an 'indicative personal budget'.

### **3.3 Establishing whether a bias can be objectively justified**

Finally, the 14 local authorities that had identified an age-related bias in their RAS or their policies for care planning and community support were asked if they had taken any legal advice as to whether either could be 'objectively justified'. Of these, seven local authorities had not taken any legal advice, two were unsure and two more were in the process of doing so. Of the remaining three authorities (i.e. those who had received legal advice), two stated that this advice had indicated that the age bias was considered lawful while the third was unsure as to the outcome of this process.

### **3.4 Summary**

Overall, while local authorities were more likely to have reviewed their relevant policies and practices in response to the change in law than to do so in response to the reviews contained in recommendation 9 of the 'Close to home' report, only a relatively small proportion of local authorities stated that they had identified a potential age-related bias within their RAS (13 per cent of local authorities) or in their policies for care planning and for supporting community participation (11 per cent of local authorities) as a direct result of the legal change. These are much lower proportions than those who stated that they had highlighted an area for improvement through their reviews of the two related areas that were conducted in response to recommendation 9 (44 per cent and 41 per cent of local authorities respectively).

## 4. Compliance with the inquiry's other recommendations

### 4.1 Introduction

This chapter examines local authority responses to the seven, more specific, recommendations made in the inquiry report that related to their policies and practices concerning the tendering, contracting and provision of home care. In addition, this chapter also includes an analysis of some of the 'risk factors' which, while the Commission chose not to make recommendations concerning them, are those that it has decided are sufficiently importance to gain further information on.

To make this section of the survey easier to complete, the seven specific recommendations were divided into three groups by reference to the broad area of policy and practice they sought to influence: three recommendations were seen as relating to supporting user choice; three more concerned the mainstreaming of human rights considerations in home care commissioning; while one was specifically concerned with the rewarding and retaining of home care workers. The local authority responses to each of these three groups are now considered in turn.

### 4.2 Supporting user choice

**Table 4.1 Response of local authorities to the recommendations on supporting user choice (Question C1).**

Recommendations focussing on supporting user choice	Base: all Local Authorities that responded to survey	Action already taken	Action being taken	No action taken because...		Plans to take action in future
				Confident that Human rights are fully protected	Other reason	
<b>Recommendation 5:</b> supporting older people who employ personal assistants	101	59	32	6	0	4
<b>Recommendation 16:</b> compile and make accessible more information about the quality of care providers	101	41	41	2	0	17
<b>Recommendation 17:</b> put greater focus on developing advocacy, guidance and brokerage schemes for older people	101	42	38	4	1	16

Figures in absolutes.

The 2011 'Close to home' report made three recommendations which specifically focussed on supporting the choices available to older people who require or receive home care. These were recommendations 5, 16 and 17. Table 4.1 on the previous page summarises local authority responses to each of these recommendations.

## Responses to recommendation 5

Recommendation 5 stated that:

**Given that the CQC has no regulatory remit over personal assistants who are not supplied by a care provider, local authorities should develop ways of supporting those who employ their own personal assistants, to ensure older people's human rights are protected. This could include steps such as funding advocacy and advice services and facilitating voluntary registers for personal assistants.**

Table 4.1 shows that 59 local authorities indicated that action had already been taken in response to recommendation 5, 32 indicated that such actions were in progress, four indicated that they had plans to take action in response to this recommendation in the future, while only six reported taking or planning no action.

Of the authorities who reported that they had not taken action, and had no plans to do so, all stated that this was because their current policies and practices already complied with the recommendation and so fully promote and protect human rights.

Of those authorities that had taken action, or who were planning to take action, the most common response was to involve voluntary sector organisations, such as Age UK, to assist in providing support for older people who employed their own personal assistants. The comments below, from two different local authorities, illustrate this:

We have developed a service with Age UK known as 'Go Direct' which provides support for people of all ages who employ personal assistants. This service also holds a register of personal assistants.

We have developed a scheme with Age UK to support volunteers to become trained personal assistants and to match service users with these personal assistants and support the relationship going forward. However, there has been very little interest to date from older people wanting to have personal assistants from this source or any other.

Some local authorities also detailed their work with user-led organisations to help support home care users who employ their own personal assistants. However, these user-led organisations tended to be disabled people's organisations with additional responsibilities for older people, as opposed to being those more specific to older people. This was highlighted in the comments of three separate local authorities:

We have a contract with a local user-led disabled person's organisation who provide support to individuals (including older people) who employ their own personal assistants.

An innovation fund grant was awarded to a user-led organisation to support direct payment recipients, specifically around employing personal assistants. This covers all client groups, including older people.

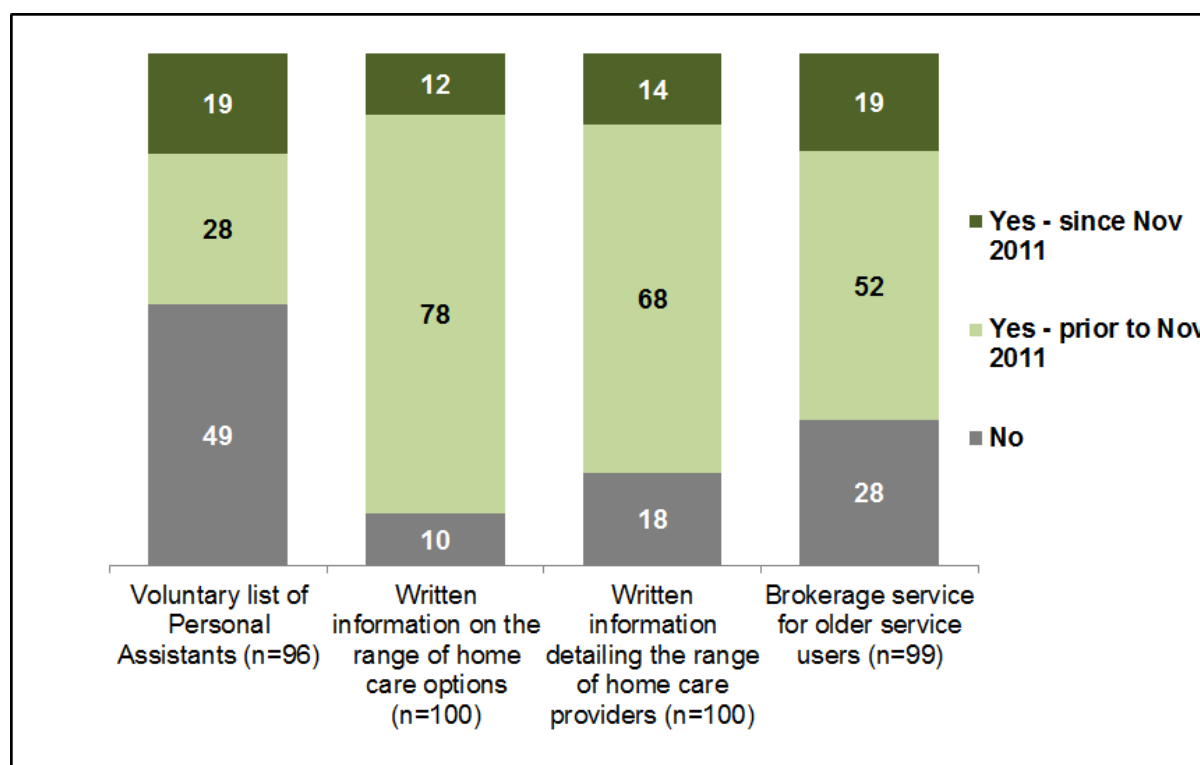
The Council has a contract with a local user-led organisation, the Disability Rights Centre, to provide advice and support to older people to enable them to find and employ personal assistants, as well as offering a payroll service.

More specifically with regard to their responses to recommendation 5, local authorities were asked if they provided a voluntary list of personal assistants working in their local area that could be accessed by older individuals using direct payments for their home care<sup>9</sup>. The first column of Figure 4.1 summarises the responses to this question. It shows that 19 local authorities had begun to provide such a list in the year following the publication of 'Close to home' while 28 authorities reported that they had provided such lists prior to this date. Conversely Figure 4.1 shows that just under half of authorities (49) reported that they still do not provide such a list. In addition to these, five local authorities reported not knowing whether this was done.

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<sup>9</sup> Such lists already exist to allow service users greater choice as to their care provider in their local area although there are no common standards for this type of list. These lists are described as 'voluntary' as local authorities are under no obligation to provide such information.

**Figure 4.1 Whether local authorities provide initiatives that are specifically designed to meet the needs and choices of older people who require or receive home care (Question C4)**



Base: All local authorities who responded to survey excluding 'Don't know' responses

**Responses to recommendation 16**

The second recommendation in 'Close to home' that focussed on supporting user choice was recommendation 16. This recommendation stated that:

**Much more consumer information should be compiled and made accessible about the quality of care providers and their specialist areas to enable home care users to make an informed choice, including by means of:**

- **The development of in-depth provider profiles on the Care Quality Commission website**
- **Support for a consumer feedback website**
- **Steps by local authorities to draw together and provide relevant information on care providers in their area**
- **Increased information sharing between the Local Government Ombudsman, local authorities and providers**

To assess their responses to recommendation 16, local authorities were asked whether they had taken action to provide greater information about the care providers operating in their area. As is shown in Table 4.1, 41 authorities indicated



that they had already taken action, the same number reported that they were currently taking action, while 17 indicated that they had plans to do so in the future. Only two authorities reported having no plans to take action in response to this part of the recommendation and both indicated this was because they were confident that their existing policies and practices already fully promote and protect human rights.

Most of the authorities who reported that they had taken action, or planned to take action, in response to recommendation 16 reported they had developed or improved websites dedicated to disseminating information about the quality of care providers:

[We have developed] a major web-based information site on services and community activity backed up by assurance, customer feedback and telephone support.

A new model is being piloted that looks at how information can be made more accessible to consumers. Intention is to report information via the internet. There are three main strands to the model: case file tracking, user experience, delivery against outcomes and service monitoring.

However, one local authority commented that legal advice has restricted their efforts to publicise enhanced feedback on the quality of home care providers:

We have worked closely with our Legal team to try and provide more detailed information about providers to consumers. Legal advice has been constraining and thus we have decided to promote the national website Find Me Good Care locally to service users and carers and also providers. The website was launched in October and we have raised regularly at provider forums, at user carer meetings including our public information meeting we hold regularly with service users, voluntary sector and the LINK [Local Involvement Network].

**Case study 1:**

Focussing on disseminating information online for older people could limit the availability of this information due to the high levels of digital exclusion of elderly populations. To address this, Tameside Metropolitan Borough Council reported that, alongside a website, they have developed an ambassador network to disseminate information to home care users:

The Council has also developed an Information Ambassador Network that currently has 160 people in various community groups who are able to disseminate information to thousands of people much more effectively than leaflets and poster campaigns. We also use the network to gain views and issues from residents. We are also encouraging home care providers to join the Council's Buy with Confidence scheme which allows consumers within the borough to have more confidence in the traders.

In addition to providing information and feedback about care providers, five local authorities also made reference to having developed an e-marketplace where service users could buy care services directly:

The existing directory of services has been revised and an e-marketplace for social care is being developed within the district in partnership with services users, providers and professionals. The site will provide information about support available locally and information about groups and activities people can join in with in their communities. The site will also provide the functionality for people to buy the services and products to help them manage their care needs.

An e-marketplace is available on the Council website with adverts currently from over 80 providers. Phase 2 of the development of this tool is currently underway, part of which will be a trip advisor type tool for people to comment on quality of services.

However, while the greater use of such on-line platforms to disseminate provider information to service users is both helpful and likely to be cost effective, it is possible that local authorities will need to monitor the levels of domestic internet usage among their older service users to ensure that this remains a viable solution.

Next, and to further explore their responses to recommendation 16, local authorities were specifically asked whether they provided written information for older service users on the range of difference options available (such as direct payments) for meeting their home care needs. As the second column of Figure 4.1 shows, 78 authorities reported doing this prior to the publication of the 'Close to home' report in

November 2011 while 12 indicated that they had started to provide such information in the year following the publication of the inquiry report. However 10 local authorities still did not provide this information to service users in written form. In addition to these, one local authority reported that it did not know what had happened here.

Local authorities were then asked whether they provided written information for older service users which provided details about the full range of home care providers operating in their local area. As the third column of Figure 4.1 shows, 68 local authorities stated they had done this prior to November 2011, while 14 reported that they had begun providing such written information since the publication of 'Close to home.' However, Figure 4.1 also shows that 18 authorities still do not provide such information. Again, one local authority reported not knowing what it did in this area.

### **Case study 2**

Three local authorities reported that, in collaboration, they had developed an online advice, information and support directory which covers all the adults within their Boroughs.

The directory was designed and produced with assistance from voluntary organisations and influenced and informed by focus groups of adults with care and support needs. The system has a facility to enable people to submit reviews about their experiences of accessing services with listed providers.

The local authorities also reported that they have plans to further develop the system to provide details on each provider and to link with Care Quality Commission and their own in-house monitoring services. This will provide information about the quality of services delivered including, subject to legal advice, publicising in-house contract monitoring reports.

### **Responses to recommendation 17**

Recommendation 17 of the 'Close to home' report also focussed on supporting user choice. This recommendation stated that:

**In order that more older people can, if they choose, benefit from the greater autonomy inherent in personalised home care, an increased focus is needed by government and local authorities on developing advocacy, guidance and brokerage schemes.**

As is detailed in Table 4.1, 42 local authorities indicated that they had either already taken action in relation to recommendation 17, 38 were currently in the process of taking action while 16 were planning to take action in respect of this in the future.

Four of the five authorities that had not taken action, nor had plans to do so, reported that this was because they were confident that their policies and practices already addressed recommendation 17 and so fully promote and protect human rights. The fifth authority that had not taken action reported that they had a large-scale redesign process underway that would incorporate the contents of this recommendation.

Of the local authorities that had taken action, or planned to take action, in response to recommendation 17, around six out of ten mentioned they had either reviewed their advocacy, guidance and brokerage services or had re-commissioned them.

For example, one local authority reported that in response to this recommendation:

We have commissioned for a voluntary service to provide an 'Older People Advocacy Service'. This is specifically for people aged 65 and over. We also work in partnership with a pan-disability user-led organisation that provides a Direct Payments Support Service, which is free and accessible to everyone who has a direct payment. Advice and support is offered with managed payroll, recruiting and employing personal assistants and using personal budgets creatively.

Another local authority mentioned that they had commissioned advocacy services and introduced a mobile brokerage service to visit hospital patients:

The Borough commissions advocacy services for older people and carers which take either direct self-referral or referral via Adult Social care staff. We have an in house Brokerage service which provides advice and support to older people considering residential and domiciliary care and have introduced Mobile Brokers who will visit clients in hospital to offer advice about various care options upon hospital discharge.

Three authorities specifically noted their efforts to develop Independent Mental Capacity Advocate services:

We have developed advocacy services and made additional investment into Independent Mental Capacity advocacy services to support the needs of our local population. These services are jointly commissioned with the NHS and offer people a choice of advocacy provider and the type of advocacy they wish to access. We provide training for people who wish to self-advocate to help with

confidence with self-representation. This training is also available to volunteers who may wish to gain a greater understanding of advocacy functions to support older people in the wider community.

We have a contract for Independent Mental Capacity advocacy services which covers any person with mental capacity issues. We also have independent professional advocates for people who lack capacity.

Furthermore, a number of local authorities specifically detailed their efforts to better support those service users who made use of direct payments:

We have a contract with Paypartners to manage direct payment accounts for people who are unable to do so themselves or who have concerns about managing their own finances. We offer all people expressing an interest in having a direct payment a visit from a direct payments worker to explain the system in more detail with written guidance also available.

We have recently awarded tenders for advocacy and brokerage services, and are currently working on a welfare benefits advice tender. Each tender was awarded on an "umbrella" arrangement that ensured that older people's needs were overtly and appropriately specified.

The new Support Options Team provides a brokerage function for home care placements with independent providers. The Council intends to extend the remit of the team in 2013/14 to include support information for customers choosing to use some or all of their personal budget to purchase transport, lifestyle and other community services.

In order to further explore their responses to recommendation 17, local authorities were then specifically asked whether they provided a brokerage service to put older service users in touch with potential care providers. As is shown in the final column of Figure 4.1, 52 authorities reported doing this prior to the publication of the 'Close to home' report in November 2011 while 19 stated that they began doing this in the year following the report's publication. However, 28 authorities stated that they still did not provide such a service while two reported not knowing what had occurred.

All the local authorities were then also asked about their funding arrangements for a range of different advocacy services. As is detailed in Figure 4.2, the majority indicated that they provided funding for each of the specified services. In particular, 95 authorities mentioned funding Independent Mental Capacity Advocacy services as a standard service. However, as this service is a statutory requirement under the Mental Capacity Act 2005, such a high level of support is only to be expected.

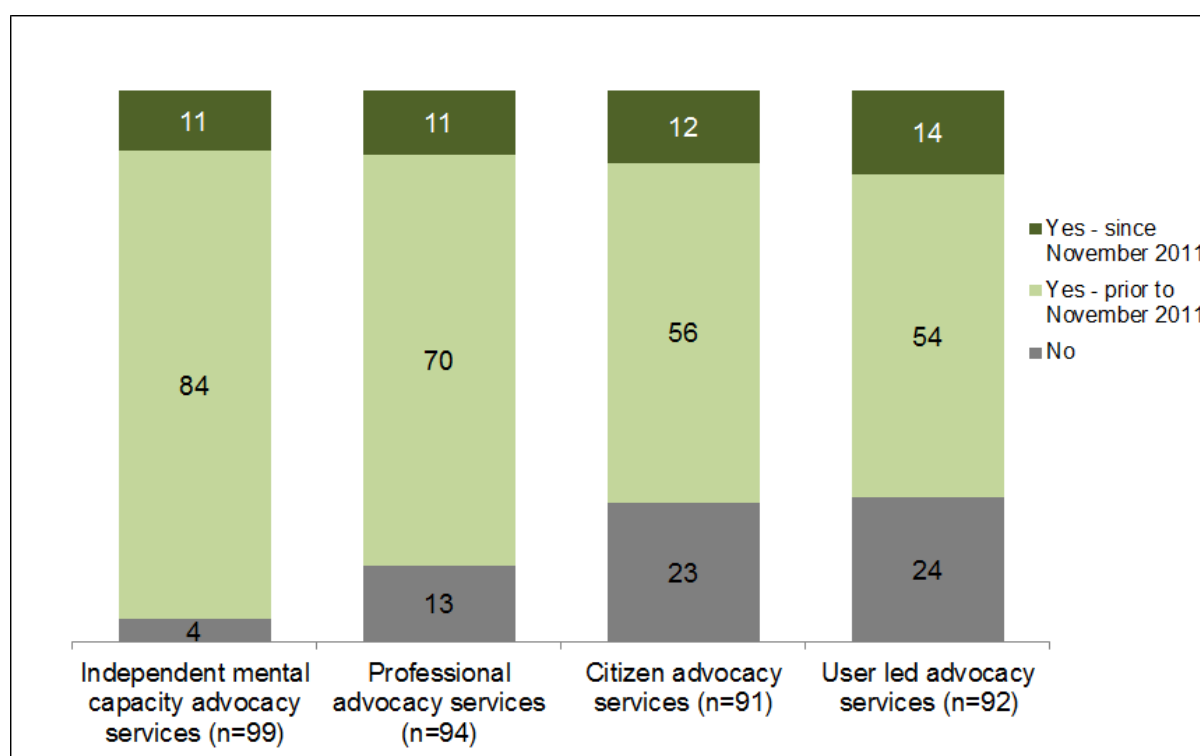
In contrast, Citizen Advocacy services and user-led Advocacy services were the least likely to be supported (67 and 68 authorities supported them respectively) while just over a fifth of authorities reporting having never funded either (21 and 23 authorities respectively). However, some of these authorities detailed the other advocacy services they did provide funding for including an Independent Complaints Advocacy Service and an Independent Mental Health Advocacy Service. One authority reported offering advocacy services that were not specifically age related:

A key commissioning principle for us is to only commission services that are specific to age / disability / diagnosis when there is clear evidence that this is needed and will add value. We commission specific advocacy services for people with a learning disability as we are seeing increasing numbers of people with a learning disability live into older age and become affected by conditions of old age.

Another authority reported that they did not directly provide such advocacy services and, instead, directed service users to other sources of information and advice:

Our community support services were redesigned to focus across client groups on giving information, sign posting and advice rather than providing a more traditional advocacy function.

**Figure 4.2 Local authority provision of funding for advocacy services (Question D5)**



Base: All local authorities who responded to survey excluding 'Don't know' responses.

Note: the 'No' category above combines two of the local authority responses to question C5: 'used to but don't anymore' and 'have never done this'.

Consistent with the above comments, and for each type of the specified advocacy services, Figure 4.2 shows that the majority of local authorities who funded such services also indicated that they had provided such funding prior to November 2011. Furthermore, as is also detailed in Table 4.2, the majority of those authorities who reported supporting such advocacy services stated that they funded them at the same level as they had prior to November 2011 although, as the table also shows, there were also instances of funding levels being either increased or decreased.

**Table 4.2 Whether local authorities who fund advocacy services are putting more or less funding into these services (Question D6)**

Specific advocacy services	Base: Local authorities that have funded services prior to Nov 2011	Putting more funding in now	No difference in funding	Putting less funding in now
Independent mental capacity advocacy services	84	10	68	6
Professional advocacy services	70	12	50	8
Citizen advocacy services	56	5	41	10
User-led advocacy services	54	7	40	7

Figures in absolutes.

However 20 local authorities reported that they had either stopped, or had reduced, their funding levels for some of the specified advocacy services since November 2011. The two main reasons cited for these changes were general financial constraints and concerns about value for money. The latter concern was supported by examples from other local authorities of where these services had been re-contracted to providers offering the same level of service but at a lower overall cost:

Contracts were renegotiated to provide better value with no loss of services.

The service was tendered and the successful provider bid was lower than the previously commissioned service.

### **4.3 Summary of responses to supporting user-choice recommendations**

Finally, it is possible to summarise the overall response of local authorities in terms of whether they had taken action with regard to the three recommendations in 'Close to home' which were specifically concerned with the improvement of user choice.

In summary, nearly a quarter (24 per cent) of the responding local authorities had taken action with regard to all three of these recommendations by the time of the survey, a similar percentage had taken action on at least two (24 per cent) while 22 per cent of authorities had taken action with regard to one recommendation only. However, a third of local authorities (31 per cent) had not yet taken any actions with regard to any of these recommendations by the time of the survey, although a large proportion of respondents were either taking action or planning to do so in the future.



Among those authorities who had not been implementing the suggested changes prior to November 2012, but who subsequently reported taking action in response to one or more of the three recommendations in this group, Figure 4.1 shows that they were rather more likely to have not changed their policies and practices as a result. Likewise, as the data in Figure 4.1 also shows, it was often the case that the changes in practices and policies suggested by the inquiry recommendations in this group were similar to what many local authorities were doing prior to the publication of 'Close to home'. This, again, may also explain why little further action occurred.

However, given the suggestive and non-prescriptive nature of some of the specific actions contained in this group of recommendations, it is not possible to conclude that only a relatively small amount of change with regard to the promotion of greater user choice has occurred in the year following the publication of the inquiry report.

#### 4.4 Mainstreaming human rights in home care commissioning

Recommendations 8, 11 and 13 of the 'Close to home' report focused on how local authorities could better mainstream human rights considerations into their home care commissioning practices and policies. Table 4.3 below summarises the local authority responses to each of the recommendations related to this general theme.

**Table 4.3 Response of local authorities to the recommendations focussing on mainstreaming human rights in home care commissioning (Question D8).**

Recommendations focussing on mainstreaming human rights in home care commissioning	Base: all local authorities that responded to survey	Action already taken	Action being taken	No action taken because...		Plans to take action in future
				Confident that human rights are fully protected	Other reason	
<b>Recommendation 8:</b> Mainstreaming human rights into decision making processes and business plans	101	42	32	5	3	19
<b>Recommendation 11:</b> Enhancing leadership of elected members via additional human rights training	101	21	12	10	23	35
<b>Recommendation 13:</b> Incorporating HRA obligations into contracts and include 'third party' rights clauses	101	32	22	5	4	38

Figures in absolutes.

## Responses to recommendation 8

Recommendation 8 stated that:

**Local authorities should mainstream human rights into their decision making processes and business plans to ensure compliance with the HRA, including their positive obligations to promote and protect human rights. Human rights considerations should be at the centre of assessment, procurement and commissioning of home care, for example incorporating human rights requirements into care provider service specifications.**

Table 4.3 shows that 74 local authorities reported that they had either already taken action, or were in the process of taking action, with regard to recommendation 8. A further 19 local authorities stated that they had plans to take action in the future.

Of the eight authorities that had not taken action, nor planned to take action, in response to recommendation 8, five felt that their current policies and practices already fully promote and protect human rights. Of the other three local authorities, one cited insufficient staff resources, another the impact of financial constraints while the third gave no particular reason for why no action had occurred in this respect.

Of the 74 local authorities that had taken action, or were in the process of doing so, with regard to this recommendation, nearly half (36) indicated that they used Equality Impact Assessments (EIAs), or intended to use them in the future, when reviewing or making changes to their care commissioning procedures or policies. In particular, the documentary evidence suggested some local authorities relied upon assessments of impact on equality to inform the human rights scrutiny of their decision-making:

The Council ensures that consideration of human rights implications is embedded in decision making through a requirement for this to be addressed in every report to Cabinet. Similarly, it is required that all decisions, changes to policies and functions etc. are subject to an Equality Impact Assessment. Where this involves services targeted at particular groups sharing a protected characteristic, a more detailed analysis of any impact is specifically identified and discussed within the body of the report to Cabinet.

All business plans go through an Equality Impact Assessment process. All contracts are person centred and all contracts have Mental Capacity and Best Interests in place.

All the Council's decisions and services are backed up with Equality Impact Assessments that take account of any impact on various groups within the

community. There is a general requirement in all Council contracts that equalities are understood and processes and practices reflect this. Contracted services within Adult Services are regularly monitored and any breaches of contract are dealt with by default notices or suspension with action plans being put in place for improvement.

Another action reported by local authorities in response to recommendation 8 was the embedding of human rights principles within their service specifications and their other tendering, commissioning and procurement documentation and processes (19 per cent) and in their wider business or strategic plans (14 per cent of authorities).

Local authorities were asked to submit documentary evidence in support of their actions in addressing recommendation 8. 44 local authorities indicated that they would submit documentary evidence while documents were finally received from 21.

Of the supporting documentary evidence that was submitted, much was concerned with the mainstreaming of human rights principles into local authority decision making processes and businesses plans. These documents included examples of:

- Business plans outlining strategies for the near future
- Contracts and services specifications (and other related contractual and tendering process documents such as pricing schedules, tender interview questions, resource allocation templates and guidance notes) emphasising service providers' HRA obligations
- EIA templates and supporting information

In addition to the above, and despite these not having been specifically requested by the Commission, six local authorities submitted their EIA forms as documentary evidence to support their responses to the questions concerning recommendation 8. These documents were all similar in content and explored the following issues:

- The reasons for introducing or changing a policy or service
- Who the change was aimed at and some of the consideration of the needs to be met
- The information gathered from research or consultations undertaken to inform the assessment and the impacts of the change
- Any potential positive or negative impacts of the proposed change
- The actions taken to ensure any negative impacts were mitigated.

Several of these EIAs made no reference to human rights and, typically, aimed only at ensuring that any discrimination or victimisation was eliminated and that equality of opportunity was advanced. However, some of these EIAs went further than this by

referring to the value of considering whether there were any opportunities to promote and protect the relevant human rights when undertaking such assessments.

While this suggests some local authorities are moving towards using EIAs to consider the potential human rights impacts that may arise from any proposed changes in home care provision, it is important to understand that this approach will only work if the authority understands, and takes account of, the differences between assessing the impact on equality - as required by the Public Service Equality Duties (PSED) under the Equality Act 2010 - and any legal obligations under the HRA. However, and on the basis of the documentary evidence submitted, there still appears to be considerable confusion between the need to properly assess any equality impacts and the need for authorities to comply with their HRA obligations.

### **Case study 3**

In relation to mainstreaming human rights into decision making processes, one local authority reported that during the tendering process, they require providers to evidence practice that protects human rights at each stage.

To assess this, they conduct surveys, telephone questionnaires, one-to-one interviews and observations visits with the providers.

The local authority provided supporting evidence of their practices in the form of a tender questionnaire, their scoring criteria, and a list of the questions (and the scoring criteria) asked at the tender presentation / interview stage.

The criteria by which tenderers are assessed demonstrated a strong focus on human rights. For example, tenderers are marked on, amongst other aspects: their understanding of outcome-based and person-centred approaches; how they ensure their implementation increases service user's independence and empowers them to manage and direct their own support; and how they work with partners to ensure service users are supported to increase participation within their communities and maintain their social and civic identity.

The local authority also submitted their domiciliary contract for service providers. Within this, they have inserted a clause that specifies the need for service providers to comply with the provision of the HRA and that evidence of non-compliance will empower the purchaser to suspend the service.

### Responses to recommendation 11

The second recommendation in 'Close to home' that related to the mainstreaming of human rights in home care is recommendation 11. This recommendation stated:

**To enhance the leadership of local authority elected members, training and guidance should be provided on using their scrutiny function and their roles on Health and Wellbeing Boards to maximise the promotion and protection of the human rights of older people.**

Table 5.3 shows that only one third of local authorities (33) reported that they had already taken action, or were in the process of taking action, in response to recommendation 11 while a further third (35) reported that they had plans to do so in the future. However, and unlike most of the recommendations discussed in this chapter, a comparatively large proportion - one third (33) – of authorities reported not having taken action in response to recommendation 11, nor had any plans to do so. This compares to the eight authorities who reported this for recommendation 8 and the nine authorities who responded in this manner in reaction to recommendation 13.

10 local authorities reported that the reason for not taking action here was because they deemed that their current policies and practices already fully promote and protect human rights, while 23 reported that other issues had a higher priority or stated that such material is contained in other training programmes. However, as with the evidence presented with regard to recommendation 8, the local authority responses with regard to this recommendation also seemed to provide further evidence of a conflation between equalities and human rights issues. For example:

Equality and diversity training [is] provided to all members but not with strong focus on human rights training.

This will be picked up as part of the LGA equality programme

[This is already covered in] training on equalities and in codes of conduct.

For those authorities who reported taking action, or being in the process of taking action, a commonly mentioned response was that dedicated training sessions for elected members have been implemented with a specific focus on human rights:

The Quality Assurance Team undertook a training programme with Elected Members who are undertaking visits to services. The training focussed on the documentation to be used and on the specific areas Members should be focusing on, but specifically on the guidance and protection of the human rights of Older People.

This is done through commissioning and overseen by the Care and Independence Overview and Scrutiny Committee, and the Health and Wellbeing Board. A refresh of human rights training is currently under consideration by the Corporate Equality and Engagement Group.

We have a County councillor who is the nominated 'champion for older people'. Plans are underway to devise a bite-size briefing for our members with the aim of raising awareness of human rights issues in general.

The Council's elected members are all offered equalities and human rights training as part of their induction. Also, under the Corporate Plan the Council has set a priority of 'tackling inequality'. The member development working group have decided that with this as a major priority, all workshops and training seminars will include equalities and human rights issues as part of the session. The 12 month training programme will be finalised in February and one of the sessions will include 'Commissioning of Care for Older people'.

All reports to cabinet include an Equality Impact Assessment. Also, a Members Information Seminar was held last year on Equality and Diversity.

Six local authorities also mentioned holding briefings or seminars with a human rights focus for councillors while four authorities also mentioned having human rights or Older People's champions among their elected members. However, only a minority of the local authorities who reported acting on recommendation 11 made reference to the fact that their human rights training programmes are compulsory. Therefore, it is difficult to know which of these local authorities training programmes could be available to, but not necessarily attended by, their elected members.

Local authorities were asked to submit documentary evidence in support of their actions in addressing recommendation 11. Of the 13 authorities that indicated they were able to submit documentary evidence, documents were received from nine.

In these documents, several authorities referred to on-going engagement and awareness raising activities with elected members that took the form of attending external training programmes and seminars, conferences, events and forums. However, and perhaps because of the external nature of these events, few submitted any supporting documentary evidence concerning their content and, of those that did, most submitted HRA guides aimed at councillors, extracts from training resources or invitations for elected members to attend events or forums.

The following comments were typical of the actions taken in this respect:

We are implementing a bespoke training course for all elected members on the diversity and human rights agendas.

We have an election in May 2013 and we are working up an induction programme for all elected members. Members already attend compulsory Equalities & Safeguarding training which has human rights issues embedded within it. In the development of our contract management and service improvement processes we are looking to other areas to understand how we can better involve elected members in the on-going monitoring of care provision in their areas.

Counsellor Guide to Human Rights Act was developed and distributed in August 2012. Integrated reference to HRA into safeguarding training for Counsellors. Training was delivered in June and Sept 2012, further sessions planned for 2013.

### **Responses to recommendation 13**

Recommendation 13 of the 'Close to home' report was the third which focused on the mainstreaming of human rights in home care commissioning. It stated that:

**To ensure maximum human rights protection, consideration should be given to incorporating HRA obligations into local authorities' contracts with providers, to include clauses giving service users 'third party' rights to challenge the care provider for any breach of their human rights for which the care provider is directly responsible.**

Encouragingly, Table 4.3 shows that over half of the local authorities (54) either reported that they had already taken action or were in the process of taking action in response to recommendation 13. In addition, a further 38 authorities indicated that they had plans to take action in the future in response to this recommendation.

Of the nine authorities that reported they had neither taken action in relation to recommendation 13 nor had plans to do so, five stated that this was because they were confident their policies and practices already fully promote and protect human rights. Of the other four, two cited financial constraints, one did not know why no action had been taken and the fourth stated that it needed further internal discussion.

When detailing their responses to this recommendation, many authorities reported that they included HRA obligations into their contracts as standard practice. Of the 54 that had acted, or were currently acting, on this recommendation 25 stated that human rights clauses are already written into their contractual agreements while 17 stated that they planned contract reviews in order to include the relevant clauses.

Local authorities were again asked to submit documentary evidence in support of their actions in addressing recommendation 13. Of the 41 that indicated they had relevant evidence that could be made available, documents were received from 19.

In general, the documents that local authorities provided were copies of their contract terms and conditions with providers. These tended to include human rights clauses and a list of the HRA obligations with which the providers should comply.

For example, one authority's contract stated:

The Service Provider shall in relation to the performance of his obligations under this Contract be contractually bound to the Council to act in a way which is consistent with the obligations of a public authority under the Human Rights Act 1998.

However, in terms of third party rights, the same contract stated:

Under the Rights of Third Parties Act 1999, no term of the contract is intended to be enforceable by a person who is not a party to this Contract and that 'the parties to this Contract may, by agreement, rescind or vary this Contract without the consent of any person who is not a party thereto.'

It should be apparent that the second of the above extracts is, in effect, a partial negation of the first: while service providers are contractually bound to act consistently with the HRA, service users are expressly denied a direct right of redress against the provider for any human rights breaches that may occur. A similar conflict of contractual terms was found in several other cases. This suggests that a number of local authorities may only be satisfying the first part of recommendation 13 (i.e. that they had 'Given consideration to incorporating HRA obligations into contracts with care providers') as the survey responses indicated that several authorities were struggling to align the second part of the recommendation (i.e., the need to have 'included clauses to allow provision for 'third party' rights to service users to ensure maximum human rights protection'), with the existing restrictions in their standard contracts relating to third party rights legislation more generally.

But there was evidence from their comments that several authorities had consulted with, or were consulting, their legal teams to identify how such conflicts in contractual terms between the HRA and the Rights of Third Parties Act could be resolved:



HRA obligations are already included within standard contract terms and conditions. Third party rights not currently included but will be in the new contracts.

HRA Obligations are in contracts but not clauses regarding 'third party' rights, based on legal advice.

Contracts have been recently reviewed with our legal services department to ensure they are compliant. In light of the inquiry we feel it would be of benefit for the wording within our contracts to be more explicit to support the rights of the third party.

Finally, when asked whether they include 'third party' rights in their new home care contracts with service providers, only a minority (23) of local authorities reported that they did this while seven did not know if this occurred. However, of those who did do this, only seven had included a 'third party' rights clause since November 2011 while 16 had included such a clause prior to this point. Conversely, while almost three-quarters (71) of local authorities who responded to the survey reported that they do not currently include a 'third party' rights clause in their current home care contracts, over half (51) stated that they intended to include such a clause in future contracts.

At this point it should be recalled that the fact that most recipients of publicly funded home care are not protected by the HRA was one of the key concerns underpinning the 'Close to home' report. Therefore the above evidence is encouraging as it suggests the majority of local authorities are looking into the possibility of using contracts with providers as a means of extending HRA protection to service users.

#### **4.5 Summary of responses to the mainstreaming human rights recommendations**

Again, it is possible to summarise the overall actions taken by local authorities with regard to the recommendations relating to the mainstreaming of human rights.

The survey responses showed that 11 per cent of local authorities had taken action on all three of these recommendations by the time of the survey. In addition 16 per cent of the responding authorities had taken action with regard towards two of the recommendations while 30 per cent had taken action on one recommendation only. However, this also means that just under half (43 per cent) of local authorities had not yet taken any action with regard to these recommendations in the year following the publication of 'Close to home'. But, as is shown in Table 4.3, the majority of these authorities had actions underway or were planning to take action in the future.

Furthermore, and in comparison to those concerning user choice, the responses of local authorities to these recommendations were more varied and, in the case of recommendation 13, rather more encouraging. However, one of the main results to emerge from the responses to recommendations 8 and 11 is that there still appears to be a considerable degree of confusion among many local authorities concerning the distinction between equality and human rights issues and what would amount to compliance with their obligations under the relevant human rights legislation.

#### 4.6 Rewarding and retaining care workers

Recommendation 14 of the 'Close to home' report stated that:

**Commissioning practice needs to balance allocation of resources against assessed home care needs that must be met, to ensure contracted providers can pay at least the National Minimum Wage (NMW) to care workers, including payment for time spent travelling.**

Just under two thirds (65) of local authorities that responded to the survey reported that they had already taken action in response to recommendation 14. A further 19 said they were in the process of taking action while 10 authorities reported that they had plans to take action in the future. This means that recommendation 14 was the one in 'Close to home' that elicited the highest level of action by local authorities.

Only seven authorities reported that they had neither taken action nor planned to take action in response to this recommendation. Of these, four indicated that the reason for this was because they deemed their current policies and practices to already fully promote and protect human rights. The other three indicated that they had already taken the recommended action and were hence already compliant.

When asked to describe their responses to recommendation 14, of the 84 local authorities who had already or were currently taking action in this respect, 37 per cent (31) reported that the requirement for providers to pay care staff at least the NMW was specified in their contracts with providers, 40 per cent (34) reported that assessing whether providers pay at least the NMW formed part of their contract tendering process while 10 per cent reported making use of both requirements. It is possible that even more local authorities made use of both approaches but this was not explicitly stated in the verbatim comments made at this point in the survey.

Even more positively, some local authorities reported that they sought to ensure that providers paid at rates above the NMW. For example, one local authority stated that:

Providers were required to submit a detailed breakdown of costs including staff payment rates as part of the tendering process for home care services. This confirmed that all providers were paying above the national minimum wage.

Another stated:

We have retendered all of our commissioned home care services and included a requirement that providers pay the London Living Wage as a minimum salary for all care staff irrespective of age.

Likewise, another local authority stated that:

When setting the rate for provision of home care we consulted with existing providers; benchmarked rates with other councils and used a care cost calculator with a starting rate higher than the national minimum wage and building in proportionate costs to set the rate at a fair level for the provider. During the tender process for the home care contract, each bid included details of how the rate would be applied against the provider's costs. The scores were weighted most heavily where a provider indicated that they would pay their care staff at least the local living wage and only those providers who complied with this were accepted onto the Council's framework.

Authorities were asked to submit documentary evidence in support of their actions in addressing recommendation 14. Of the 42 local authorities that indicated they had relevant evidence that could be made available, documents were received from 20.

As with those submitted with regard to their compliance with recommendation 13, these documents largely comprised of contract and service specifications, tendering schedules and pricing templates. In addition, a few local authorities submitted reports that related specifically to fee review processes and the resulting outcomes, the processes they are undertaking to ensure that the 'actual cost of care' was accounted for and to ensure their compliance with the relevant NMW requirements.

Likewise, local authorities' verbatim comments, which was also supported by the documentary evidence submitted, was that the requirement to pay care workers at least the NMW was confirmed during the contract tendering process, with service providers being asked to submit a breakdown of costs to allow this to be established.

However, the level of information provided by this documentation on the criteria by which costing structures are assessed in this regard varied across local authorities. In particular, costing structures and monitoring procedures seemed to vary widely. For example, some local authorities stated that their pricing schedules accounted for

aspects such as travel time, the time allocated to visits and the “real cost” of care and that they implemented monitoring and quality control procedures to ensure these were abided by. Other authorities, however, simply stated that they expected service providers to comply with the law and did not commission those that paid below the NMW. However, they did not elaborate as to how their commissioning practices ensured providers accounted for these issues and there was sometimes no evidence of any processes being in place to ensure that such agreements were honoured.

In summary, the documentary evidence that was submitted suggested that, in some cases, there appeared to be considerable scope for factors which may strongly influence whether the NMW is actually paid from not being adequately factored into local authority assessment procedures (for example, and perhaps most importantly, the travel time of care workers between visits). This suggests there is a continuing risk that some care workers will not, in practice, actually receive the NMW.

#### **Case study 4**

When specifying their response to recommendation 14, one local authority reported that they have introduced a framework agreement for domiciliary care which incorporates a local hourly 'fair rate' calculated at a level to ensure that providers can compete within the local employment market.

The local authority provided documentary evidence in the form of a case study of their altered framework and whole systems approach to domiciliary care.

Specifically, the case study details that the local authority engaged with service users and concluded that historical tendering processes had created a bidding culture of unrealistic price submissions from providers. In addition, below inflation annual fee uplifts from local authorities was a barrier for providers to deliver quality and valued home care services.

To address this, the local authority developed and implemented a 'fair rate' for care procurement with clearly defined service specifications focussing on quality. This 'fair rate' was calculated at a level to ensure that providers could better compete within the local employment market and thereby increase the retention of quality care staff. In exchange for this 'fair rate' providers were required to evidence implementation of fair employment staff terms including remuneration at "well above the National Minimum Wage". At the same time, the council implemented a separate payment for travel time.

The local authority reported an improvement in care quality as care workers no longer had to rush their home care visits. It also ensured that service users were only charged for the direct care they received, and sought to improve the recruitment and retention of staff through better terms and conditions

#### **4.7 Home care commissioning risk factors**

Finally, and in order to further examine some of the potential risk factors associated with the protection and promotion of the human rights of older people that were identified in the inquiry report, local authorities were asked some further questions about their home care tendering processes and the provision of home care services.

#### **Price and other factors considered during the tendering process**

Local authorities were asked about the relative weightings they used during their most recent home care tendering exercise in order to determine the balance between the use of cost, quality and any other relevant factors. The responses to

these questions also allowed for some limited quantitative analysis of the results although this showed the differences reported below were not statistically significant.

67 local authorities reported that the only two factors they considered during their most recent tendering exercise were cost and quality, 21 incorporated other factors and 13 responded that they did not know what factors had been used. Of the local authorities that only used cost and quality factors it was the latter, overall, that appeared to be slightly more important: the mean weighting assigned to cost factors was 44 per cent whereas the mean weighting assigned to quality factors was higher at 62 per cent. In particular, 29 of these authorities indicated that they had applied a quality weighting of at least 60 per cent while 12 reported that they had applied an 80-100 per cent weighting to quality during their most recent tendering exercise. For all the authorities who provided details, only six had weighted quality at less than 60 per cent, while only one had based their tendering decisions on cost factors alone.

When asked if they anticipated using a different weighting between cost and quality factors in their next tendering exercise, 37 authorities said that they intended to keep the same weights, 42 did not know what weightings they would use, while 22 expected to use different ones. However, of the 22 authorities that intended to use a different weighting system, 12 did not know what these relative weights would be.

Of the 10 local authorities who could describe their new weighting system, the mean weight applied to cost was expected to fall from 45 per cent to 42 per cent while that applied to quality was expected to rise from 55 per cent to 58 per cent. Thus there appeared to be a shift towards the greater use of quality factors among those authorities who expected to change the relative weights used in their tendering processes. Indeed, only one authority intended to apply a greater cost weighting: from a 50:50 split between cost and quality factors to a 60:40 split in favour of cost.

Finally, when asked about the reasons for any changes in their relative weighting of cost and quality factors, five of the 22 local authorities that intended to use different weightings in the future stated this was due to a change in their awareness of human rights issues while a further five said it was due to changes in the financial or staffing resources available. Other reasons given for this change included the intention to switch to a more outcomes focussed approach to commissioning while two local authorities cited the requirements of the Public Service (Social Value) Act 2012<sup>10</sup>.

### **Setting maximum and minimum prices external providers can submit**

Local authorities were also asked if they had set either a maximum or a minimum price that could be submitted by potential providers during their most recent contract

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<sup>10</sup> [http://www.legislation.gov.uk/ukpga/2012/3/pdfs/ukpga\\_20120003\\_en.pdf](http://www.legislation.gov.uk/ukpga/2012/3/pdfs/ukpga_20120003_en.pdf)

tendering exercise. This is because the Commission is concerned that, while local authorities may feel that setting a maximum price allows those potential providers who may wish to tender for a contract to assess whether or not they should do so, if the maximum price quoted does not reflect the actual costs of care including, at the very least, the payment of the NMW, this may constitute a risk to the human rights of service users because of the incentives this may create to reduce the quality of care provided. Conversely, the setting of a minimum price may, dependent on the level set, be a more concrete indication of a commitment to a minimum quality standard.

In response to this, one third (34) of local authorities specified that they had set a maximum price which ranged from between £10.85 to £24.80 (£13.68 on average) while just under one fifth of local authorities (18) specified that they had set a minimum price which ranged from between £10.00 to £14.50 (£12.15 on average). However, an analysis of these data showed a wide range in the maximum and minimum rates set. For example, 25 local authorities set a maximum rate that was actually lower than the minimum rate of £14.50 per hour set by one local authority.

Local Authorities were also asked to provide details of the lowest hourly rates they currently paid for week-day home care that is delivered during daytime hours. 92 per cent of authorities provided this information which showed that the lowest hourly rates paid ranged from £8.98 to £15.91 and was, on average, £12.23 per hour for all local authorities in England. The lowest hourly rate paid by the 22 London authorities that responded to the survey ranged from £10 to £14 with an average of £11.95.

Local authorities were also asked if, since November 2011, they had requested or required homecare providers to reduce the cost of the care they provide. While two authorities did not know whether this had occurred, the majority of local authorities (57) reported that they had not requested or required this to happen while around a fifth (21) of local authorities reported that they had actually increased the rates they were prepared to pay. Conversely, only seven authorities reported that they had requested a reduction in the rates paid while eight had required care providers to reduce the cost of care. In addition, six authorities that had not requested or required a reduction in rates indicated they were planning to do so during the next year.

While the above responses are encouraging, it should also be noted that the costs to care providers has risen since November 2011, most notably following the increase in the NMW in 2012 as, from this point, the rate payable for workers aged 21 and over rose from £6.08 in 2011 to £6.19 in 2012. Therefore in all cases where local authorities have not increased rates, this represents a cut in real terms for providers.

### **15 minute care visits to provide personal care**

Because 'Close to home' highlighted concerns over the commissioning of home care visits lasting 15 minutes or fewer, particularly where these included the provision of personal care<sup>11</sup>, the survey then asked about commissioning practices in this area.

31 local authorities reported that they do not commission any home visits of 15 minutes or fewer to provide personal care while 26 authorities reported that, while they did still commission them, the number of these visits has decreased since November 2011. In contrast, 16 local authorities reported that the number of commissioned home care visits lasting 15 minutes or fewer, including those for personal care, had remained the same since November 2011 while a further 15 reported that the incidence of such visits had increased. Finally, six local authorities did not know whether the number of these visits had changed since November 2011 while seven reported making arrangements 'other' than these options including, for example, commissioning care in terms of outcomes rather than by 'time and task'.

Seven local authorities did not specify whether the number of home care visits lasting 15 minutes or fewer had changed or stayed the same since November 2011 although some of their written responses suggested the use of such visits might arise for a number of reasons. For example, one local authority indicated that visits of 15 minutes or fewer may still occur but that they were not directly commissioned:

We commission for weekly hours, rather than task and time.

Likewise another local authority stated that short home care visits were commissioned but only for visits of a particular nature:

We do not commission visits of 15 minutes or fewer from independent or voluntary sector homecare providers unless these are solely for medication or welfare.

Finally, and to further understand the approach taken to the commissioning of short care visits, local authorities were asked if they had introduced a written policy or guidance on the minimum length of time that could be commissioned from an independent or voluntary sector provider to undertake personal care that excluded visits conducted solely to monitor safety or wellbeing or simply to assist with the taking of medication. 81 local authorities reported that they did not have such a policy and that one had not been introduced since November 2011. Conversely, only

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<sup>11</sup> Personal care definition: Physical assistance given to an older person in connection with everyday tasks, such as eating or drinking, toileting, washing or bathing, dressing, oral care, or the care of skin, hair and nails.



four local authorities reported introducing such a policy since November 2011 while 16 reported having had such a policy prior to the publication of 'Close to home.'

#### **4.8 Summary of the responses concerning home care commissioning risk factors**

The evidence submitted concerning the various risk factors identified in the 'Close to home' report suggests that some further progress has been made with regard to the issues which might impact on the human rights of older people. In particular, there is some evidence of a shift towards the greater use of 'quality' factors in home care tendering processes and some decrease in the commissioning of short care visits.

But the evidence in other areas is more mixed: there are still wide variations in the hourly rates that local authorities are prepared to pay for care services and there must be some concern about whether some of the rates quoted are compatible with the payment of the NMW. This concern is reinforced by the cuts in the rates paid to the majority of care providers, either requested or required, or bought about in real terms by a failure to increase such rates to reflect the increase in the NMW. Finally, the finding that the minimum rates at which some local authorities will accept tenders are higher than the maximum rates quoted by many others merits further attention. This is especially so for authorities in London where the evidence suggested that the average maximum rate set was actually slightly lower than for England as a whole.

## 5. Perceived impact of the Commission’s inquiry

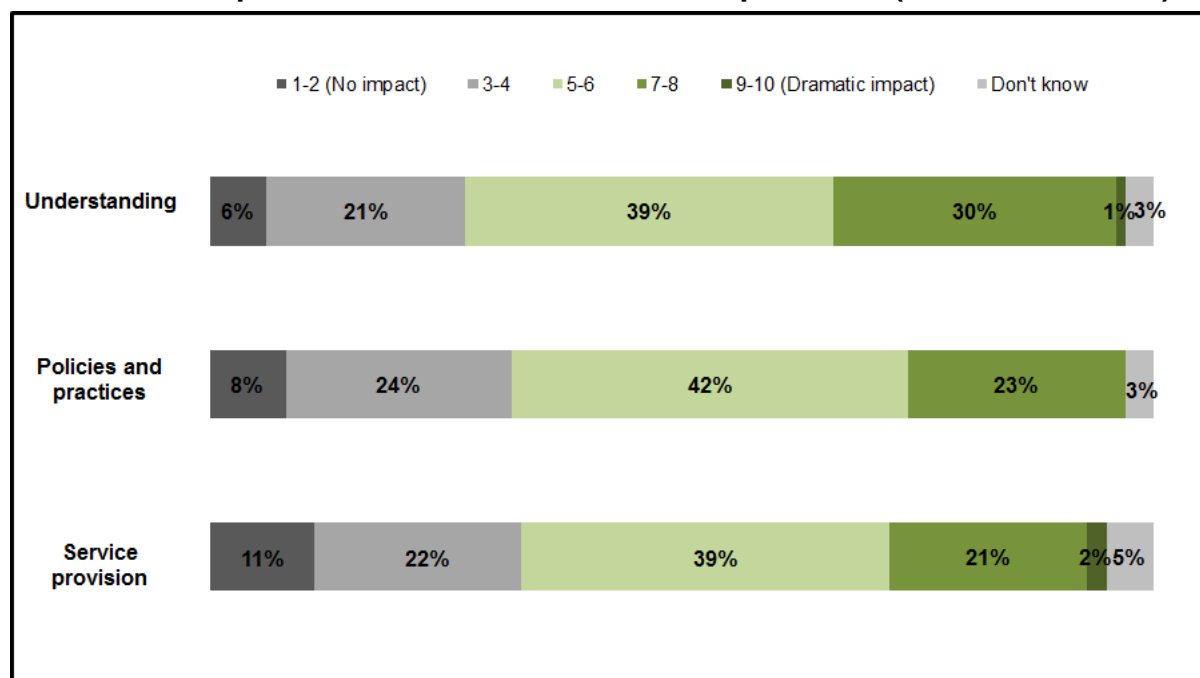
### 5.1 Introduction

The final section of the survey sought to measure local authority perceptions about the impact of the inquiry report on their overall approach to home care issues. More specifically, local authorities were asked to assess the impact of the Commission’s inquiry report using three dimensions. These were the inquiry’s impact on their:

- Understanding of human rights
- Policies and practices
- Quality of service provision

In order to do this, local authorities were asked to provide a rating for each of these aspects ranging from between 1 and 10 (with the former suggesting 'no' impact while the latter indicating a 'dramatic' one) and to provide a comment explaining the reasons for this assessment. Figure 5.1 below shows the overall distribution of these inquiry impact ratings. For simplicity these scores have been combined into groups of two (i.e., the '1 and 2', '3 and 4', '5 and 6' scores, etc., have each been combined).

**Figure 5.1 Local authority assessments of the impact of the inquiry on their understanding of human rights, their policies and practices and home care service provision (Questions D1-D3)**



Base: All local authorities responding to survey (101).

It should be apparent from Figure 5.1, however, that the majority of local authority ratings for each of the three impact dimensions ranged from between ‘3’ and ‘8’ with

few of them giving ratings at the either the highest or lowest levels of impact. This suggests that most local authorities found each of these scales difficult for assessing the level of impact on them of the 'Close to Home' inquiry. Thus, in what follows, the analysis focuses on the written comments made in support of these assessments.

The majority of these comments suggested that several common themes ran across each dimension. Hence, to demonstrate these themes better, the following extracts are classified according to the perceived impact of the inquiry by the local authority which made them. For this purpose, a score of '3' or below is seen as indicating a 'low' perceived impact while a score of '8' or above is taken as representing a 'high' one. Scores of between '4' and '7' are classified as indicating a 'moderate' impact.

## **5.2 Impact on understanding**

The analysis of the reasons given by local authorities for offering a particular score on this dimension showed that, regardless of the rating chosen, the rationales for each were largely similar. This was that a large portion of local authorities already felt that they had a good and grounded understanding of human rights issues and principles and that many of these were already embedded within their care policies and practices, or that steps were already being undertaken to ensure this occurred.

Indeed, several local authorities written comments suggested that the inquiry reports main impact had been to provide further impetus for activities which were already well underway. The following six verbatim comments reflect this general theme:

We are committed to embedding human rights into our services, practice and service provision and have already undertaken a significant amount of work in this area. However, there are still some areas which we can improve in and look to the report to support this work. Low score

Human rights are already considered as part of all commissioning. The report was very valuable in providing a focus and drive to address potential age-related bias in the Resource Allocation System. Low score

We were already aware of the potential inequality between care planning practices and were working to provide guidance and put practices in place but the report did help crystallise thoughts and highlight the person's experience. Medium score

We had already embarked upon a considerable programme of reviewing our commissioning and delivery of domiciliary care based on local issues. So this report enhanced our work and understanding but did not engender this work. High score

The report has given us a good structure to understanding human rights and articulating it in future contracts. It is not radically different to the principles already used in policies such as our dignity charter. High score

Whilst the EHRC report was widely distributed and considered within the authority, issues of equality and human rights are already integral parts of the authority's approach. Therefore it is hard to determine how much activity was undertaken as a direct result of the EHRC report rather than as part of our general approach. High score

More generally, these comments reflected a more widespread sense among many local authorities that the inquiry report had more enhanced and complemented their current understanding of human rights, and validated their current practices, rather than having had a particularly radical impact of its own accord. Indeed, several local authorities found it difficult to unpick which of their policies or practices had been directly influenced by the inquiry report and those which they believed to have been already adequately underpinned by human rights principles prior to its publication.

However, and perhaps more importantly, several local authorities also felt that the report would positively impact on those areas of policy and practice which the inquiry had placed particular emphasis upon. These were their future commissioning and tendering practices and action plans. This is reflected in the following comments:

The recommendations will form part of the action plan we are currently devising to implement the recommendations of our green paper consultation with a white paper to be developed. [It] will be incorporated into commissioning of home care going forward and redesigning proposals. - Medium score

The report was to have a positive impact on the way we tendered for domiciliary care this year and was the basis for the questions we asked providers and reached a conclusion on successful providers we obtained through this process. High score

In some cases, the report was also felt to have provided greater clarity around local authorities more general HRA obligations. For example, one authority stated that:

This authority took part in the initial inquiry and this process and the report itself was useful in clarifying our understanding of the requirements of the HRA, and the differences between human rights and equality/diversity. High score

### 5.3 Impact on policies and practices

Many of the comments that supported local authorities' numeric ratings on this dimension were similar to those provided for the previous one: that their policies and practices already incorporated their understanding of human rights. In addition, and as was noted in chapter two, several local authorities that gave either a low or medium rating here stated that reviews of their policies and practices were already underway and would have occurred independently and irrespectively of the report:

Many changes had already been made or were in progress so there was no profound impact on policies and practice but this was good from a baseline position. Low score

The timing of the report fitted well with a considerable overhaul of our existing strategies and approach. This helped inform our thinking which was already along these lines. Low score

This conclusion is also partly supported by the comments of a few authorities which referred to the perceived cross-over between the objectives of the Commission's report and those of other recent relevant policy agendas. Most notably, some authorities felt that 'Dignity in Care' and the 'personalisation agenda' already underpinned their approach to human rights, and that these principles had already informed, and had become entrenched within, their care policies and practices:

To date some improvements [have been made] around contracts and legal requirements but this was already partly identified as "Dignity in Care". We anticipate it will have a greater impact over time. Low score

Work has been on-going through the personalisation agenda which is at the forefront of our thinking. Medium score

Conversely, some other local authorities stated that the inquiry report itself has had a more direct influence by feeding positively into practice revisions and decision-making processes. Likewise, some local authorities also stated that, since the publication of the inquiry report, they had made a number of changes and had introduced relevant measures although they did not specifically elaborate on these in their comments. Other local authorities, however, did provide examples of the ways in which the report has influenced procedural changes. These examples included:

- Building human rights principles more explicitly into contracting processes
- Reviewing, improving and/or increasing the usage of Equality Impact Assessments and policies
- Revising Resource Allocation Systems

- Incorporating human rights principles into Quality Improvement Frameworks
- Reviewing quality monitoring and service delivery

Some of these changes are reflected in the following comments:

As an authority, we were in the process of reviewing a number of our systems and procedures and many of the key recommendations of the report were pertinent to our deliberations at the time. Low score

Findings [are] feeding into future quality monitoring and service delivery, working with service users and providers. Medium score

#### **5.4 Impact on service provision**

Many local authorities did not elaborate further on the explanations they had already given in response to the two previous dimensions when explaining their rating for this one. And the comments from those authorities who did elaborate on their ratings again related to the value of the report in validating existing and on-going work or in informing the procedural reforms mentioned in response to the previous question.

However, and rather more positively, a number of local authority verbatim comments stated that the inquiry report was directly influencing revisions in their commissioning, tendering and contractual processes and informing a more person-centric approach to services. These factors are reflected in the following comments:

[The authority is] linking a strengthened service specification and quality monitoring framework to improve service quality and flexibility to improve customer service. Low score

A lot of work has been done with quality, complaints and safeguarding in partnership with contracting to ensure that we include people at an early stage in developing services. Equally important is their ability to reflect honestly on the quality of those services through easily accessible means. Much of this work we were doing already or had planned. The guidance has provided useful validation of this work done or planned. Medium score

The Close to Home report and incorporated recommendations will be used to inform thinking during the development of tenders for any future commissioned services. We are rapidly progressing with a Health and Social Care Integration programme which is also ensuring people receive joined up services, reducing duplication and ensuring both health and social care are working with the person to identify the outcomes they want to achieve and then find the solutions. Our Enablement service has been very successful and people value

the individualised support which is developed with them to meet needs. We hope to build on this in our commissioning review. High score

Finally, a number of local authorities commented that it will take time to properly evaluate the impact of the actions they have taken in response to the inquiry report.

## **5.5 Assessment and summary**

In summary, the local authority comments suggest that the inquiry report has made a mainly indirect impact across each of the three dimensions: it has influenced and shaped changes in home care practices that were already underway rather than by acting as a direct catalyst for these of itself. The most direct impact of the report, so far, appears to have been on local authorities overall understanding of human rights.

This should not necessarily be interpreted as indicating that local authorities questioned the significance of the report. Instead, and based on an analysis of their comments, it seems that local authorities felt that they had grasped the main policy and practice implications of the HRA (or their interpretation of these) prior to the report's publication and had embedded, or were in the process of embedding, the associated obligations across their functions. In this sense, while the report is not perceived as directly impactful in itself, there is a general sense that the inquiry, and the 'Close to home' report in particular, has been very valuable in terms of focussing efforts and for endorsing much of the current work that is already being undertaken.

Furthermore, and when considering the overall impact of the inquiry report, it is important not to ignore (but, likewise, not to overstate) the wider financial and policy environment within which many local authorities now operate. Hence, and across all three impact dimensions, a small number of comments were made by local authorities regarding the pressures they were facing in implementing any positive changes in the wake of competing agendas and the need to apply cost-efficiency measures. For such authorities, these external pressures had impeded progress in taking forward the policy and practice changes recommended by the inquiry:

Financial constraints on local authorities, the need to balance changes with other statutory requirements and recruitment difficulties in the market itself, and the expectations of older people (people and their families) are such that it will take time to deliver and evidence service delivery.

The report brought to the fore issues that most local authorities would already have been aware of. It raises very difficult issues of balancing competing priorities, particularly in a time of significantly increasing demand / decreasing resources. We would welcome the outcomes of the survey adding to the national debate on social care funding now and in the future.

In summary, the evidence suggests that 'Close to home' has had an impact on local authorities' understanding of their human rights obligations in the provision of home care for older people. However, most local authorities feel that the main impact of the report has been indirect: to provide context, reassurance and direction to initiatives that were already underway rather than in providing any direct impetus for change.



## 6. Conclusions

This chapter provides an overall assessment of how local authorities have responded to the recommendations directed at them by the Commission's 'Close to home' inquiry report in the year following its publication in November 2011. In general, a mixed picture emerged as to how local authorities reacted to the inquiry.

Three quarters of authorities stated that they had complied with the recommendation to review their policies and practices for potential breaches of human rights in home care or that they were planning to do so at the time of the survey. However, only 15 per cent of them had completed reviews of all five suggested areas by the time of the research. It is perhaps of more concern that 21 authorities did not intend to conduct any such reviews and that three were unaware as to whether any had occurred.

Furthermore, while the main reason stated for not taking any action in relation to this recommendation was that these authorities were fully confident in the robustness of their existing policies and procedures, this response assumes they had a clear understanding of their human rights obligations prior to the publication of 'Close to home'. However, at several points in this report, and especially in terms of the documentary material that was submitted, evidence emerged that suggested, for some local authorities at least, this confidence may not always be fully justified.

The value of conducting the recommended reviews is shown by the fact that 86 per cent of local authorities that had completed at least one review had identified an issue that needed addressing to better promote and protect the human rights of older people in at least one of the five areas of policy and practice. Given that some local authorities were still in the process of reviewing some of these areas, or had not yet started some of their reviews at the time of the survey, the proportion identifying such issues may increase by the time these review processes have been completed.

With regard to the more specific recommendations about supporting user choice, mainstreaming human rights and rewarding/retaining care workers, the evidence suggests that these have been addressed to some extent by the majority of local authorities. This is shown by the large numbers of authorities who indicated having taken action, or who were planning to take action, for each one. However, it is also worth noting that, and especially with regard to the recommendations about supporting user choice, many local authorities were already taking the actions suggested before the report was published. This suggests that 'taking action' here may have amounted to ensuring that they were already compliant with the inquiry's recommendations rather than in implementing any changes as a direct result of it. But it may also reflect the nature of this particular group of recommendations which were both specific and non-prescriptive: while local authorities may not have taken

the specific actions recommended, they may have taken others with a similar aim. However, and on the basis of the survey evidence, it is not possible to confirm this.

To an extent this view is backed up by local authorities' own assessments of the overall impact of the report: on balance, they tended to feel that the report had mainly provided context, reassurance and direction to initiatives that were already underway rather than any direct impetus for change of itself. But there was evidence that the inquiry recommendations were informing their future commissioning plans. Finally, some authorities felt that more time was needed for any impacts to emerge.

However, the research suggests three inquiry recommendations stand out from the rest in terms of the way in which local authorities have responded to them. This is in terms of whether they had prompted action or were likely to do so in the future.

The inquiry recommendation that was the least likely to have been implemented was recommendation 11 on enhancing the leadership role of elected members through additional human rights training which a third of local authorities were not planning to address. One implication of this is that authorities may need further persuasion of the value of such training for elected members if it is to become a widespread practice.

Conversely, the recommendation which could potentially make the most impact was recommendation 13 about incorporating HRA obligations into contracts and the inclusion of 'third party' rights clauses. While most local authorities stated that they, at least, planned to address this recommendation, only just over half had completed this or reported that it was under way by the time of the research (although 38 reported that they planned to take action in the future). The evidence suggested this was because many local authorities were encountering some difficulties with the legal issues around clauses giving service users 'third party rights'. In particular, some local authorities were concerned about potential conflict between such 'third party' rights provisions and their existing Rights of Third Parties Act 1999 clauses.

But this conflict should not be overstated as it often means little more than contractual clauses being re-written to allow, rather than prevent, third party clauses being used under the 1999 legislation. And, if these technical issues can be overcome, there is evidence of the potential of these clauses to address one of the key concerns that underpinned the inquiry: that the users of commissioned care services are not protected by the HRA in the same way that they would be had their local authority directly provided them. However, while some authorities had legal teams already addressing this issue, there may be a need for further clarification or assistance if more local authorities are to act on this inquiry recommendation.

Thirdly recommendation 14 - about the need to ensure that the allocation of home care resources between meeting assessed home care needs and ensuring that contracted providers can pay at least the NMW including payment for travel time - was the one which prompted the most action by local authorities. Here 65 local authorities had taken action in regard of this recommendation by the time of the survey. However, the review of documentary evidence in this regard suggests that, in some cases, acting on this recommendation may have been limited to the inclusion of the required clauses in provider contracts. While this is obviously a good starting point, there is perhaps an onus on local authorities to put into place better monitoring procedures to ensure that these clauses are actually adhered to.

In particular, more evidence is needed as to how, or if, the time care workers take in travelling between care visits is actually incorporated into existing monitoring procedures in determining whether the NMW is actually paid to them in practice. There may be value in providing guidance to local authorities on this issue.

Finally, and more generally, the documentary evidence submitted by the local authorities sometimes suggested that there is a wide variation (as also observed in the 2011 research) in the manner that, and the extent to which, care policies and practices fully incorporate human rights. For example, there were cases where:

- Human rights were used as a catch-all term within the documentation. Whereas authorities sometimes stated that they considered human rights within their policies and practices, it was not always clear whether, or how, the full range of their HRA obligations were being accounted for or assessed in actual service delivery. For example, it was often clear how principles such as dignity and security or autonomy and choice were considered but not those relating to social and civic participation and the right to privacy. It was also unclear whether local authorities fully understood their positive human rights obligations.
- When submitting documents as evidence of their adherence to human rights principles, local authorities often provided examples of their 'Equality and Diversity' procedures and processes as evidence of their compliance. This indicates a relatively limited understanding of their human rights obligations and a confusion with their PSED obligations under the Equality Act 2010.
- Several local authorities appeared to conflate several similar agendas that are, to some extent, consistent with human rights principles: for example, 'personalisation', 'outcomes focus', 'self-directed support', 'personal-centred approaches' and 'Dignity in Care'. To this end, many local authorities seemed to rely on an adherence to these agendas as evidence of compliance with their human rights obligations.

This final point, perhaps, suggests that some local authorities may believe that, if they make reference to some human rights principles, they can claim to have fully understood and implemented their obligations under the HRA. This is not so: it is important that local authorities clearly recognise that they have legal obligations concerning human rights in home care and that meeting these is not simply a matter of selecting to champion a selection of principles without recognizing their relationship with human rights obligations. This issue may require further monitoring.

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## Appendix: The survey questionnaire

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Private & Confidential  
Home Care inquiry follow-up Survey

J5178 Date 2/10/13  
Online

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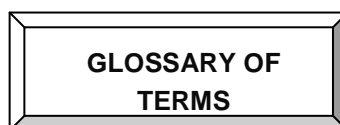
### S Screener

PROGRAMMING NOTE: NEED TO ALLOW ACCESS TO SURVEY EITHER BY UNIQUE LINK OR ENTERING PASSWORD/LOG-IN.

ASK ALL

Thank you for accessing our survey. This survey is being conducted for the Equality and Human Rights Commission (EHRC) by IFF Research. Following a formal inquiry conducted last year looking at the human rights of older people requiring and receiving home care, the EHRC aim to collect up-to-date information from Local authority commissioners of home care to assess the extent to which they have effectively implemented the inquiry recommendations.

Click on the buttons at the top of the page to obtain more background to this study or to view a glossary of terms used in the questionnaire. You can click on these buttons at any point during the questionnaire.



PROGRAMMING NOTE: THESE BUTTONS TO APPEAR ON EVERY PAGE (TEXT OVERLEAF)

It is possible that you may need to consult with other members of your organisation in order to provide complete answers.

If you do need to leave the survey at any point, you can do so without losing any of the answers that you have already entered. To return to the point you had reached, just click on the same link that you were e-mailed (or use the log-in and password provided in the letter sent from the EHRC).

If you would like further information on this survey you can contact Mark Twedde at IFF Research on 020 7250 3035 or by e-mail ([mark.twedde@IFFResearch.com](mailto:mark.twedde@IFFResearch.com)). You can also contact Sue Coe at the EHRC for any further information on the Inquiry on 0161 829 8406 or by email ([Sue.Coe@equalityhumanrights.com](mailto:Sue.Coe@equalityhumanrights.com)).

You can access a printable paper version of this survey questionnaire by following the link provided in the invitation email. This paper version can help giving you an overview of all the survey questions, but please remember to complete the online survey where the responses of all Local Authorities will be captured.

## FURTHER BACKGROUND

In November 2011 EHRC launched the final report and recommendations of its statutory inquiry into older people and human rights in home care. The inquiry examined the extent to which the human rights of older people who require or receive home care are promoted and protected by public authorities, together with the adequacy of the legal and regulatory framework.

As the EHRC conducted the using their legal powers under section 16 of the Equality Act 2006, organisations have a legal duty to ‘have regard’ to its recommendations. The EHRC is therefore looking to ascertain the extent to which relevant bodies have complied with the inquiry recommendations. This survey will be one of the ways in which this evidence is collected. In order to accurately assess the extent to which recommendations have been implemented it would be helpful if documentation requested could be provided.

The report from this survey will set out the findings that have emerged from the evidence gathered. It will not state or imply that a particular local authority has committed an unlawful act, or include any information that could lead to a local authority being identified as having done so. In order to highlight examples of good practice that have been gathered during the inquiry and assist their dissemination, local authorities could be named in the report with their permission. **The review report will also identify local authorities that have failed to provide us with information and where we have therefore been unable to form a judgement about the regard they have had to the inquiry recommendations.**

## GLOSSARY

**Commissioner** we mean the person/organisation responsible for initiating and co-ordinating the commissioning process.

**Commissioning** we mean the process of identifying and assessing the needs of individuals, agreeing what service is needed to meet those needs, allocating the financial resources to meet those needs and subsequently reviewing the impact of that provision.

**Community participation** means being able to maintain and enjoy relationships with friends and family and taking part in community events, groups and associations and religious or non-religious activities outside the home.

**Human Rights** any reference to **human rights** in this survey means the human rights of older people requiring or receiving home care services.

**Home care services** we mean community based domiciliary social care only and excludes all forms of residential or nursing care.

By **obligations under the HRA** we mean making sure that all your policies, practices and decisions comply with the rights protected by the Human Rights Act. For older people, key rights are freedom from inhuman and degrading treatment and the right to respect for private and family life, which includes respect for dignity and autonomy.

**Older people** we mean those aged 65 and above.

**Personal care** in this context means physical assistance given to an older person in connection with everyday tasks, such as eating or drinking, toileting, washing or bathing, dressing, oral care, or the care of skin, hair and nails.

**Procurement** we mean the buying, leasing, renting of goods, services and works required by an organisation.

By the **promotion and protection of human rights** we mean a duty to prevent breaches of human rights by your authority or third parties and to take action if someone’s rights are violated, as well as providing information to people whose human rights are at risk.

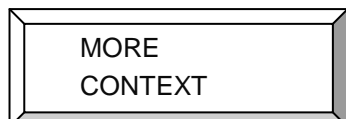
‘**Third party**’ rights give service users the right to challenge their care provider for any break of their human rights for which the provider is directly responsible.

## A Reviewing Policies and Practices

ASK ALL

**Recommendation 9 of *Close to Home* required Local authority commissioners of social care to review their current commissioning policies and practices and, if necessary, to draw up an Action Plan to address any issues which arose from these. This section will ask how your authority responded to this recommendation.**

More context for this question can be obtained by clicking on the button below:



**TEXT FOR MORE CONTEXT LINK;**

The report states that as a minimum, the reviews should cover the following issues:

- a. The systems used by your authority to overcome barriers that older people experience in raising concerns or making complaints about the home care they receive;
- b. The design and operation of your authority's Resource Allocation Systems with a view to identifying and removing any age-related bias that may exist;
- c. The extent to which differential treatment linked to age is present in your authority's policies for care planning and for supporting community participation;
- d. Whether your authority's home care commissioning practices recognise the diverse needs of older people;
- e. The extent to which your authority's home care commissioning policies and practices ensures a sufficiently skilled, supported and trained workforce.

The EHRC's *Close to Home* report can be viewed here:

[http://www.equalityhumanrights.com/uploaded\\_files/homecareFI/home\\_care\\_report.pdf](http://www.equalityhumanrights.com/uploaded_files/homecareFI/home_care_report.pdf)

ASK ALL

- A1 **In the year since the publication of the *Close to Home* report in November 2011, has your authority reviewed any of its policies and practices in relation to human rights in home care?**

PLEASE SELECT ONE OPTION ONLY

Yes	1	
No	2	
Don't know	3	

ASK IF REVIEWED (A1=1)

A2 **Please indicate whether each of the following aspects of your Local Authority’s home care commissioning policies and practices have been reviewed since November 2011.**

PLEASE SELECT ONE OPTION IN EACH ROW

	Already reviewed	Currently being reviewed	Plans to review in the future	No review conducted and none planned
a) Systems to overcome barriers that older people experience in raising concerns or making complaints	1	2	3	4
b) The design and operation of Resource Allocation Systems with a view to identifying and removing any age-related bias that may exist	1	2	3	4
c) The extent to which differential treatment linked to age is present in care planning and support for community participation	1	2	3	4
d) Whether commissioning practices recognise the diverse needs of older people	1	2	3	4
e) The extent to which commissioning ensures a sufficiently skilled, supported and trained workforce	1	2	3	4

**The EHRC’s *Close to Home* report can be viewed here:**

[http://www.equalityhumanrights.com/uploaded\\_files/homecareFI/home\\_care\\_report.pdf](http://www.equalityhumanrights.com/uploaded_files/homecareFI/home_care_report.pdf)

IF REVIEWED (ANY OF A2 = 1 OR 2)

A3 **The EHRC is interested in obtaining documentary evidence relating to your reviews, and of any action plan if one was prepared. Please indicate below whether any such documents exist or not. You will receive an email at the end of the survey with instructions of how to submit a copy of these documents.**

*DP: RECORD INSTANCES WHERE RESPONDENT WILLING TO SHARE AND PREPARE LIST FOR AUTOMATIC EMAIL TO BE SENT OUT AT THE END OF SURVEY*

Yes – relevant documentary evidence can be submitted to the EHRC	1
No – no relevant documents exist	2



IF ANY AREAS REVIEWED/UNDER REVIEW (ANY OF A2 = 1 OR 2)

A4 **When reviewing your Local Authority's policies and practices, did you become aware of any areas which needed to be addressed to better promote and protect the human rights of older people?**

PLEASE SELECT ONE OPTION IN EACH ROW

DP – SHOW ONLY ROWS CODED 1 OR 2 AT A2

	Yes – became aware of areas where policy or practice could be improved	No – the review did not raise areas where policy or practice could be changed (yet)	Don't know
a) Systems to overcome barriers in raising concerns or making complaints	1	2	X
b) The design and operation of Resource Allocation Systems with a view to identifying and removing any age-related bias	1	2	X
c) Differential treatment linked to age in care planning and support for community participation	1	2	X
d) Whether commissioning practices recognise the diverse needs of older people	1	2	X
e) Commissioning ensures a sufficiently skilled, supported and trained workforce	1	2	X

ASK FOR EACH AREA WHERE CONCERNS HIGHLIGHTED (EACH A4 = 1)

A5 **In terms of [AREA FROM A4], please briefly describe the areas that needed to be addressed and any action you have taken or plan to take to address these.**

PLEASE WRITE IN YOUR ANSWER IN THE BOX BELOW.

**[AREA FROM A4] – DP SHOW AS TITLE FOR TABLE**

AREA WHERE POLICY OR PRACTICE COULD BE IMPROVED	WRITE IN
STEPS TAKEN TO ADDRESS (IF ANY)	WRITE IN

ASK IF REVIEWED (A1=1)

A6 **In the course of reviewing your practices, did you identify any areas of good practice in promoting and protecting the human rights of older people receiving and requiring homecare which you would like to share with other local authority Commissioners? If so – please describe them below.**

PLEASE WRITE IN:
------------------

ASK FOR EACH AREA NOT REVIEWED (EACH A2 = 4)

A7 **You mentioned that you are not planning a review into [AREA FROM A2]. Why is this?**

PLEASE SELECT ALL OPTIONS THAT APPLY

Already confident that policy and practice fully promotes and protects human rights	1
Have already recently reviewed policies and practices	2
Insufficient staff resource	3
Financial constraints	4
Other issues have a higher priority	5
Other reason (PLEASE SPECIFY)	6
Don't know	7

ASK ALL

A8 **Is there anything further you would like to add about how your local authority promotes and protects the human rights of older people which was not covered in the inquiry's Recommendation 9, but which you consider relevant in assessing your response to the recommendations of *Close to Home*?**

PLEASE WRITE IN:
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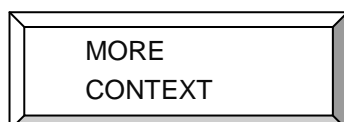
## B Changes in the Law on Age Discrimination

ASK ALL

On 1st October 2012, as part of the Equality Act 2010, age discrimination in the provision of services became unlawful. The new law applies to social care.

As a result, this section will ask what your authority has done to become compliant with the change in age discrimination law.

More context for this question can be obtained by clicking on the button below:



### TEXT FOR MORE CONTEXT LINK

If commissioners or providers of care use age-based criteria or otherwise treat people less favourably because of their age, they must be able to demonstrate that this can be “objectively justified” i.e., it is a proportionate means of achieving a legitimate aim. In practice, this means any use of age criteria in home care will only be lawful if it can be objectively justified.

Your authority will also need to ensure that its policies and practices are compliant with this legal change. With regard to two of the issues covered by the required reviews of commissioning policies and practices that were discussed in the previous section – see points b) and c) again below – you will need to be compliant with this change in law, even if you have not conducted the associated reviews.

- b) The design and operation of Resource Allocation Systems with a view to identifying and removing any age-related bias that may exist
- c) The extent to which differential treatment linked to age is present in care planning and support for community participation

- B1 In relation to the new ban on age-related discrimination in services, has your authority taken action to ensure any use of age in its home care resource allocation systems and/or policies for care planning and supporting community participation are objectively justified?

An overview to the implications of the change in law for service providers can be found here: <http://www.homeoffice.gov.uk/publications/equalities/equality-act-publications/equality-act-guidance/>

Yes	1	
No	2	
Don't know	3	

IF NO ACTION TAKEN (B1 = 2)

**B2 Please could you explain why your authority has taken no action?**

PLEASE SELECT ALL OPTIONS THAT APPLY

Already confident that our Resource Allocation Systems and our policies and practices were compliant prior to the change in the law	1
Had already recently reviewed our Resource Allocation Systems and our policies and practices	2
Insufficient staff resource	3
Financial constraints	4
Other issues have a higher priority	5
Other reason (PLEASE SPECIFY)	6
Don't know	7

IF TAKEN ACTION (B1 = 1)

**B3 Did any of your actions identify any potentially unlawful age-related bias?**

PLEASE SELECT ALL OPTIONS THAT APPLY

Yes for social care Resource Allocation Systems	1	
Yes for policies for care planning and supporting community participation	2	
No	3	
Don't know	4	

IF IDENTIFIED UNLAWFUL BIAS (B3 = 1,2)

**B4 Please use the space below to briefly describe these age-related biases.**

DP SHOW ONLY THOSE CODED YES AT B3

Potential age-related bias in Resource Allocation Systems	<i>WRITE IN</i>
Potential age-related bias in care planning and community participation policies	<i>WRITE IN</i>

IF IDENTIFIED UNLAWFUL BIAS (B3 = 1,2)

B5 **Did your authority take legal advice as to whether these biases could be 'objectively' justified?**

Yes	1	
No	2	
Currently in the process of doing so	3	
Don't know	4	

IF TOOK ADVICE (B5 = 1)

B6 **And did this legal advice indicate that the age-related biases were not objectively justified and therefore unlawful?**

Yes	1	
No	2	
Don't know	3	

IF LEGAL ADVICE INDICATED UNLAWFUL (B6 = 1) OR DID NOT TAKE ADVICE (B5 = 2 OR 4)

B7 **What steps did you take to make these practices compliant with the law? If you have not taken any action then please use the boxes to explain why.**

DP SHOW ONLY THOSE CODED YES AT B3

Steps to address unlawful age-related bias in Resource Allocation Systems	<i>WRITE IN</i>
Steps to address unlawful age-related bias in care planning and community participation policies	<i>WRITE IN</i>

IF TAKEN ACTION (B1 = 1)

B8 **The EHRC is interested in obtaining documentary evidence relating to how your authority has sought to ensure that its Resource Allocation Systems and care planning policies are compliant with the recent change in the law. Please indicate below whether any such documents exist or not. You will receive an email at the end of the survey with instructions of how to submit a copy of these documents.**

DP: RECORD INSTANCES WHERE RESPONDENT WILLING TO SHARE AND PREPARE LIST FOR AUTOMATIC EMAIL TO BE SENT OUT AT THE END OF SURVEY

Yes – relevant documentary evidence can be submitted to the EHRC	1
No – no relevant documents exist	2

## C Complying With Recommendations

ASK ALL

The 2011 inquiry '*Close to Home*' also made a series of recommendations about ways in which Local Authorities could enhance their commissioning and other practices to improve the way these help promote and protect the human rights of older people requiring or receiving home care.

This section will ask you about how your Local authority has responded to each of these recommendations. Where you have taken action which is in line with any of these recommendations, you should attach a document which outlines how you have done this.

We have grouped the relevant recommendations into three broad categories.

1. Supporting User Choice
2. Mainstreaming Human Rights in Home Care Commissioning
3. Rewarding and Retaining Care Workers

We will ask you about each of these areas in turn.

The EHRC's *Close to Home* report can be viewed here (the recommendations are at the end of the report):

[http://www.equalityhumanrights.com/uploaded\\_files/homecareFI/home\\_care\\_report.pdf](http://www.equalityhumanrights.com/uploaded_files/homecareFI/home_care_report.pdf)

C1 Has your Local authority taken any of the following actions in relation to the recommendations below, since the publication of the inquiry report in November 2011?

	Action already taken	Action currently being taken	Plans to take action in the future	No action taken and none planned
<b>Recommendation 5:</b> Developed ways of supporting older people who employ their own personal assistants	1	2	3	4
<b>Recommendation 16:</b> Taken steps to compile and make accessible more consumer information about the quality of care providers, and their specialist areas	1	2	3	4
<b>Recommendation 17:</b> Put greater focus on developing advocacy, guidance and brokerage schemes for older people	1	2	3	4

*DP NOTE: Ask C2 and C3 in a loop for every area where action taken or planned (C1=1,2,3), possibly display C2 and C3 on one screen*

ASK FOR EACH AREA WHERE ACTION TAKEN (C1=1,2,3)

C2 **In terms of...**

[RECOMMENDATION FROM C1]

**...please briefly describe the action you have taken, or plan to take, to address this recommendation.**  
PLEASE WRITE IN YOUR ANSWER IN THE BOX BELOW.

STEPS TAKEN OR PLANNED	<i>WRITE IN</i>
---------------------------	-----------------

ASK FOR EACH AREA WHERE NO ACTION PLANNED (EACH C1=4)

C3 **You mentioned that you are not planning to take action on...**

[RECOMMENDATION FROM C1]

**....why is this something that you are not planning to act on?**

PLEASE SELECT ALL OPTIONS THAT APPLY

Already took the recommended action	1
Current policies & practices fully promote and protects human rights	2
Insufficient staff resource	3
Financial constraints	4
Other issues have a higher priority	5
Other reason (PLEASE SPECIFY)	6
Don't know	7

ASK ALL

C4 **Does your authority provide any of the following that are specifically designed to meet the needs and choices of older people who require or receive home care?**

PLEASE SELECT ONE OPTION IN EACH ROW

	Yes – started doing this since November 2011	Yes – did this prior to November 2011	No	Don't know
a) Written information for older service-users on the range of different options available for meeting their home care needs (direct payments etc.)	1	2	3	X
b) Written information for older service users providing details about the full range of home care providers operating in your local area	1	2	3	X
c) A voluntary list of Personal Assistants working in your area that can be accessed by older individuals using direct payments	1	2	3	X
d) A brokerage service to put older service users in touch with possible care providers	1	2	3	X

ASK ALL

C5 **Does your authority fund any of the following advocacy services which are specifically designed to meet the needs and choices of older people who require or receive care?**

PLEASE SELECT ONE OPTION IN EACH ROW

	Yes – started doing this since November 2011	Yes – did this prior to November 2011	No – used to do this but don't any more	No – have never done this	Don't know
a) Independent Mental Capacity Advocate services	1	2	3	4	X
b) Professional advocacy services	1	2	3	4	X
c) Citizen Advocacy services	1	2	3	4	X
d) User led advocacy services	1	2	3	4	X
e) Other types of advocacy services (Please describe these)	1	2	3	4	X



IF FUNDED ANY SERVICES PRIOR TO NOVEMBER 2011 (ANY OF C5/2)

- C6 **Thinking of funding since November 2011, are you currently putting any more or less funding into the following services?**

DP: SHOW ONLY THOSE SERVICES CODED 2 AT C5

	Putting more funding in now	Putting less funding in than prior to November 2011	No difference in funding
a) Independent Mental Capacity Advocate services	1	2	3
b) Professional advocacy services	1	2	3
c) Citizen Advocacy services	1	2	3
d) User led advocacy services	1	2	3
e) Other types of advocacy services (Please describe these)	1	2	3

IF HAVE STOPPED FUNDING (ANY OF C5/3) OR PUTTING IN LESS FUNDING (ANY OF C6/2)

- C7 **You mentioned that you have stopped or are putting less funding into...**

[SERVICE FROM C5]

....why is this?

PLEASE SELECT ALL OPTIONS THAT APPLY

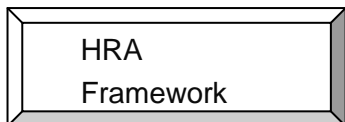
Insufficient staff resource	1
Financial constraints	2
Did not feel that the service was good value for money	3
Other issues have a higher priority	4
Other reason (PLEASE SPECIFY)	5
Don't know	6

ASK ALL

The next few questions relate to the second group of recommendations around Mainstreaming Human Rights in Home Care Commissioning.

C8 Since November 2011 has your Local authority taken any of the following actions?

Recommendation 13 mentions HRA obligations. A summary of these obligations can be found by clicking on the link below:



	Action already taken	Action currently being taken	Plans to take action in the future	No action taken and none planned
<b>Recommendation 8:</b> Taken additional steps to mainstream human rights into your decision making processes and business plans	1	2	3	4
<b>Recommendation 11:</b> Sought to enhance the leadership role of its elected members in the commissioning of care for older people via additional human rights training	1	2	3	4
<b>Recommendation 13:</b> Given consideration to incorporating HRA obligations into contracts with care providers and included clauses to allow provision for 'third party' rights to service users to ensure maximum human rights protection	1	2	3	4

The EHRC's home care inquiry identified areas where human rights might be at risk in home care settings. This framework is based mainly on rights protected by the Human Rights Act:

### **Dignity and security**

- Physical well-being
  - Freedom from intentional physical abuse
  - Freedom from unintended/careless neglect
  - Protection from pharmaceutical/medical abuse
  - Protection from sexual abuse
- Psychological and emotional well-being
  - Freedom from bullying and threats
  - Freedom from disrespectful treatment
  - Freedom from being ignored/not talked to
  - Respect for cultural heritage/religion
- Financial security/security of possessions
  - Protection from financial abuse
  - Financial decisions taken in one's best interests (if someone lacks capacity)
  - Freedom to control one's personal possessions

### **Autonomy and choice**

- Self-determination in one's life
  - Right to live as independently as possible
  - Right to make routine decisions (eg what to eat/wear)
  - Right to be consulted about ongoing professional decisions
  - Right to determine the timetable of one's day
- Support for decision-making about care
  - Right to information and advice about options
  - Right to be offered meaningful choices and time to decide
  - Right to be offered support for personalisation of care
  - Right to nominate a third party to decide, if desired
  - Appropriate application of MCA (if someone lacks capacity)

### **Privacy**

- Respect for privacy
  - Modesty when dressing/bathing
  - Privacy when one's personal circumstances are discussed by others
- Respect for personal space
  - Respect for wish to be alone
  - Respect for wish to be intimate with others
- Respect for private correspondence
  - Respect for private letters
  - Respect for private documents
  - Respect for private phone calls

### **Social and civic participation**

- Friends and family
  - Right to maintain relationships with family
  - Right to maintain relationships with friends
- Community participation
  - Right to participate in community events
  - Right to join community groups/associations
  - Right to participate in religious/non-religious activities
- Civic participation
  - Right to participate in elections

*DP NOTE: ASK C9 AND C10 IN A LOOP FOR EVERY AREA WHERE ACTION TAKEN OR PLANNED (C8=1,2,3), POSSIBLY DISPLAY C10 AND C11 ON ONE SCREEN*

ASK FOR EACH AREA WHERE ACTION TAKEN (C8=1,2,3)

C9 **In terms of...**

[RECOMMENDATION FROM C8]

**...please briefly describe the action you have taken, or plan to take, to address this recommendation. PLEASE WRITE IN YOUR ANSWER IN THE BOX BELOW.**

STEPS TAKEN OR PLANNED	WRITE IN
------------------------	----------

ASK FOR EACH AREA WHERE ACTION TAKEN (C8=1,2,3)

C10 **The EHRC is interested in obtaining documentary evidence relating to the actions that you have taken, or plan to take, on the back of the recommendations. Please indicate below whether any such documents exist or not. You will receive an email at the end of the survey with instructions of how to submit a copy of these documents.**

*DP NOTE: Please record any instances of (C10=1) at the end of the survey*

Yes – relevant documentary evidence can be submitted to the EHRC	1
No– no relevant documents exist	2

ASK FOR EACH AREA WHERE NO ACTION PLANNED (EACH C8=4)

C11 **Why are you not planning to take action on...**

[RECOMMENDATION FROM C8]?

PLEASE SELECT ALL OPTIONS THAT APPLY

Already took the recommended action	1
Current policies & practices fully promote and protects human rights	2
Insufficient staff resource	3
Financial constraints	4
Other issues have a higher priority	5
Other reason (PLEASE SPECIFY)	6
Don't know	7

ASK ALL

C12 **Does your authority include ‘third party’ rights into new home care contracts with service providers?**

**By ‘third party’ rights we mean rights that give service users the right to challenge their care provider for any breach of their human rights for which the provider is directly responsible.**

PLEASE SELECT ONE OPTION

Yes – started doing this since November 2011	1
Yes – did this prior to November 2011	2
No – intending to include ‘third party rights’ to future contracts	3
No	4
Don't know	X

ASK ALL

C13 **What weighting between cost and quality did you use in your last home care tendering exercise?**

PLEASE WRITE IN YOUR ANSWERS BELOW

% allocated to cost factors	WRITE IN
% allocated to quality factors	WRITE IN
% allocated to other factors	WRITE IN
Don't know	X
Other (PLEASE SPECIFY)	X

DP NOTE: ANSWERS SHOULD NOT EXCEED 100%

C14 **Do you anticipate using different weightings between cost and quality for your next home care tendering exercise?**

Yes	1	
No	2	
Don't know	3	

IF PLAN TO CHANGE WEIGHTINGS (C14/1)

C15 **What weighting between cost and quality do you plan to use in your next home care tendering exercise?**

PLEASE WRITE IN YOUR ANSWERS BELOW

% allocated to cost factors	WRITE IN
% allocated to quality factors	WRITE IN
% allocated to other factors	WRITE IN
Don't know	X

DP NOTE: ANSWERS SHOULD NOT EXCEED 100%

IF PLAN TO CHANGE WEIGHTINGS (C14/1)

C16 **Please explain what factors have led you to change the weightings you use in commissioning home care.**

PLEASE SELECT ALL OPTIONS THAT APPLY

Changed awareness of human rights issues	1	
Changes in financial or staffing resources available	2	
Other factors (Please specify)	3	
Don't know	X	

ASK ALL

C17 **In your most recent tendering exercise for home care services did you set a maximum price that could be submitted?**

Yes (Please specify maximum price)	1	
No	2	
Don't know	3	

ASK ALL

C18 **In your most recent tendering exercise for home care services did you set a minimum price that could be submitted?**

Yes (Please specify minimum price)	1	
No	2	
Don't know	3	

ASK ALL

C19a **What is the lowest hourly rate that your authority pays for week-day home care delivered during the day?**

PLEASE WRITE IN YOUR ANSWER BELOW

Lowest hourly rate in £	<i>WRITE IN, ALLOW DECIMALS</i>
Don't know	X

ASK ALL

C19 **Since November 2011 has your authority requested or required homecare providers to reduce the cost of care they provide?**

PLEASE SELECT ONE OPTION

Yes – requested reduction	1	
Yes – required reduction	2	
No - but we plan to request a reduction in the next 12 months	3	
No - but we plan to require a reduction in the next 12 months	4	
No – we did not request or require a change in rates	5	
No - we increased rates	6	
Don't know	X	

ASK ALL

C20 **Since November 2011 has the number homecare visits your Local authority commissioned from private or voluntary sector homecare providers that were expected to last 15 minutes or fewer:**

PLEASE SELECT ONE OPTION

Increased	1	
Decreased	2	
Remained the same	3	
We do not commission visits of 15 minutes or fewer from independent or voluntary sector homecare providers	4	
Other (Please describe)	5	
Don't know	X	

ASK ALL

C21 **Since November 2011, has your Local authority introduced a written policy or guidance on the minimum length of time that can be commissioned from an independent or voluntary sector provider to undertake personal care?**

**Please exclude those visits conducted solely to monitor safety or well being, or to assist with medication.**

A definition of **personal care** can be found in the glossary.

Yes – we’ve introduced a written policy	1	
No – we already had a written policy in place before	2	
No – we haven’t introduced a written policy	3	
Don’t know	X	

ASK ALL

**We now consider the third category of the inquiry’s recommendations around rewarding and retaining Care Workers.**

C22 **Has your Local authority taken any of the following actions, or planned to take action in relation to the recommendation below, since the publication of the inquiry report in November 2011?**

	Action already taken	Action currently being taken	Plans to take action in the future	No action taken and none planned
<b>Recommendation 14:</b> Taken steps to ensure their commissioning practices balance allocation of resources required to meet assessed home care needs with the need to ensure contracted providers can pay at least the National Minimum Wage to care workers	1	2	3	4

IF ACTION TAKEN (C22=1,2,3)

C23 **In terms of...**

[RECOMMENDATION FROM C22]

**...please describe the action you have taken, or plan to take, to address this recommendation. PLEASE WRITE IN YOUR ANSWER IN THE BOX BELOW.**

STEPS TAKEN OR PLANNED	<i>WRITE IN</i>
------------------------	-----------------



IF ACTION TAKEN (C22=1,2,3)

- C24 **The EHRC is interested in obtaining documentary evidence relating to the action that you have taken, or plan to take, on the back of the recommendations. Please indicate below whether any such documents exist or not. You will receive an email at the end of the survey with instructions of how to submit a copy of these documents.**

*DP NOTE: Please record any instances of (C24=1) at the end of the survey.*

Yes – relevant documentary evidence can be submitted to the EHRC	1
No – no relevant documents exist	2

IF NO ACTION PLANNED (EACH C22=4)

- C25 **You mentioned that you are not planning to take action on...**

[RECOMMENDATION FROM C22]

**...why is this something that you are not planning to act on?**

PLEASE SELECT ALL OPTIONS THAT APPLY

Already took the recommended action	1
Current policies & practices fully promote and protects human rights	2
Insufficient staff resource	3
Financial constraints	4
Other issues have a higher priority	5
Other reason (PLEASE SPECIFY)	6
Don't know	X

ASK ALL

- C26 **Do the current home care contracts between your Local authority and service providers explicitly require external providers to pay care workers an hourly rate for all working time in line with the requirements of National Minimum Wage legislation, including the time required to travel between visits?**

<b>Yes</b> – started doing this since November 2011	1	
<b>Yes</b> – did this prior to November 2011	2	
No	3	
Don't know	4	

IF NOT (C26=3,4)

C27 **Do your current home care contracts make provision for payment of any of the following?**

PLEASE SELECT ONE OPTION IN EACH ROW

	Yes – started doing this since November 2011	Yes – did this prior to November 2011	No	Don't know
Current external care providers are paid an enhanced rate for visits that are shorter than one hour	1	2	3	4
In addition to payment for the time care workers spend in a service users home, an additional payment to current external care providers is made to cover for a care workers travel time between visits in line with the requirements of National Minimum Wage legislation.	1	2	3	4
Current external care providers receive an enhanced rate to for visits which include dense urban or rural travel	1	2	3	4
Current external care providers are paid a rate which ensures care workers are reimbursed for their costs of travel between visits.	1	2	3	4

ASK ALL

C28 **Will your authority's future home care contracting procedures require potential providers to do any of the following as part of the tendering process?**

**As a note: the 'Living wage' is defined as £8.30 per hour in London and £7.20 elsewhere.**

PLEASE SELECT ONE OPTION IN EACH ROW

	Yes	No	Don't know
State explicitly that they will pay their care staff at least the NMW including travel time between visits	1	2	3
Break down their costs of provision to indicate how the quoted price will include compliance with the NMW for care staff	1	2	3
Ensure care staff employed by potential external providers are paid a minimum of the 'living wage'?	1	2	3
Other ways in which potential external providers can be required to pay [please specify]	1	2	3

## D Close

ASK ALL

**Finally, we would like to ask you a few questions about the impact of the EHRC's inquiry report on your authority's overall approach towards human rights in the context of home care for older people.**

ASK ALL

- D1 On the scale below, how would you describe the overall impact of the EHRC report on your authority's understanding of human rights in the context of home care for older people?**

PLEASE SELECT ONE OPTION

No impact on understanding							Dramatically changed understanding			DK
1	2	3	4	5	6	7	8	9	10	11

ASK ALL

- D2 On the scale below, how would you describe the overall impact of the EHRC report on your authority's policies and practices towards human rights in the context of home care for older people?**

PLEASE SELECT ONE OPTION

No impact on policies and practices							Dramatically changed policies and practices			DK
1	2	3	4	5	6	7	8	9	10	11

- D3 On the scale below, how would you describe the overall impact of the EHRC report on the quality of your authority's service provision with regard to human rights in the context of home care for older people?**

PLEASE SELECT ONE OPTION

No impact on service provision							Dramatically changed service provision			DK
1	2	3	4	5	6	7	8	9	10	11

- D4 In the box below, please explain why you have provided the assessments that you have for any of the last three questions.**

Impact on understanding	<i>WRITE IN</i>
Impact on policies and practices	<i>WRITE IN</i>
Impact on service provision	<i>WRITE IN</i>

D5 DUMMY VARIABLE to record where respondents are willing to upload documentary evidence

1	IF (A3=1)	Documents relating to your findings from reviewing home care commissioning policies and practices or your action plans for this area, if applicable
2	IF (B8=1)	Documents relating to how your authority has sought to ensure that its resource allocation systems and care planning policies are compliant with the recent change in the law
3	IF (C10=1)	Documents relating to the action that you have taken, or plan to take, on the back of the inquiry's recommendations 8, 11, and 13 regarding Mainstreaming Human Rights in Home Care Commissioning
4	IF (C24=1)	Documents relating to your written policy on the minimum length of time that can be commissioned from an independent or voluntary sector provider to undertake personal care
5	None of these	

EVERYONE WHO INDICATED THAT THEY ARE ABLE TO PROVIDE DOCUMENTATION (D5/1-6)

D6 **You mentioned earlier in this questionnaire, that you would be willing to share documentation relating to your policies and practices on a confidential basis. We'd like to send you a separate e-mail listing the documents you said you could provide for you to respond to. So that we can do this, please type in your name, phone number and e-mail address into the boxes below.**

<b>Name</b>	
<b>Phone number</b>	
<b>E-mail address</b>	
<b>Re-enter email address</b>	

ASK ALL

D7 **Thank you for taking the time to answer all the questions in this survey. Would it be OK if IFF were to contact you again with regards to this survey, if any queries should arise?**

Yes	1	
No	2	

IF WILLING TO BE RECONTACTED (D7=1) AND NOT ALREADY GIVEN DETAILS AT D6

- D8 **Please type in your name, phone number and e-mail address into the boxes below. These will only be used if we need to clarify any of your responses to this survey:**

<b>Name</b>	
<b>Phone number</b>	
<b>E-mail address</b>	

- D9 **On behalf of IFF Research, and the Equality and Human Rights Commission, thank you very much for your time.**

**If you would like to speak to someone at IFF about this research you can call Christoph Koerbitz or Mark Tweddle on 020 7250 3035.**

# Contacts

## **www.equalityhumanrights.com**

The Commission's publications are available to download on our website:

**www.equalityhumanrights.com.**

If you would like to discuss the option of accessing a publication in an alternative format or language please contact **engagementdesk@equalityhumanrights.com.**

### **Equality Advisory and Support Service (EASS)**

The Equality Advisory Support Service has replaced the Equality and Human Rights Commission Helpline. It gives free advice, information and guidance to individuals on equality, discrimination and human rights issues.

**Telephone:** 0808 800 0082

**Textphone:** 0808 800 0084

#### **Opening hours:**

09:00 to 20:00 Monday to Friday

10:00 to 14:00 Saturday

**Website:** [www.equalityadvisoryservice.com](http://www.equalityadvisoryservice.com)

**Post:** FREEPOST Equality Advisory Support Service FPN4431

In November 2011, the Equality and Human Rights Commission published the results of a statutory inquiry into the human rights of older people who required or were receiving care in their own homes.

The final report, entitled 'Close to home', explored the degree to which the human rights of people aged 65 and over requiring or receiving home care services in England were being fully promoted and protected.

The 'Close to home' report made 25 recommendations, nine of which applied specifically to local authorities. This research report presents the findings of a survey conducted on behalf of the Commission on the progress that has been made by local authorities in implementing these recommendations in the year following the publication of the 'Close to home' report.