Your home care and human rights
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This guide explains how your human rights protect you when you use home care services. It also explains your rights to home care. This guide can help you to use your rights to make sure you get a good quality service.

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1. Introduction

Every day thousands of older people get care and support services at home. The local council, a private home care agency or a charity may offer these services. Everyone using home care is entitled to get good quality services. Most people are satisfied with the home care they get. But the Equality and Human Rights Commission has found that some older people get inadequate or poor quality home care. Many people do not know how to change this or feel unable to complain about it.
If your home care is less than satisfactory, you can and should complain. Asking a home care agency to fix a problem will make its services better for everyone. You do not have to put up with poor treatment or bad services. Your human rights can help you to draw attention to a worry or complaint about your home care services. The Human Rights Act helps to protect everyone from poor treatment by public services.
help or reminders to take your medication; support to go shopping.
2. What is home care

As you get older, you may find it more difficult to do some things. You might find it harder to get into the bath or go upstairs, for example. You may have recently had an illness or accident that has made you weak or unsteady on your feet. Home care services could help you with daily tasks, either for a few weeks or for longer. Home care services could include having:

- help getting in or out of bed, eating, drinking or getting dressed
- frozen meals being delivered to your home
- a laundry service
- a cleaning service
- help or reminders to take your medication
- support to go shopping.

Getting the right home care services may improve your quality of life. It can reassure your friends and family that you have the support you need to be independent. It can delay or prevent you from having to go into hospital or a care home.
3. How do I get home care and what are my rights?

How do I get home care?

The first step is to contact the social services department of your local council. Find the phone number in the phone book or on the council’s website.

When you call them, say that you could do with some regular support at home. It is important to tell them about all of the difficulties you are having. Ask for a ‘needs assessment’. They may ask you some questions to see if you require a full assessment. You have a right to have a full assessment regardless of your savings or income.

A social worker will assess what your care needs are, what home care services would benefit you and if the local council can help you. The assessment will decide if your needs are low, moderate, substantial or critical. Many councils only offer home care services to people who have a substantial or critical need for care. If your needs are not eligible you will have to organise your own home care and pay for it without help from the council.
Who will pay for my home care?

You should not be asked questions about your money or who will pay for your care until after your needs assessment. You can be a millionaire and still have a needs assessment from social services.

The local council may pay for all of your home care, some of it or none at all. A social worker will do a ‘financial assessment’ to decide what the council can offer. They will ask you questions about your income and savings.

It is important to be clear about who is funding your home care. How your home care is funded will affect who you can complain to if you have a complaint and how easy it will be for you to use the Human Rights Act when challenging a decision or action about your home care.
Who will arrange my home care services?

If you get some funding from the council for your home care, you can choose for it to arrange the services for you or you can choose to do it yourself.

If you choose to do it yourself, you will get cash payments from the council called ‘direct payments’. You can then buy home care services directly from the provider(s) of your choice. If you want to do this, ask your social worker for more information about direct payments.

If you do not qualify for council funding or choose to organise your own home care, you do not have to use the first home care agency you come across.

You should shop around as prices, services and standards can vary between home care agencies.

All home care agencies in England must register with the Care Quality Commission. It decides if a home care agency is meeting government standards on safety and quality. Section 4 starting on page 12 of this guide tells you more about how to check the quality of service offered by a home care agency.
You can get a list of home care agencies in your area from your local council social services department or by contacting:

- United Kingdom Homecare Association (UKHCA)
  Tel: 020 8661 8188
  Website: [www.ukhca.co.uk](http://www.ukhca.co.uk)

- Care Quality Commission (CQC)
  Tel: 03000 616 161
  Website: [www.cqc.org.uk](http://www.cqc.org.uk)

**What if my circumstances change?**

If you get any council funding towards your home care, your needs should be reviewed by social services. This should happen within three months of you first receiving home care services and then every 12 months.

If your needs change before your review date, you can ask social services to carry out a reassessment or review immediately. This also applies if you feel that your original assessment did not cover all of your care needs. You do not have to wait until your review date to let social services know that you think you need more or less home care. If social services refuse to carry out a re-assessment or review, you can make a complaint (see section 6 starting on page 19 of this guide).
4. What standards should I expect from my home care?

Everyone should get a decent standard of home care. But how do you know what that means? Your human rights can be a useful starting point to judge the quality of your care. These basic human rights standards can help you to ask the right questions to decide if your home care agency is treating you properly.

**Dignity**

This includes:

- Am I being treated with respect?
- Am I being listened to and not ignored?
- Is there respect for my cultural heritage or religion?
- Am I being provided with adequate care as stated in my care plan?
Privacy

This includes:

- Do I have privacy and respect for my modesty when I am getting dressed and bathing?
- Are my personal circumstances treated confidentially and not disclosed to others without my permission?
- Is my personal space my own and treated respectfully by care workers?
- Can I choose to be alone if I wish to be?
- Am I allowed to be intimate with others when I wish to be?
- Am I able to keep my letters, documents and personal information private?
- Am I able to take phone calls in another room, away from care workers, if I want to?
Safety and security

This includes:

- Am I being physically well-treated?
- Do my care workers have enough skill and experience?
- Are my care workers using the correct equipment and procedure to move me (e.g. using a hoist)?
- Are my medicines given to me safely and on time?
- Are my money, jewellery and other personal possessions kept secure?

Choice

This includes:

- Do I get information on the options for my home care?
- Am I getting support to help me make decisions about my home care?
- Am I able to accept or refuse home care services?
- Am I able to make decisions like what to eat and wear?
- Do I have a say in what I do during my day and when I do it?
Social contact

This includes:

- Am I able to maintain relationships with family and friends?
- Am I able to participate in my community?
- Can I vote in elections if I want to?

If the answer to one of these questions is no, your home care may not be meeting an acceptable standard. You may wish to consider making a complaint (see section 6 on page 19).

The Equality and Human Rights Commission used a similar approach in its formal inquiry into home care for older people. The approach was based on the European Convention on Human Rights, the UN Convention on the Rights of Persons with Disabilities and the UN Principles for Older Persons.

Case Study: Right to privacy

Mr A had multiple sclerosis. He got help with daily tasks from a home care agency. The home care agency sent trainee care workers to his home without warning or his permission. Several trainees at a time would observe him being showered and dressed. Mr A felt this took away his privacy and dignity. These actions breached Mr A’s human rights.
5. What are my legal rights when using home care?

Your legal rights are set out in the law and government policy. These rights cannot be taken away from you or ignored. If they are, this could mean the law has been broken. You could challenge this by following the complaints procedure or by going to court (see section 6 on page 19).

- If you appear to need home care services, you have a right to have a needs assessment. This is set out in the *NHS Care and Community Act 1990*.

- You have a right to get home care via a direct payment, if you are eligible for some money from your local council. This is where the council gives you money to pay for home care services that you choose and arrange for yourself. This is set out in the *Community Care (Direct Payments) Act 1996*.

- Your human rights protect you from being treated badly. The *Human Rights Act 1998* sets out sixteen basic rights for everyone in the UK. These rights include:
  - Right to life
  - No inhuman or degrading treatment
  - Right to liberty and security
- Right to a private and family life, home and correspondence
- Freedom of thought, conscience and religion
- Right not to be discriminated against in the way your human rights are protected
- Right to protection of property

More information about each of these rights and home care is at the back of this guide.

Home care funded by your local council or any other public authority must protect your human rights. It is less easy to use these rights if your home care is not funded by a public body. But you may be able to use other legislation, for example community care law.

Case Study: Inhuman or degrading treatment

Mr C had a stroke. The hospital discharged him and sent him home. Social services agreed to provide home care to support him. But when Mr C’s son visited him, he found his father unwashed, in dirty clothes, and sitting in his own excrement. Mr C said that his care workers rarely helped him to wash as they said they did not have time to. They often forgot to help with other tasks listed in his care plan. This left Mr C in a highly distressed state. This inhuman and degrading treatment would be a breach of his human rights.
Your home care cannot be stopped or reduced if you make a complaint.
6. What can I do if I am unhappy with my home care?

Many people are satisfied with the home care they get. But sometimes things do go wrong. For example, you may be unhappy with the type of care you receive, the way you have been treated or with a particular staff member. Making a complaint can seem daunting but it is an essential step towards resolving your own problem and making the service better for everyone.

**If your concern relates to a crime or if you or someone else could be seriously harmed do not wait to make a complaint. Call the police or the ‘adult safeguarding team’ at social services.**

Your home care cannot be stopped or reduced if you make a complaint. Your care can only be stopped or reduced if you ask for it to be stopped or if the council reassesses you as no longer needing home care.

A complaint may be resolved informally by talking to the right person at the home care agency about the problem. If that does not work, or if the problem is very serious, you may need to make your complaint a formal one. There are three stages for making a complaint.
Stage 1: informal complaint

If the problem is quite straightforward, and you are not at risk of harm, it may be best to complain informally. You can do this by speaking to someone or in writing. You can make your complaint to your care worker, the manager of the home care agency, or your social worker – whichever person you would prefer to speak to. Sometimes telling the right person is all that is needed to resolve your complaint. You could complain informally to say that your care worker is always late on Fridays or that your meals are always given to you lukewarm not hot.

Stage 2: formal complaint

You can make a formal complaint if an informal complaint has not resolved your problem or if it is a more serious issue. Make your complaint directly to the home care agency. If your care is arranged by the local council, you can also use the local council’s complaints procedure. See our top tips for making a written complaint on page 23.

Home care agency complaints procedure

Ask your home care agency for a copy of its complaints procedure. This will tell you how to make a complaint. It may already be in your personal file along with your care plan and care worker sign-in sheet.
You may be asked to fill in a complaint form. This will ask you questions about your complaint. If there is not a complaint form, you will need to write a letter to the manager of the home care agency. Start the letter by saying you have a complaint and then set out the problem.

**If your complaint relates to your needs assessment or care plan, talk to your local council first. This is because the home care agency does not have a say in your care plan.**

The home care agency should answer your complaint in writing. The letter should say what it has found out and what it will do to resolve the problem.

**Local council complaints procedure**

If your home care was arranged or funded by social services, you can use the local council’s complaints procedure to make a formal complaint. Ask your local council for a copy of its complaints procedure. This will tell you how to make a complaint.

You may be able to make a formal complaint in writing using a complaints form, by writing a letter or by email. You may be able to make your complaint over the telephone or by visiting one of your local council’s offices. You should get a letter within three days to say when you can expect a response.
A complaints manager will look into your complaint. They will investigate your complaint to work out what has happened. You should receive a written response setting out what they found and what action has been taken to resolve the problem.

**Tips for writing a complaint**

- Set out your complaint clearly and logically.
- Keep to the facts and remain polite even if you feel angry or distressed about what has happened.
- Give specific dates and times the events occurred if you can.
- Write your complaint as soon as possible after the incident as you are more likely to remember all the details. Also, normally complaints must be made within 12 months of the incident happening.
- Get a friend or relative to check through your complaint. They may remember something that you forgot to put in.
- Include what changes you would like to be made, but be realistic in your demands.
- A relative or friend can help you make your complaint, or an independent advocate (see section 7 on page 28).
- Keep a copy of your complaint and any correspondence for your records.
Stage 3: Use the Local Government Ombudsman or consider taking legal action

Local Government Ombudsman

If you are not satisfied with the final response to your complaint or with how your complaint was dealt with, you could ask the Local Government Ombudsman to look into it. If it takes on your complaint, it will carry out its own investigation. If it agrees there is a problem, the Local Government Ombudsman can make recommendations to the council or home care agency to stop it happening again. It may suggest the council or home care agency: apologises to you, pays you compensation, reimburses you for any costs incurred, offers you services or an assessment, or reviews their policies and procedures. The council or home care agency does not have to follow the Ombudsman’s recommendations, but most do take action.

To make a complaint to the Local Government Ombudsman, call 0300 061 0614 or fill in a form on its website www.lgo.org.uk.

Legal action

If the council or home care agency has acted unlawfully, you may want to consider bringing legal action. Legal action is the last resort to resolving your complaint. Usually you will go through the formal complaints
procedure before taking any type of legal action. It is better to resolve disputes without having to go to court.

There are two options for legal action:

- **Take the council or home care agency to court**
  
  This is a ‘private law’ legal action, based on your complaint. You would bring the case against the council or home care agency. A judge will listen to both sides and decide if the council or home care agency was in the wrong.

- **Apply for a judicial review**
  
  You can only do this if your complaint involves a public authority, such as a council. The judge will decide if the public authority has followed the law, been biased or acted outside of their remit. You have to apply for a judicial review within three months of the date of the public authority’s decision you disagreed with.

If you win your case, the judge may tell the local council or home care agency to make changes. This will make home care services better for everyone. Some people also get financial compensation if that is appropriate. But, if you lose your case and do not have financial protection such as Legal Aid, you may have to pay your own legal costs and the local council or home care agency’s too.
A solicitor will help you with the legal work. Find one who specialises in community care law and/or human rights law. They will be able to tell you if you have a case and if you are likely to win. The Law Society can give you a list of solicitors who may be able to help you. Either telephone 020 7242 1222 or visit its website www.lawsociety.org.uk.

Your solicitor can advise you about legal costs. Legal Aid can help with your legal costs depending on your income, savings and the nature of your case. If you do not get Legal Aid, you may have to pay all your legal costs up front. The Community Legal Advice service can tell you if you qualify for legal aid. If you do qualify, it can also give you free legal advice and give you a list of suitable local solicitors who will take on legal aid work. Its local rate telephone helpline is 0845 609 6677.
Case Study: Right to a private and family life

Mrs Bernard is a severely disabled wheelchair user. Her local social services carried out an assessment of her needs. It said her home was unsuitable for someone using a wheelchair. Mrs Bernard could not get into the bathroom, so she could not have a bath or use the toilet. But the council did not do anything to help. Mrs Bernard felt that the council had left her in a degrading situation. She had no privacy and was unable to lead a normal family life. Mrs Bernard applied for a judicial review. The judge decided that the council had breached her right to a private and family life, home and correspondence. This is a right only protected by the Human Rights Act.
7. Can I get help with making a complaint?

If you are making a complaint about your home care, you may want some support to help you through the process. An independent advocate can listen to your concerns, provide you with information about the complaints process, attend meetings with you and represent your views to any professionals on your behalf, with your permission. The advocacy service should be free, confidential and independent of the organisation you are complaining about.

For more information about advocacy support in your local area, please contact:

- Action for Advocacy  
  Tel: 0207 921 4395  
  Website: [www.actionforadvocacy.org.uk](http://www.actionforadvocacy.org.uk)  
  Email: info@actionforadvocacy.org.uk

- Advocacy Resource Exchange  
  Tel: 02380 234 904  
  Website: [www.advocacyresource.org.uk](http://www.advocacyresource.org.uk)  
  Email: enquiries@advocacyresource.org.uk

- Older People’s Advocacy Alliance (OPAAL)  
  Tel: 01782 844 036  
  Website: [www.opaal.org.uk](http://www.opaal.org.uk)  
  Email: jo@bjf.org.uk
8. Where can I find out more information about my rights?

If you would like further advice about your rights when receiving home care, it may best to speak to one of the following organisations:

- **Age UK**
  Tel: 0800 169 80 80
  Website: [www.ageuk.org.uk](http://www.ageuk.org.uk)

- **Community Legal Advice**
  Tel: 0845 609 6677

- **Disability Law Service**
  Tel: 020 77919800
  Website: [www.dls.org.uk](http://www.dls.org.uk)

- **Independent Age Advice Service**
  Tel: 0845 262 1863
If you want to know more about human rights and home care, you may want to read the following publications:

If you want to know more about how to find good home care services, you may want to read the UK Home Care Association’s Choosing Care at Home publication: www.ukhca.co.uk/productdesc.aspx?ID=9
Appendix:

Your human rights and home care

The following human rights protections are most relevant to home care. These rights are set out in the European Convention on Human Rights and made part of our law by the Human Rights Act 1998.

Article 2 “Right to life”

Public authorities must not place your life in danger. If someone dies as a result of consistently poor treatment by care workers, this may be a breach of their right to life under Article 2. It may also be a criminal offence.

Public authorities must also act to ensure your life is protected. For example, councils must ensure your care package gives you enough support for your assessed needs. It should check that care workers do not have a criminal record and are trained to work with older people. If a care worker does not raise concerns about a serious deterioration in someone’s health and this contributes to that person’s death, this could also be a breach of the person’s right to life.

If someone dies under suspicious circumstances, the State has a duty to investigate the death. If that investigation is inadequate, this could also be seen as a breach of Article 2.
Article 3 “No one shall be subject to inhuman or degrading treatment”

Your home care should not cause you serious physical or mental harm, or humiliate or degrade you. Depending on the circumstances, examples of inhuman or degrading treatment by care workers could include:

- repeatedly failing to change your soiled clothes or bed sheets if you are incontinent
- not providing you with enough food or water
- failing to wash you over a prolonged period if you cannot wash yourself
- if you are bed bound, not moving you over a prolonged period so you get severe bed sores
- using excessive force to restrain you.

Only the most serious cases of poor treatment will be considered a breach of this right. However, other cases may still count as a breach of your right to a private and family life, home and correspondence (See Article 8 on page 35).
Article 5 “Right to liberty and security”

You have the right not to have your liberty taken away from you. You should be free to leave and return to your home at will. You should not be prevented from leaving or returning to your home by other people. Care workers should not lock you inside your home. They should not stop you from going outside because you have a tendency to fall or if you might get confused. To do so could be a breach of your right to liberty and security.

There are exceptional circumstances where this right does not apply. For example, someone can be kept in hospital if they are detained (‘sectioned’) under the Mental Health Act 1983. This deprivation of liberty would only be applied to someone who was a risk to themselves or others.
Article 8 “Right to a private and family life, home and correspondence”

You should be able to live your life as you choose. These rights can be restricted in some circumstances, for example to protect the rights of other people or because of public safety or national security. In terms of home care, this might give you the right to:

Privacy

- *Keep your post, personal documents and phone calls private.*
  It is your right to request care workers leave your post unopened or leave you to take a phone call in a different room if you wish. Even if care workers are just trying to be helpful, you do not have to share any information with them or any other professionals if you do not want to.

- *Be cared for in a way that respects your privacy.*
  For example, when care workers are helping you to wash, you can very reasonably ask them to close the curtains, close the bathroom door or place a towel over you to protect your modesty.
Family and or home life

- See your family.
  If you cannot live with your family you should be allowed to have regular contact with them. For example, if your spouse is moving to a care home because it is unsafe for him or her to live at home, the council should not place your spouse in a care home far away, where you would not be able to visit them. In offering your spouse a care home placement, the council must consider your rights to a family life and those of your partner.

- Have adequate care and support.
  This is essential if your right to a home life is to be protected. Care workers turning up late, not carrying out all of the tasks listed in your care plan or simply not carrying out tasks properly could amount to a breach of your right to a private life.

- Not to be handled roughly or abusively by care workers.
  Care workers must change what they do if you ask them to be more careful, use disability equipment correctly, and not cause you discomfort or pain. If they do not respond, they could be breaching your human rights. If care workers subject you to serious ill-treatment, this could be inhuman or degrading treatment (Article 3 on page 33).
Choice

- **Accept or refuse home care services.**
  You might prefer to have meals being delivered to you, a laundry service, or door to door transport instead of a care worker. If you do not want care workers to visit you at home, perhaps because you find it intrusive, you do not have to accept this help. Simply advise your social worker or home care agency manager of your wishes.

- **Have choices about your care.**
  For example, which day centre you attend or which meals you want to have delivered.

- **Dress as you wish.**
  Your care worker cannot make you wear items of clothing you do not like or would not normally wear. Your care worker cannot make you wear slippers on a shopping trip just because it is easier for them to put them on instead of outdoor shoes. If you are stopped from wearing clothing or jewellery related to your religion, this could also count as a breach of your religious freedom (see Article 9 on page 38).

- **Live your life according to your wishes.**
  If care workers are visiting at inappropriate times to help you, this undermines your right to control your day. For example, being put to bed or being helped to eat too early or too late could be a breach of your right to a private life. If care workers are visiting at
irregular hours so you cannot go out to visit friends or family, this could also infringe your right to a family life.

Article 9 “Freedom of thought, conscience and religion”

You can think what you want and hold any religious or non-religious beliefs that you want. You are free to observe and practice your religion, either alone or with others, in public or in private. This right may be restricted in some circumstances, for example to protect the rights of others or to maintain public order.

Ensure that your social worker (if you have one) is aware of any needs relating to your religion or belief. This can then be included in your needs assessment and care plan. If you do not have a social worker, contact the manager of the home care agency to ensure your needs are known and can be catered for.

Care workers should be able to help you to practice your religion. For example, if you wear a turban, hijab or a cross and chain because of your religion, your care worker should help you to continue dressing in this way. Likewise, if you follow a particular diet because of your religion, for example, a halal, vegetarian or kosher diet, you should get meals that meet these requirements.
Article 14 “Right not to be discriminated against in the way your human rights are protected”

Your human rights cannot be breached or enforced differently because of your age, religion, gender, sexual orientation, ethnicity, political beliefs or your disabilities. This right can only be used in connection with another article set out in the Human Rights Act. For example, a Muslim does not get halal meals, but his Jewish neighbour gets kosher meals from the same home care agency. The Muslim man is being discriminated against in the enjoyment of his right to practice his religion (Article 9).

Article 1 of the first protocol: “Right to protection of property”

You have the right to keep your belongings from your home such as money or possessions. If a care worker is stealing from you during care visits, this would be a breach of this right. It is also a criminal offence.