

Our commitment to promoting
and upholding the rights of
people who use social care
and childcare services

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

*“Where, after all, do universal human rights begin?
In small places, close to home...”*
Eleanor Roosevelt

What are Human Rights?

Human Rights are the basic rights and freedoms that belong to everyone.

Human Rights are based on core principles like dignity, fairness, equality, respect and autonomy. They are relevant to our day-to-day life and protect our freedom to control our own lives, effectively take part in decisions made by public authorities which affect our rights and get fair and equal services from public authorities.

The concept of a set of basic human rights is a relatively simple one; however, human rights law and practice is complex and changing. Not all rights are absolute, some are limited and others are qualified and should be applied proportionately. In addition, there has been the development of additional law, charters and conventions, for example in relation to people with diverse backgrounds, children, people with disabilities, people who lack mental capacity and older people. Many of these re-state fundamental human rights as set out in the European Convention of Human Rights providing further interpretation or areas for consideration.

As a public-sector body, we have duties to respect, protect and fulfil the rights that people have under the Human Rights Act 1998 when carrying out our functions. We also have duties to eliminate discrimination, advance equality of opportunity and foster good relations between different groups under the Equality Act 2010.

As a regulator, Care Inspectorate Wales' (CIW) primary responsibility is to ensure the law in relation to the running of social care and childcare services is upheld. The legal framework governing social care and childcare services has been carefully developed to incorporate and reflect people's rights. These include; the 'Social Services and Well-Being (Wales) Act 2014', the 'Regulation and Inspection of Social Care Act 2016', the 'Children and Families (Wales) Measure 2010' and associated regulations, codes of practice, statutory guidance and national minimum standards.

CIW undertakes its function in accordance with this legal framework. We actively promote and seek to uphold people's legal human rights by:

- reviewing the performance of local authority social services functions,
- providing first gateway to promoting good care through our registration process,
- undertaking inspections, and
- pursuing compliance with statutory requirements by regulated providers of social care and childcare services.

We also recognise human rights legislation and practice is constantly evolving, and this needs to be reflected in how we undertake our work. We have developed inspection frameworks underpinned by Welsh Government's national outcomes framework for people who need care and support, and their carers. The frameworks are supported by guidance for our inspectors that place additional emphasis on the

relevance and importance of respecting diversity, promoting equality and upholding human rights within our work. This takes account of, but is not limited to:

- Universal Declaration of Human Rights
- European convention of Human Rights
- The Human Rights Act 1998¹
- The Equality Act 2010²
- The United Nations Convention on the Rights of the Child (UNCRC)³
- The United Nations Convention on the Rights of Persons with Disabilities⁴
- The United Nations Principles for Older Persons
- The Mental Capacity Act 2005⁵
- The Deprivation of Liberty Safeguards (DoLS)⁶.
- The Welsh Language Standards⁷

A rights based approach to inspection

We integrate a rights based approach in inspections by adhering to the underlying FREDA core principles of:

- Fairness
- Respect
- Equity
- Dignity
- Autonomy

Value	Human Right	Practice example
Fairness	Right to a fair trial	Ensuring there is a robust and fair process for dealing with concerns and whistleblowing about conduct of staff
Respect	Right to respect for family and private life, home and correspondence	Respecting diverse families Avoid denying access to family without good reason
Equality	Right not to be discriminated against in the enjoyment of other human rights	Ensure people are not discriminated against on the basis of age or disability
Dignity	Right not to be tortured or	Ensure sufficient staffing to

¹ www.equalityhumanrights.com/en/human-rights/human-rights-act

² www.gov.uk/guidance/equality-act-2010-guidanc

³ www.gov.uk/government/publications/united-nations-convention-on-the-rights-of-the-child-uncrc-how-legislation-underpins-implementation-in-england

⁴ <https://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/un-convention-rights-persons-disabilities>

⁵ www.legislation.gov.uk/ukpga/2005/9/contents

⁶ [Due to be replaced by Liberty Protection Safeguards](#)

⁷ www.legislation.gov.uk/wsi/2015/996/schedule/1/made

	treated in an inhuman or degrading way	maintain people's dignity
Autonomy	Right to respect for private life	Involving people in decisions about their care

Within our inspection frameworks we have lines of enquiry that consider human rights principles with examples of what good looks like. Where care is unacceptable we will always take action.

The basic human rights, as set out in the Human Rights Act, most applicable to social care and childcare are set out in Table 1. These have been broadly mapped against the potential lines of enquiry we consider during inspection under the four inspection themes of:

- Well-being
- Care and Support / Care and Development
- Leadership and Management
- Environment (where services are “setting” based).

For local authorities we inspect in relation to the four key principles of the Social Services and Well-being (Wales) Act 2015 (well-being, people, prevention, partnership) with lines of enquiry in relation to upholding human rights weaving through each theme.

We consider how local authorities and registered providers protect human rights, treat people fairly, with respect and dignity; give people choice and control over the care they receive and take action to ensure equality for their staff.

At its most basic, care and support offers protection of people's right to life by ensuring their most fundamental physiological needs, such as eating, taking medication, getting up in the morning and going to bed at night are met. But for those who require it, and those with whom they share their lives, the availability and organisation of care and support also determines whether they enjoy a number of other important human rights.

Human rights apply equally to staff working in social care and childcare services, for example the right to whistle-blow about poor care.

The table overleaf summarises some of the key areas we consider on inspection of local authority social services, adult and children's services and childcare and play services.

We use the term 'people' to refer to children, young people and adults

Table 1 Human Rights and links with inspection lines of enquiry	
Article	Potential lines of enquiry consider the extent to which:
Article 2: Right to life	- people do the things that matter to them
Article 3: Freedom from torture, inhuman or degrading treatment	- people are treated with dignity and respect
Article 5: Right to liberty and security	- people contribute to the decisions that affect their life, or have someone who can do it for them
Article 6: Right to a fair trial	- there is an accurate and up to date plan that meets the needs of the individual
Article 8: Respect for your private and family life, home and correspondence	- people are provided with a service which considers their personal wishes, aspirations and outcomes
Article 9: Right to freedom of thought, belief and religion	- people have a voice
Article 10: Freedom of expression	- people feel safe, happy and valued
Article 12: Right to marry and start a family	- children develop, learn and become independent
Article 14: Right of protection from discrimination	- practitioners promote children's play learning and development and meet their individual's needs
Protocol 1, Article 2: Right to education	- practitioners keep children safe and healthy
	- people's right to remain living in their in own home is upheld
	- people are supported to maintain ordinary family relationships
	- people are supported by a service that provides sufficient numbers of suitably fit staff required to achieve the individual's personal outcomes
	- people are safe and protected from abuse and neglect
	- people are supported with religious observance such as prayer, diet or the opportunity to participate in religious festivals.
	- people are supported to access communication support or independent advocacy.
	- people are supported to seek and live with a partner
	- people working at the service are supported to raise concerns about the service through whistleblowing procedures.
	- people are protected from risk of infection through hygienic practices
	- people's health is promoted through safe systems for medicines management
	- people have access to information about the service to enable informed choice
	- people are able to raise complaints through an accessible complaints policy and learning from complaints is demonstrated
	- people's personal outcomes are promoted because the service is provided in a location and environment with facilities and, where relevant, equipment that promotes well-being and minimises risks

Relationship with Equality Act and other UN Conventions

In addition to the universal human rights set out in Table 1, the following also apply to our work:

Equality Act

When we inspect we take into account how service providers/local authorities consider the protected characteristics of:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

UN convention on the Rights of the Child

- The right to a childhood (including protection from harm and the right to leisure, play, culture and education).
- The right to be healthy (including access to medical care).
- The right to be treated fairly (including changing laws and practices that are unfair on children as well as discrimination against children, for examples on grounds of ethnicity, gender, religion or disability).
- The right to be heard (including considering children's views)

UN Convention on the rights of persons with disabilities

This convention includes rights to:

- Accessibility
- Live independently and being included in the community
- Personal mobility
- Access to information
- Equal health services and rehabilitation.

UN Principles for Older Persons

There are 18 principles, grouped under the five themes below

- Independence
- Participation
- Care
- Self-Fulfillment
- Dignity

Further information on our rights based approach to the review of local authority social services functions and inspection of regulated social care and childcare services is set out in the our relevant Codes of Practice⁸.

⁸ Code of Practice for Inspection of Regulated Services
Code of Practice for Review of Local Authority Social Services
Code of Practice for Inspection of Child Minding, Day Care and Open Access Play Services