

EXERCISING LEGAL RIGHTS

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Where do we find the law?

Primary Legislation

(eg Mental Capacity Act 2005
Care Act 2014)

Statutory Guidance
(Codes of Practice)

Local policies

Caselaw.

The
Human
Rights
Act

The UN Convention on the Rights of Persons
with Disabilities

The European Convention on Human Rights

“Minimum standards”- between the State and its citizens.

Right to life- Article 2

- Prohibition on Torture or degrading /inhuman treatment – Article 3
- Not to be arbitrarily deprived of your liberty – Article 5
- Right to a fair trial- Article 6
- To have your family and private life respected- Article 8

Human Rights Act 1998: Public bodies, courts, bodies carrying out public functions (eg independent hospitals using MHA) must comply with the Convention. Damages can be awarded for violation of Convention Rights.

How is this relevant?



The United Nations Convention on the Rights of Persons with Disabilities

- Ratified by UK in 2009
- Aim “to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity”
- Does not bind UK in national law or give directly enforceable rights
- But increasingly used to interpret the law in UK and Europe.

Understanding Rights: Care Act 2014

- The first step to enforcing rights is to know them!
- “a confusing patchwork of conflicting statutes...baffling...tortuous complexity”
- - *Munby LJ on adult social care law, Re A and C [2010]*
- Care Act replaces National Assistance Act 1948, National Health and Community Care Act 1990 and others

Care Act 2014: Key facts

- One statute, for all adult social care:
<http://www.legislation.gov.uk/ukpga/2014/23/contents/enacted>
- Supported by
 - -Explanatory Memorandum
 - -Regulations (for a lot of the detail, eg eligibility)
 - -Statutory Guidance:
<https://www.gov.uk/government/news/final-care-act-guidance-published>
- Factsheets at:
<https://www.gov.uk/government/publications/care-act-2014-part-1-factsheets>
- Also resources on SCIE website: <http://www.scie.org.uk>

Care Act: Key facts

- The “Wellbeing Principle”- s1. Local authority’s must promote an individual’s wellbeing- which relates to his/her personal dignity; physical and mental health; emotional wellbeing.
- A single national eligibility threshold at which adults and carers must have their needs met. (Care and Support (Eligibility Criteria) Regulations 2014)- no more FACS.
- A duty (s58) to assess a child’s needs for care and support needs when they turn 18, if there is “significant benefit” in carrying out the assessment. Written reasons for refusing a transition assessment must be given

Care Act- Key facts

- Ss37-8: Provisions to ensure continuity if you move area.
- Ss67-8: Advocate to be appointed for those experiencing substantial difficulty in taking part in assessment processes
- S73- Registered providers providing care in a persons home subject to the Human Rights Act
- Ss43- 8: Safeguarding Adults now statutory
- S 72- will be an appeals procedure (from 2016: currently complaints/LGO); “duty of candour” where things have gone wrong.
- Care and support means-tested- but will count towards “cap” (from April 2016).

New Code of Practice to the MHA

- In force April 2015
- <https://www.gov.uk/government/publications/code-of-practice-mental-health-act-1983>
- New guiding principles, with a stronger emphasis on the less restrictive option; empowerment and involvement
- New guidance on the importance of equality and human rights
- New guidance on care planning- to start as soon as the patient arrives in hospital

Enforcing Rights

Can the principles be met in times of austerity?

How do you enforce your rights?

Local complaints; Ombudsman.

Offer mediation or other ADR?

Legal aid still available:
<http://solicitors.lawsociety.org.uk>

Questions?