



**Health  
Information  
and Quality  
Authority**

An tÚdarás Um Fhaisnéis  
agus Cáilíocht Sláinte

# **A Human Rights-based Approach for Health and Social Care Services**

Health Information and Standards  
Directorate, HIQA

*Safer Better Care*

# Introduction

## What is the purpose of this slide deck?

This slide deck has been developed by the Health Information and Quality Authority (HIQA) to provide a teaching resource on a human rights-based approach to care and support in health and social care services.

## Who is this slide deck for?

This slide deck will be useful for those teaching health and social care students and those providing training for health and social care staff.

# Introduction

## How can this slide deck be used?

The slide deck has been designed to be used in a flexible way. Content has been divided into different sections and these can be delivered together or separately as individual modules.

These slides may be adapted for teaching and training purposes.

We ask that you acknowledge HIQA as the source of these materials.

# Introduction

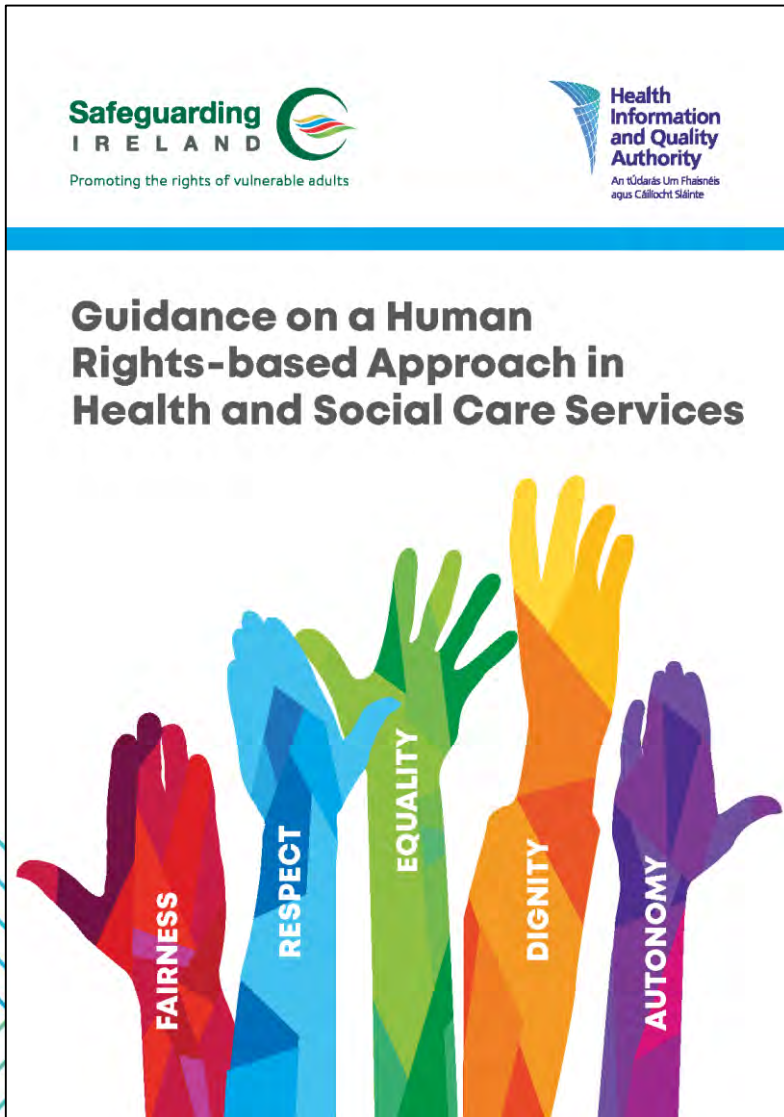
## About the Guidance

The *Guidance on a Human Rights-based Approach in Health and Social Care Services* was developed in conjunction with Safeguarding Ireland, and was part-funded by a grant from the Irish Human Rights and Equality Commission (IHREC).

Safeguarding Ireland is a national body tasked with promoting safeguarding of vulnerable adults to protect them from abuse.

**IHREC is Ireland's national human rights and equality institution.** Its purpose is to protect and promote human rights and equality in Ireland.

# Introduction



The Guidance is available to download [here](#) from the HIQA website ([www.hiqa.ie](http://www.hiqa.ie)).

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# **Section 1: About the Health Information and Quality Authority (HIQA)**

# The Health Information and Quality Authority

HIOA is an independent statutory authority, established in 2007, to improve the safety and quality of health and social care services for the public.





# HIQA's functions:



## **Standards & Quality**

Developing person-centred standards and guidance for health and social care services.



## **Regulation**

Regulating residential services for older people, people **with a disability and children's special care units**, as well as medical exposure to ionising radiation (for example, X-rays).



## **Monitoring**

Monitoring the quality and safety of health services and **children's social services**.

# HIQA's functions:



## **Health Technology Assessment**

Evaluating the clinical and cost-effectiveness of health programmes, policies, medicines, medical equipment, diagnostic and surgical techniques, and health promotion and protection activities.



## **Health Information**

Developing a consistent and standardised approach to health and social care information including in National Data Collections and eHealth services in Ireland.



## **National Care Experience Survey**

Carrying out service-user experience surveys, including the National Inpatient Experience Survey and the National Maternity Experience Survey.

# Standards and guidance development

## Under the Health Act, 2007 HIQA:

- Sets standards for the safety and quality of health and social care services
- Promotes safety and quality in the provision of health and social services for the benefit of the health and welfare of the public

# Purpose of national standards and guidance

## National standards

- A key driver in quality and safety
- Act as an impetus to recognise good practice and address poor performance

## Guidance

- Help staff to implement national standards, or as a guide to making improvements in a particular area

# Section 2: Introduction to human rights

# Human rights

## What are human rights?

Human rights are the basic rights and freedoms that all people should enjoy, regardless of nationality, place of residence, gender, national or ethnic origin, colour, religion, language or any other status or characteristic.

## Who has human rights?

We are all born with human rights regardless of who we are, where we are from or any other status or characteristics.

# Categories of human rights

**Absolute rights** cannot be restricted in any circumstance, including a national emergency (for example, the right to freedom from torture).

**Qualified rights** can be restricted in certain circumstances if the interference is justified. The restriction must be in the interest of the **wider community or to protect other people's rights** (for example, protection of health and prevention of crime).

**Limited rights** can only be restricted in specific situations set out in law (for example, being arrested for committing a crime).

# History of human rights

## Universal Declaration of Human Rights (UDHR) 1948

- Milestone document in history of human rights
- Established fundamental human rights to be universally protected
- Expression of values and agreed-upon standards but Declaration is not legally binding
- UDHR was a precursor to the European Convention on Human Rights (ECHR).





# History of human rights continued

## European Convention on Human Rights (ECHR)

- ECHR is the basis of the European human rights system, drafted by the Council of Europe in 1950, post Second World War
- First regional treaty designed to protect human rights, democracy and the rule of law
- **ECHR's main purpose is to limit a state's** interference with the rights of citizens
- Enforced by the European Court of Human Rights.



# Human rights defined under ECHR:

<b>Article 1:</b> Obligation to respect Human Rights	<b>Article 8:</b> Right to respect for private and family life
<b>Article 2:</b> Right to life	<b>Article 9:</b> Freedom of thought, conscience and religion
<b>Article 3:</b> Prohibition of torture	<b>Article 10:</b> Freedom of expression
<b>Article 4:</b> Prohibition of slavery and forced labour	<b>Article 11:</b> Freedom of assembly and association
<b>Article 5:</b> Right to liberty and security	<b>Article 12:</b> Right to marry
<b>Article 6:</b> Right to a fair trial	<b>Article 13:</b> Right to an effective remedy
<b>Article 7:</b> No punishment without law	<b>Article 14:</b> Prohibition of discrimination

# **Section 3: Human rights in an international context**

# Core international human rights instruments

Human rights instrument	Monitoring body	Date established
<b>1.</b> <a href="#"><u>Convention on the Elimination of All Forms of Racial Discrimination</u></a>	CERD	21 December 1965
<b>2.</b> <a href="#"><u>International Covenant on Civil and Political Rights</u></a>	CCPR	16 December 1966
<b>3.</b> <a href="#"><u>International Covenant on Economic, Social, and Cultural Rights</u></a>	CESCR	16 December 1966
<b>4.</b> <a href="#"><u>Convention on the Elimination of All Forms of Discrimination Against Women</u></a>	CEDAW	18 December 1979
<b>5.</b> <a href="#"><u>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</u></a>	CAT	10 December 1984

# Core international human rights instruments

Human rights instrument	Monitoring body	Date established
<b>6.</b> <a href="#">Convention on the Rights of the Child</a>	CRC	20 November 1989
<b>7.</b> <a href="#">International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families</a>	CMW	18 December 1990
<b>8.</b> <a href="#">International Convention for the Protection of All Persons from Enforced Disappearance</a>	CPED	20 December 2006
<b>9.</b> <a href="#">Convention on the Rights of Persons with Disabilities</a>	CRPD	13 December 2006

Further information available at:

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>

# Charter of Fundamental Rights of the European Union 2000

The Charter of Fundamental Rights of the European Union includes all personal, civic, political, economic, and social rights enjoyed by people within the EU in one document. It covers:

- The rights found in the case law of the Court of Justice of the EU
- The rights and freedoms enshrined in the ECHR
- Other rights and principles deriving from the constitutions of EU countries.

Within the charter, rights and freedoms are included under 6 titles:

**1. Dignity**

**2. Freedoms**

**3. Equality**

**4. Solidarity**

**5. Citizen's rights**

**6. Justice**

Further information available at:

[http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf)

# European Charter of Patients' Rights 2002

- **The European Charter of Patients' Rights (2002) aims to guarantee a high level of human health protection and to assure the high quality of services provided by different European health services**
- The charter is aligned with the duties and responsibilities that both service providers and people using services must assume
- Charter applies to all individuals but acknowledges that certain characteristics may influence individual health care needs (for example, age, gender, religion, socio-economic status)
- Charter is considered a guide for good practice but it is not legally binding.

Further information available at:

[https://ec.europa.eu/health/ph\\_overview/co\\_operation/mobility/docs/health\\_services\\_co108\\_en.pdf](https://ec.europa.eu/health/ph_overview/co_operation/mobility/docs/health_services_co108_en.pdf)

# International human rights complaints procedures

## Individual communications

Committees of experts (treaty bodies) monitor implementation of treaty provisions by State parties and may consider complaints from individuals.

## State-to-state complaints

Several human rights treaties allow for State parties to complain about alleged violations of the treaty by another State party.

## Inquiries

Committees may initiate inquiries if they have received reliable information about serious violations of the conventions in a State party.

Further information:

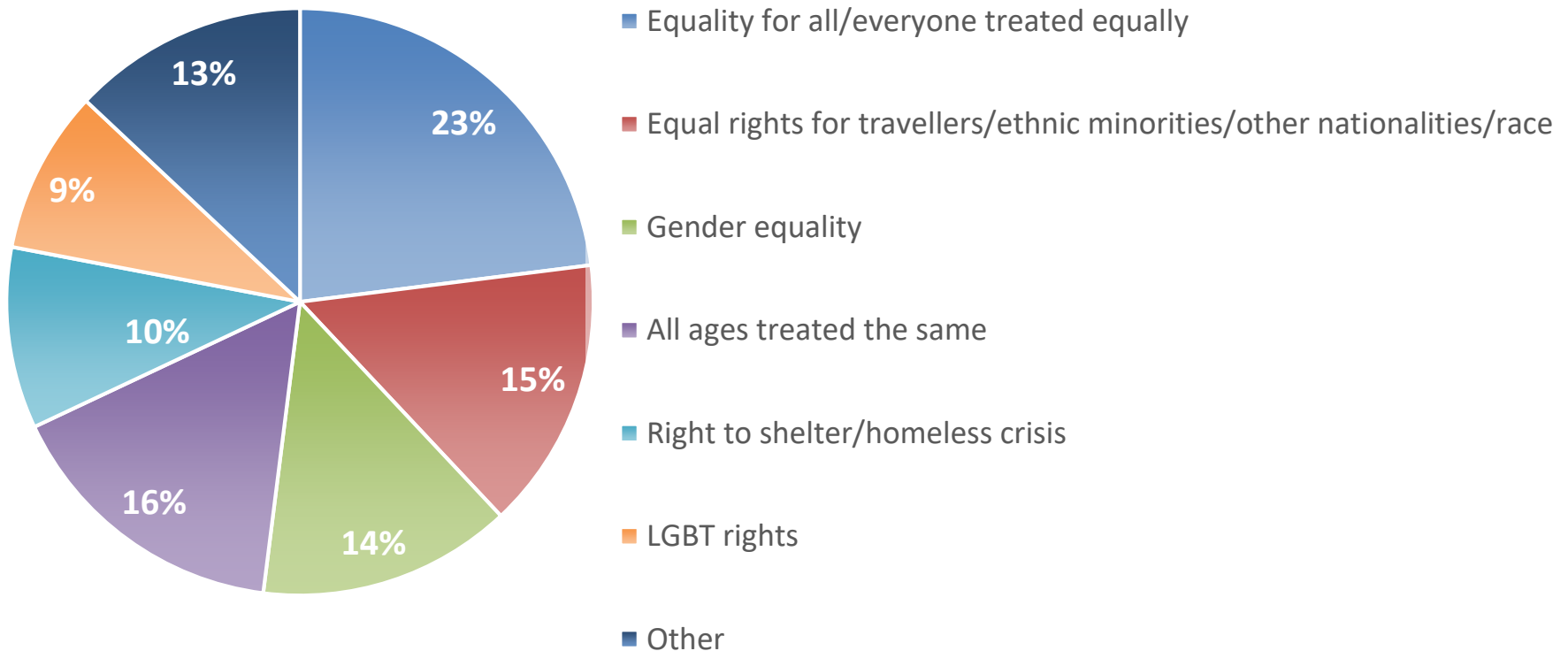
<https://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx>



# **Section 4: Human rights in an Irish context**

# Human rights in Ireland

What do you think when you hear the term ‘human rights and equality’?



Amárach Survey, 2018. Understanding and Awareness of Human Rights and Equality in Ireland. (Survey carried out on behalf of IHREC) (n=1,200)

# Irish legal framework

**The Irish Constitution (1937)** sets out how Ireland should be governed and the rights of Irish citizens. The Constitution can only be changed by public referendum. Fundamental rights set out in the Constitution include:

- right to life
- equality before the law
- right to a fair trial
- right to liberty
- right to freedom of expression, assembly, and association
- protection of the family.

Further information available at:

<http://www.irishstatutebook.ie/pdf/en.cons.pdf>

# Irish legal framework continued

**The Mental Health Act, 2001** addresses two main requirements in the provision of mental health care:

- establishment of a legislative framework within which individuals with a mental health disorder may be admitted, detained and treated involuntarily in approved centres
- promotion and maintenance of quality standards of care and treatment that are regularly inspected and regulated.

The Act improves protection of the right to liberty among individuals **with mental disorders and increases Ireland's adherence to international human rights standards** in areas of concern (involuntary admission and treatment).

Further information available at:

<http://www.irishstatutebook.ie/eli/2001/act/25/enacted/en/pdf>

# Irish legal framework continued

## The European Convention on Human Rights (ECHR) Act (2003)

protects the following rights in Ireland:

- Right to life (*Article 2*)
- Prohibition of torture (*Article 3*)
- Right to liberty and security (*Article 5*)
- Right to a fair trial (*Article 6*)
- Right to respect for private and family life (*Article 8*)
- Freedom of thought, conscience, and religion (*Articles 9*)
- Freedom of expression (*Article 10*)
- Prohibition of discrimination (*Article 14*)
- Protection of property (*Article 1*)

Further information available at:

<http://www.irishstatutebook.ie/eli/2003/act/20/enacted/en/pdf>

# Irish legal framework continued

**The UN Convention on the Rights of Persons with Disabilities (UNCPRD) (2006)** aims to promote, protect, and ensure the full and equal enjoyment of human rights and fundamental freedoms by all persons with disabilities.

The UNCPRD was ratified in Ireland in March 2018 and is aligned to a broader human rights agenda, for example:

- equal recognition before the law
- access to justice for people with disabilities
- freedom of expression and opinion
- access to information, work and employment
- participation in political and public life.

Further information available at:

<http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>

# Irish legal framework continued

HIQA was established under the **Health Act 2007** to reform the regulation of health and social care services and set national standards for health and social care services.

Under the Health Act, HIQA registers designated centres. Registered providers are required to:

- notify HIQA of any adverse events, including allegations of abuse or suspected abuse of residents
- implement policies and procedures for the prevention, protection and response to abuse, and report any incidents to HIQA.

Further information available at:

<http://www.irishstatutebook.ie/eli/2007/act/23/enacted/en/pdf>

# Irish legal framework continued

**The Irish Human Rights and Equality Commission Act 2014** established the Irish Human Rights and Equality Commission (IHREC).

IHREC aims to create an inclusive society where human rights and equality are respected, protected and fulfilled for everyone, everywhere.

The IHREC Act 2014 sets out IHREC's functions as follows:

- protect and promote human rights and equality and their understanding
- encourage a culture of respect for human rights, equality, and intercultural understanding
- promote understanding of the importance of human rights and equality
- promote tolerance and acceptance of diversity and respect for freedom and dignity
- work towards the elimination of human rights abuses, discrimination and prohibited conduct

Further information available at:

<http://www.irishstatutebook.ie/eli/2014/act/25/enacted/en/pdf>

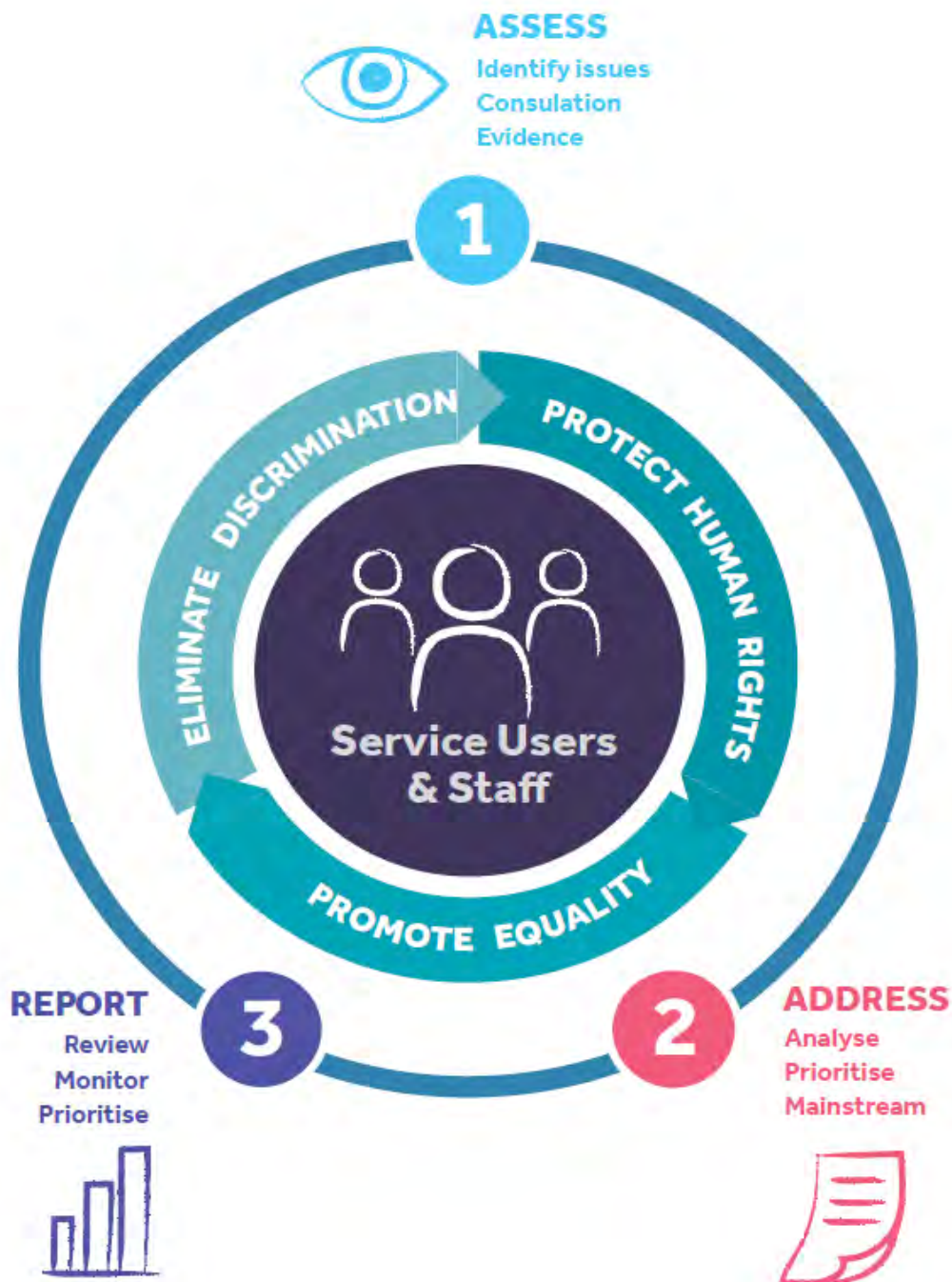


# Irish legal framework continued

**The Public Sector Equality and Human Rights Duty 2014** is set out in Section 42 of the IHREC Act 2014 and places a legal obligation on public bodies (including health and social care services) to:

- eliminate discrimination
- promote equality of opportunity
- protect the human rights of people using services and staff in their day-to-day duties.

The Duty ensures that equality and human rights are an integral part of how a public body fulfils its purpose and delivers on its strategic plan.



## Three-step process of implementing the Public Sector Equality and Human Rights Duty:

1. Assess
2. Address
3. Report

Full report available at:  
[https://www.ihrec.ie/app/uploads/2019/03/IHREC\\_Public\\_Sector\\_Duty\\_Final\\_Eng\\_WEB.pdf](https://www.ihrec.ie/app/uploads/2019/03/IHREC_Public_Sector_Duty_Final_Eng_WEB.pdf)

# Irish legal framework continued

**The Equal Status Acts 2000-2015** outline the following ten grounds of discrimination:

- age
- disability
- gender
- membership of Traveller community
- religion
- civil status
- family status
- receiving social welfare payments
- race, colour or nationality
- sexual orientation

The Acts prohibit discrimination in access to and use of goods and services, including indirect discrimination and discrimination by association, sexual harassment and harassment, and victimisation.

Further information available at:

<http://www.irishstatutebook.ie/eli/2000/act/8/enacted/en/pdf>

# Discrimination

**Direct discrimination** happens when a person is treated less favourably than another person in the same situation under any of the grounds covered by legislation.

**Discrimination by association** can occur when a person is treated less favourably simply because they are associated with or are connected to another person.

**Indirect discrimination** happens when someone is treated in the **same way as others without taking into account that person's different** situation. The individual is placed at a disadvantage as a result of blanket policies, conditions or rules which they might find hard to satisfy as a result.

# Irish legal framework continued

**The Assisted Decision-Making (Capacity) Act 2015** supports decision-making by adults whose capacity is in question or may shortly be in question by enabling them to:

- enter into legally binding arrangements to be supported in making decisions about their personal welfare, property and affairs
- plan in advance (enduring power of attorney and advance healthcare directives).

A person is determined to lack capacity to make a particular decision if they are unable to:

- understand information relevant to the decision
- retain that information long enough to make a voluntary choice
- use or weigh that information as part of the process of making the decision
- communicate their decision (that is, by talking, writing, signing, assistive technology or any other means).

Further information available at:

<http://www.irishstatutebook.ie/eli/2015/act/64/enacted/en/pdf>

# Human Rights Law in Ireland

- In Ireland, national courts are responsible for determining allegations of human rights violations.
- Under national law, an individual can only engage the protections afforded under an international human rights law if it has been incorporated into national law. For example, the rights protected under the Irish Constitution, the ECHR Act 2003 and the EU Charter of Fundamental Rights 2012 (where EU law is applicable).
- In instances where there is a lack of incorporation, individuals can make a complaint to a regional or international human rights body, such as the European Court of Human Rights.



## Do you want to know more about the legal framework underpinning a rights-based approach to care and support?

This document provides an overview of the legal framework which underpins a human rights-based approach to care and support in Ireland. This document also describes key human rights set out in the European Convention on Human Rights Act (ECHR) 2003 and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) 2006 which are applicable to health and social care services.

### What is the legal framework?

The legal framework is the set of key pieces of legislation that are most applicable to health and social care services. The framework places a responsibility on Irish health and social care providers at an organisational and individual practitioner level to uphold the human rights of people using their services.

### How can health and social care staff apply the legal framework in their day-to-day work?

This resource links the key human rights set out in the ECHR and the UNCRPD to the FREDAs principles (Fairness, Respect, Equality, Dignity, and Autonomy), as FREDAs is an internationally recognised approach to considering what human rights-based care means in practice.<sup>(1)</sup> The *Guidance on a Human Rights-based Approach in Health and Social Care Services* is structured using the FREDAs principles and focuses on the ECHR and the UNCRPD as they are the most often cited and applicable to health and social care services. However, Ireland is signatory to a number of international human rights treaties, all of which are important in international human rights law. For further information see:

<https://www.ohchr.org/EN/countries/ENACARegion/Pages/IEIndex.aspx>

### What pieces of legislation in Ireland are relevant to a human rights-based approach to care and support?

Key legal sources of human rights and equality obligations in health and social care in Ireland include:

#### The Constitution (1937)

The Irish Constitution is the fundamental legal document that sets out how Ireland should be governed and the rights of Irish citizens. All legislation passed by the Irish

## Legal framework

The legal framework is available to download [here](#) from the HIQA website.

# **Section 5: Human rights in health and social care settings**



# The Irish Constitution: Key human rights articles for health and social care



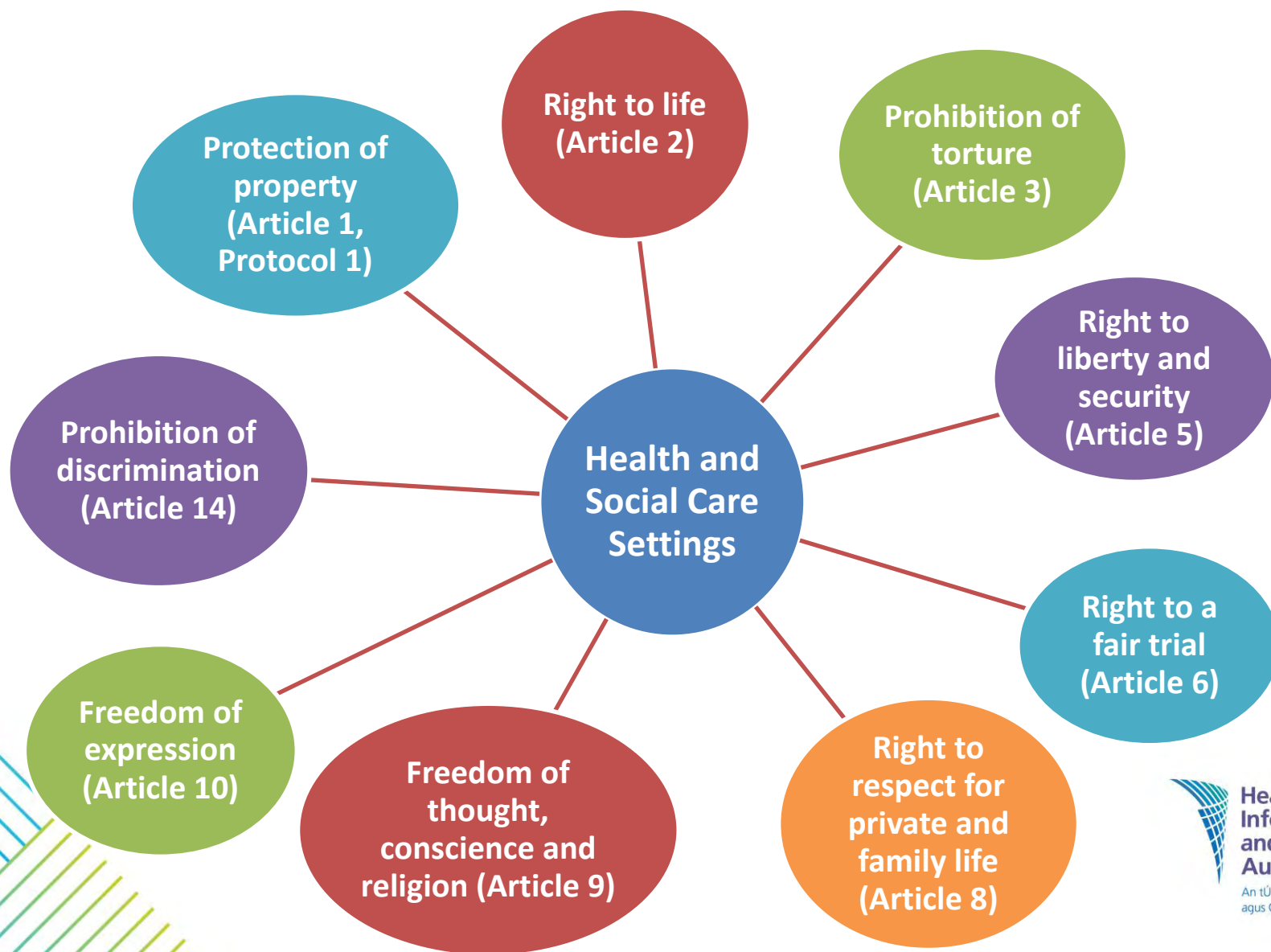
## Rights relevant to health and social care:

- Right to a fair trial (*Article 38.1*)
- Right to life (*Article 40*)
- Right to be held equal before the law (*Article 40.1*)
- Freedom from torture and ill-treatment (*Article 40.3*)
- Right to personal liberty (*Article 40.4.1<sup>o</sup>*)
- Freedom of expression (*Article 40.6.1<sup>o</sup>*)
- Right to the private ownership of external goods (*Article 43.1.1<sup>o</sup>*)
- Right to freedom of conscience and the free profession and practice of religion (*Article 44.2.1*)

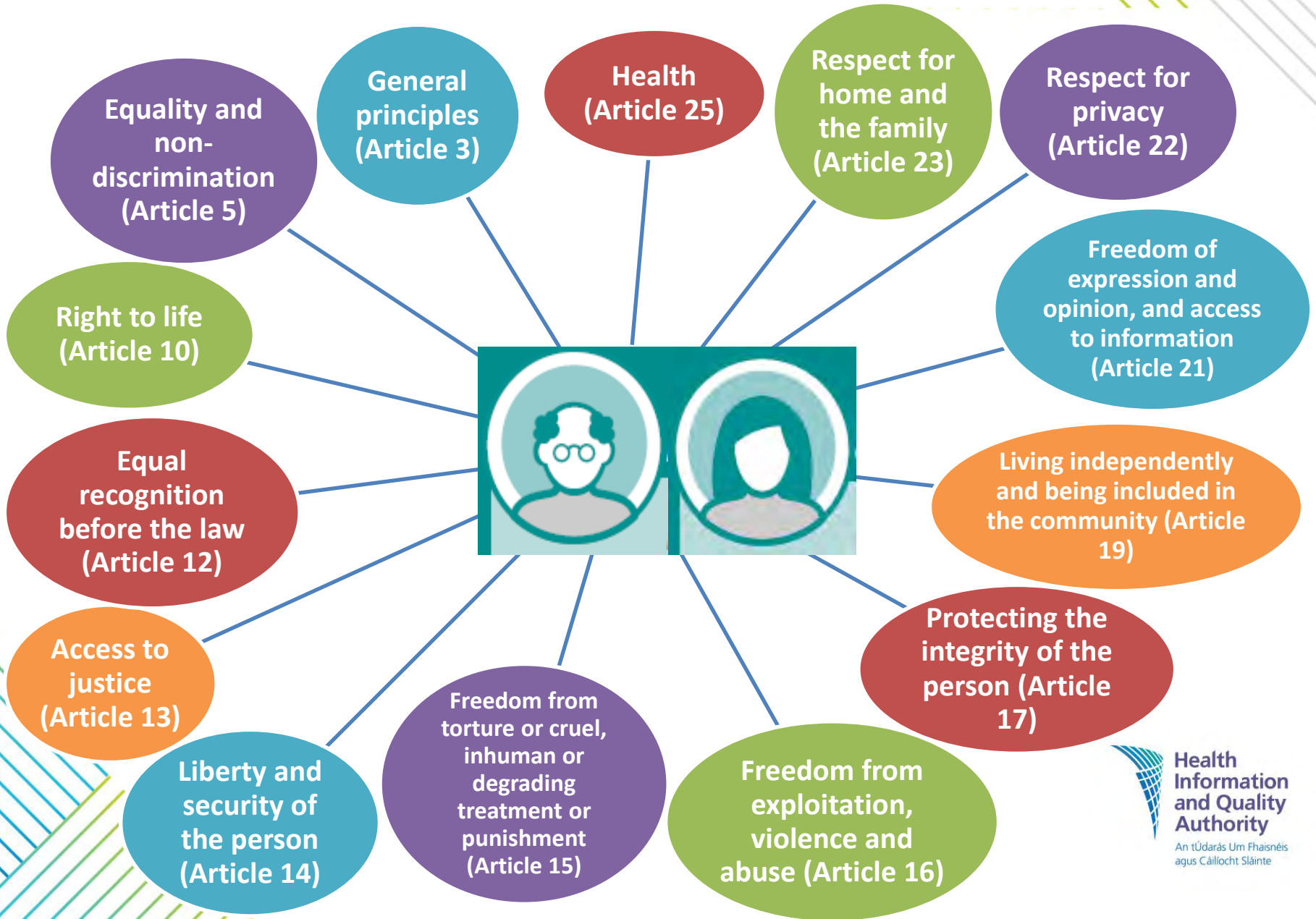
## Unenumerated rights relevant to health and social care:

- Right to privacy (*Article 40.3*)
- Right to bodily integrity (*Article 40.3*)

# ECHR: Key human rights articles for health and social care



# UNCRPD: Key human rights articles for health and social care



# Key human rights articles for health and social care - definition

**Right to life**



Article 2 of ECHR  
Article 10 of UNCRPD  
Article 40 of the Irish Constitution

How might this arise in a health or social care setting?

- For example, when a person's life may be at risk and decisions are being made to withdraw life-sustaining treatments or not to resuscitate a person.
- For example, when a person is experiencing suicidal thoughts.

# Key human rights articles for health and social care - definition

**Prohibition of torture**



Article 3 of ECHR

Articles 15 & 16 of UNCRPD

Article 40.3 of the Irish Constitution

How might this arise in a health or social care setting?

- For example, when someone receives continuing treatment/care that causes serious harm, suffering or humiliation.
- **For example, when a person's need for pain relief is not assessed or responded to.**

# Key human rights articles for health and social care - definition

**Right to liberty and security**



Article 5 of ECHR

Article 14 of UNCRPD

Article 40.4.1<sup>o</sup> of the Irish Constitution

How might this arise in a health or social care setting?

- For example, having blanket policies, conditions or rules in place in residential centres can negatively impact the liberty of people using the service.
- For example, when the use of a restrictive practice such as physical restraint is being considered.

# Key human rights articles for health and social care - definition

**Right to a fair trial  
and access to  
justice**



Article 6 of ECHR  
Article 13 of UNCRPD  
Article 38.1 of the Irish  
Constitution

How might this arise in a health or social care setting?

- For example, a person using services should be facilitated in accessing legal representation and or independent advocacy representation.
- For example, when a person wishes to make a complaint about a service.

# Key human rights articles for health and social care - definition

**Right to respect for private and family life**



Article 8 of ECHR  
Articles 19, 22 & 23 of UNCRPD  
Article 40.3 of the Irish Constitution

How might this arise in a health or social care setting?

- For example, people using services should be supported in deciding how they wish to live and whether or not to have intimate relationships and to marry.
- For example, when people are supported to participate in community life and to maintain and improve their health and wellbeing.



# Key human rights articles for health and social care - definition

**Freedom of thought, conscience and religion**



Article 9 of ECHR  
Article 3 of UNCRPD  
Article 44.2.1<sup>o</sup> of the Irish Constitution

How might this arise in a health or social care setting?

- For example, the values and beliefs of the person are considered when providing them with information about the risks and benefits of different treatment options.
- For example, services are tailored so that they are culturally sensitive for people using them.

# Key human rights articles for health and social care - definition

**Freedom of expression**



Article 10 of ECHR  
Article 21 of UNCRPD  
Article 40.6.1° of the Irish Constitution

How might this arise in a health or social care setting?

- For example, people using services should be supported and facilitated to express their wishes for their care and support.
- For example, the **person's wishes are adhered to in relation to what information is shared with their family.**

# Key human rights articles for health and social care - definition

**Prohibition of discrimination**



Article 14 of ECHR

Articles 3, 5, 17 and 25 of UNCRPD

Article 40.1 of the Irish Constitution

How might this arise in a health or social care setting?

- For example, if someone is treated differently to others under comparable circumstances on account of their characteristics (for example, on account of their age or sex).
- For example, if people with different characteristics (for example, different communication abilities) are treated the same, which can lead to unequal outcomes.

# Key human rights articles for health and social care - definition

**Right to protection of property**



Article 1 of Protocol 1 of ECHR

Article 12 of UNCRPD

Article 43.1.1<sup>o</sup> of the Irish Constitution

How might this arise in a health or social care setting?

- For example, when someone who is accessing treatment or services is able to access their possessions and property as required or requested.
- For example, when a person living in a residential centre is supported to make decisions for themselves about how to spend their money.

# National standards developed by HIQA

- High-level reference to human rights and a human rights-based approach to care and support is made in a number of the national standards developed by HIQA





# National Standards for Residential Services for Children and Adults with Disabilities (2013)

## Theme 1: Individualised Supports and Care

Standard 1:1	The rights and diversity of each person are respected and promoted.
Standard 1:2	The privacy and dignity of each person are respected.
Standard 1:3	Each person exercises choice and control in their daily life in accordance with their preferences.
Standard 1:4	Each person develops and maintains personal relationships and links with the community in accordance with their wishes.
Standard 1:5	Each person has access to information, provided in a format appropriate to their communication needs.
Standard 1:6	Each person makes decisions and, has access to an advocate and consent is obtained in accordance with legislation and current best practice guidelines.
Standard 1:7	Each person's complaints and concerns are listened to and acted upon in a timely, supportive and effective manner.



# National Standards for Residential Care Settings for Older People in Ireland (2016)

## Theme 1: Person-centred Care and Support

Standard 1.1	The rights and diversity of each resident are respected and safeguarded.
Standard 1.2	The privacy and dignity of each resident are respected.
Standard 1.3	Each resident has a right to exercise choice and to have their needs and preferences taken into account in the planning, design and delivery of services.
Standard 1.4	Each resident develops and maintains personal relationships and links with the community in accordance with their wishes.
Standard 1.5	Each resident has access to information, provided in a format appropriate to their communication needs and preferences.
Standard 1.6	Each resident, where appropriate, is facilitated to make informed decisions, has access to an advocate and their consent is obtained in accordance with legislation and current evidence-based guidelines.
Standard 1.7	Each resident's complaints and concerns are listened to and acted upon in a timely, supportive and effective manner.

# Codes of conduct and ethics

Respect for human rights is implicit in the codes and guides of conduct and ethics of different health and social care staff. See list of relevant codes and guides below:

- [Code of Professional Conduct and Ethics for Registered Nurses and Registered Midwives](#) (Nursing and Midwifery Board of Ireland, 2014)
- [Guide to Professional Conduct and Ethics for Registered Medical Practitioners](#) (Medical Council, 2009)
- [Social Workers Registration Board Code of Professional Conduct and Ethics](#) (CORU, 2019)



# Codes of conduct and ethics continued

- [Codes of Practice for those working in mental health services](#) (Mental Health Commission, 2006)
- [Rules of Professional Conduct Incorporating Code of Ethics and Guidelines for Professional Behaviour from the Irish Society of Chartered Physiotherapists](#) (Irish Society of Chartered Physiotherapists, 2014)
- [Occupational Therapists Registration Board Code of Professional Conduct and Ethics](#) (CORU, 2019)
- [Dental Council Code of Practice relating to Professional Behaviour and Ethical Conduct](#) (Dental Council, 2012)

# Linking national standards to human rights



Resources to support the implementation of *Guidance on a Human Rights-based Approach in Health and Social Care Services*



## Linking national standards developed by HIQA to human rights as set out in the European Convention on Human Rights Act 2003 and the United Nations Convention on the Rights of Persons with Disabilities 2006

A number of national standards developed by HIQA make high-level reference to a human rights-based approach to care and support. Within the national standards emphasis is placed on protecting and promoting people’s rights and respecting their autonomy, privacy, dignity, values, preferences and diversity. This includes the *National Standards for Safer Better Healthcare* (2012) as well as standards developed in the areas of older persons, disability, maternity, and adult safeguarding.<sup>1</sup> These national standards emphasise the importance of actively involving people using services in their own care and promote a culture of kindness, consideration and respect. This document provides an overview of the relationship between specific human rights, as set out in the European Convention on Human Rights (ECHR) and the United Nations Convention on the Rights of Persons with Disabilities (UNCPRD), and some of the national standards developed by HIQA; this is not intended to be an exhaustive list of standards.

Human Rights	<i>National Standards for Safer Better Healthcare</i> (2012)	<i>National Standards for Residential Services for Children and Adults with Disabilities</i> (2013)	<i>National Standards for Residential Care Settings for Older People in Ireland</i> (2016)	<i>National Standards for Safer Better Maternity Services</i> (2016)	<i>National Standards for Adult Safeguarding</i> (2019)
<b>Right to freedom from torture or inhuman or degrading treatment</b>  ECHR: Article 3 UNCPRD: Articles 15, 16	‘Service providers ensure all reasonable measures are taken to protect service users from abuse.’ (Standard 3.4)	‘Each person is protected from abuse and neglect and their safety and welfare is promoted.’ (Standard 3.1)	‘Each resident is safeguarded from abuse and neglect and their safety and welfare is promoted.’ (Standard 3.1)	‘Maternity service providers ensure all reasonable measures are taken to protect women and their babies from all types of abuse.’ (Standard 3.7)	‘The service strives to protect each person from the risk of harm and to promote their safety and welfare.’ (Standard 3.1)

Available to download [here](#) from the HIQA website

# Section 6: A human rights-based approach



# Why do health and social care staff need to apply a human rights-based approach?

- Supports the provision of person-centred care and support



- Professional obligation



- It's the law



# FREDA principles

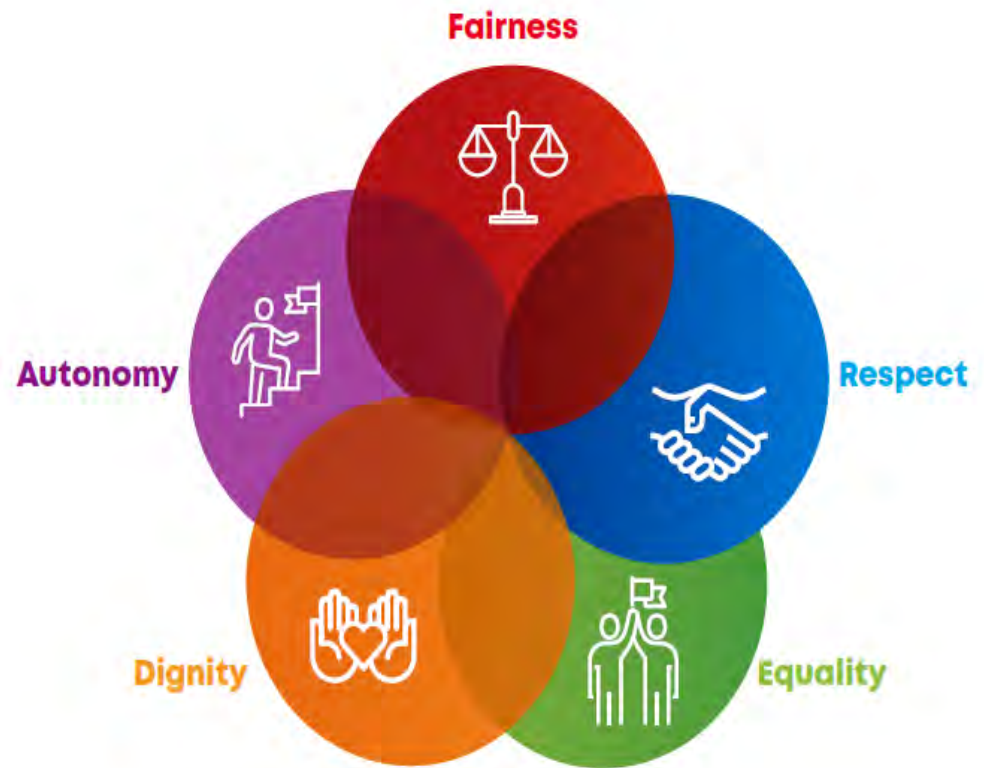
- It is helpful to focus on the aspects of legislation underlying core values of human rights (**F**airness, **R**espect, **E**quality, **D**ignity, **A**utonomy) rather than on the technical
- Useful to think of human rights in the day-to-day work of health and social care services within the context of principles.
- FREDA principles form the basics of good care.



Reference: Curtice M, Exworthy, T. FREDA: a human rights-based approach to healthcare. *The Psychiatrist*. 2010;34 (150-156).

# FREDA principles

- A human rights-based approach to health and social care involves all five FREDA principles.
- Principles are interdependent and should inform decisions, not determine them.
- The weight given to principles is dependent on the circumstances under consideration.



# FREDA principles

## Fairness

Fairness means ensuring that when a decision is made with a person using a service about their care and support, that the person is at the centre of the decision-making process.

## Respect

Respect is the objective, unbiased consideration and regard for the rights, values, beliefs and property of other people. Respect applies to the person as well as their value systems.

## Equality

Equality means people having equal opportunities and being treated no less favourably than other people on the grounds set out in legislation.

## Dignity

Dignity means treating people with compassion and in a way that values them as human beings and supports their self-respect, even if their wishes are not known at the time.

## Autonomy

Autonomy is the ability of a person to direct how they live on a day-to-day basis according to personal values, beliefs and preferences.

# 1



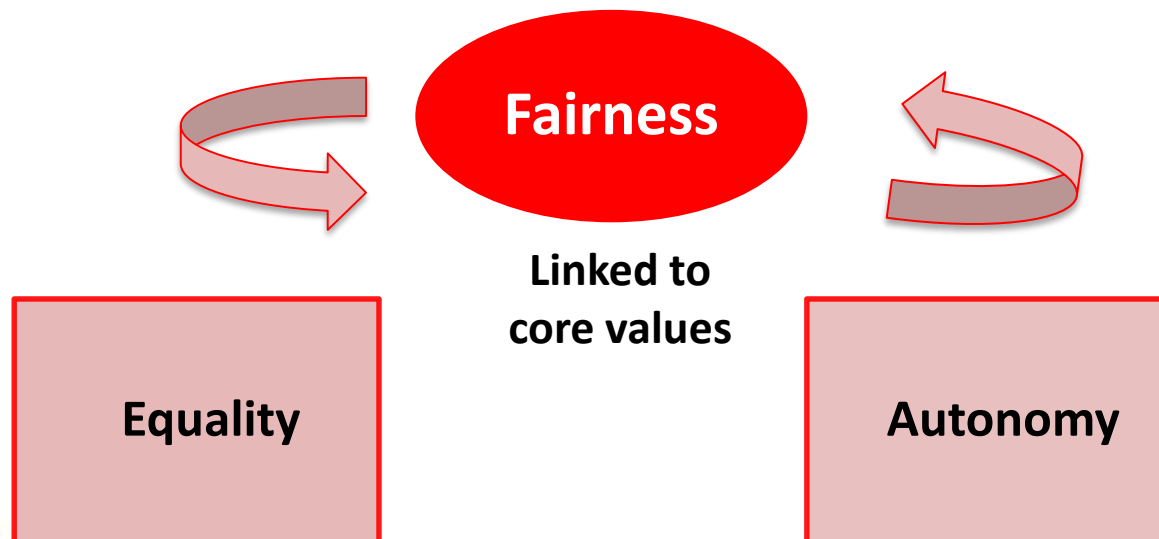
## Fairness



# Fairness

NB: The principles often overlap

Fairness means ensuring that when a decision is made with a person using a service about their care and support, that the person is at the centre of the decision-making process. **The person's views are sought, listened to and weighed alongside other factors relevant to the decision.** It is important that decisions are made in a way that is clear and fair, to allow others to know how they might be treated in similar circumstances. If a decision interferes **with a person's human rights, this must be legally justified, proportionate and only taken when all other alternatives have been considered.**



# Fairness



## How can you uphold fairness in your day-to-day work?

### Provide relevant information to people using services and recognise their right to:

- Receive information in a format and medium appropriate to their communication needs and preferences.
- Receive information about their own needs, condition, treatment and care provider in a format that they can understand and in a timely manner.
- Decide how much information they wish to receive.

# Fairness



## How can you uphold fairness in your day-to-day work?

### Providing relevant information:

- Recognise that people using services may need assistance to access information and to communicate their will and preferences.
- Provide people with accessible and tailored information on their treatment options, care providers and condition to facilitate independent and informed choices.
- Provide people with information on their human rights.

# Fairness



## How can you uphold fairness in your day-to-day work?

### Seeking consent:

- Fully explain the risks and benefits of proposed and alternative options in a format they can understand.
- Ensure the person using services is aware that they have a choice and they can give or withhold their consent freely and without pressure.
- If it is not possible for a person to make a decision, consult with the **relevant decision supporter, or with the person's family, friends or independent advocate** and consider any written documentation such as an advance healthcare directive.

# Fairness



## How can you uphold fairness in your day-to-day work?

### Facilitating access to and protecting personal information:

- **Facilitate people's access to** their personal information and information about their care and support.
- **Adhere to the person's wishes regarding sharing information with family.**
- Seek consent before sharing information and ensure that disclosure **adheres to legislation and upholds a person's right to a private life.**
- Sharing information without consent can only occur if there is a safety concern and it is in line with legislation to do so.

# Fairness



## How can you uphold Fairness in your day-to-day work?

### Ensuring participation during risk assessment:

- When it is necessary to conduct a risk assessment, ensure there are clear and consistent processes in place.
- Ensure that you conduct the risk assessment in consultation with the person using services and consider their views during the entire process.

# Fairness



## How can you uphold fairness in your day-to-day work?

### Supporting a person to provide feedback to a service:

- Facilitate an open, transparent and supportive environment that encourages people using services, their family members and carers to provide feedback, including making a complaint or raising concerns.
- Fully explain to people how they can make a complaint and facilitate access to support services for those who have made a complaint.
- Follow up on behalf of the person making the complaint to ensure it is responded to promptly, openly and effectively.

# Fairness



## How can you uphold Fairness in your day-to-day work?

### Supporting a person to make an Advance Healthcare Directive:

- Facilitate and support a person in creating an Advance Healthcare Directive, in line with their wishes.
- Ensure that the person's Advance Healthcare Directive is used to guide their treatment and care when they no longer have the capacity to make certain decisions for themselves.



# Fairness



## How can you uphold fairness in your day-to-day work?

### Minimising restrictive practices:

- Uphold your duty of care to promote a restraint-free environment in the service.
- Only approve a restrictive practice when there is a real and substantive risk to a person and the risk to the person of not using the practice outweighs the risk of using it.
- Ensure regular review where it is deemed that a restrictive practice is necessary.

# Fairness



## How can you uphold fairness in your day-to-day work?

### Participating in decisions:

- Ensure that all decisions that are made with a person are done in a way that is fair, open, timely and impartial.
- Ensure that the person plays a central role in the decision-making process and is provided with adequate time and support to make the decision.



## Case study - Fairness

Example of fairness being upheld in practice:

Marie is detained under the Mental Health Act 2001 in a mental health setting. Staff caring for Marie provide her with full information on her rights, including her right to legal representation, a second independent medical review and an independent review of her detention by a mental health tribunal. Staff go through this information with Marie and ensure her understanding. Staff facilitate Marie's access to these options. Providing this information and support enables Marie to challenge any issue in relation to her detention. It also ensures that staff fulfil their duty by ensuring people using their services are not unlawfully detained.



## Case study - Fairness

Example of fairness not being upheld in practice:

Jack has an intellectual disability and lives at home with his parents. **Jack's** parents control his finances as they believe he is not capable of managing his own money. Jack attends a day centre during the week and has told staff that he would like to manage his own money. Staff are aware that Jack has never been supported to learn the skills of managing his own money. They feel he has the right to choose how he spends his own money and is capable of doing so **with training and support. However, they also feel that Jack's parents know best and do not interfere with their wishes. Both the staff and Jack's parents have** prevented Jack from managing his own money without legal justification. By making this decision without consulting Jack, the staff and Jack's parents have failed to uphold the principle of fairness.



# Fairness: Self-reflection

- When seeking consent, did I encourage people to ask questions?
- Did I tailor the information I provided to people to suit their individual needs so that they could make independent choices?
- Did I actively seek feedback on my work from the people I provide care and support to?
- Did I uphold my duty of care to promote a restraint-free environment in the service?

# 2



**Respect**

# Respect

NB: The principles often overlap



Respect is the objective, unbiased consideration and regard for the rights, values, beliefs and property of other people. Respect applies to the person as well as their value systems.

- Respect in health and social care settings is demonstrated by communicating in a courteous manner.
- People who use services must be listened to and what is important to them must be viewed as important to the service.
- Respect is central to providing person-centred care and support and **must be upheld regardless of a person's impairment or loss of capacity.**

# Respect



## How can you uphold respect in your day-to-day work?

### Day-to-day communication:

- Ensure that you introduce yourself properly to people using the service and clearly outline your role.
- Listen to the person without judgment and provide them with all the information necessary for them to make a decision about their care and support in a format they can understand.
- Consider the preferences and background of each person when providing information to them (for example, literacy, culture and religious beliefs).



# Respect



## How can you uphold respect in your day-to-day work?

### Person-centred care and support:

- Support the person using the service to be involved in the planning of their care and support, as much as possible.
- **Ensure that the person's care and support reflects their unique goals and focuses on what is important to them, how they want to live and what support they want to achieve their goals.**
- **Ensure the person's goals are reviewed regularly to reflect their up-to-date will and preferences, and that their care and support is revised accordingly.**

# Respect



## How can you uphold respect in your day-to-day work?

### Supporting relationships:

- Take the time to get to know the person using the service and their preferred lifestyle.
- **Support the person's wishes to maintain and develop** personal relationships with family and others.

# Respect



## How can you uphold respect in your day-to-day work?

### Supporting the achievement of human rights:

- Promote the person's right to access appropriate services and support them in realising all of their rights.
- Know who to ask for advice within the service, if you have a concern regarding a person's human rights.
- Know where to access advice outside of the service, if you have a concern regarding a person's human rights.

# Respect



## How can you uphold respect in your day-to-day work?

### Respecting property and personal information:

- Ensure that people using the service have access to their possessions and property as required or requested.
- **Respect the privacy of a person's personal information and medical records in line with data protection legislation and only share information if there is a legal basis to do so.**

# Respect



## How can you uphold respect in your day-to-day work?

### Participating in developing and evaluating services:

- Actively encourage people using the service to participate in the planning, design, delivery and evaluation of the service.
- Ensure that the preferences of people using the service are reflected in any decisions made.
- If there are changes in the service, consult with people using the service in order to consider their views and preferences.



## Case study - Respect

Example of respect being upheld in practice:

Claire has an intellectual disability and lives in the community. She is attending a vocational education centre. She wishes to travel on her **own by bus to her education centre each day. Claire's circle of support**, which includes her parents and support worker, recognise that this is important to her. They listen to her and do not judge her because of her disability. They respect her personal preference and look at how they can best facilitate her choice.



## Case study - Respect

Example of respect not being upheld in practice:

Martha lives in a residential centre for older people and shares a room with another resident. Martha would like to keep her possessions and **clothes in her own room but there is not enough space. Martha's** possessions and clothes are kept in a storage room down the hall and **staff choose Martha's clothes for her. Martha cannot access her** possessions when she wishes. She would like to be able to personalise her room and choose her own clothes every day but she is not supported by **staff to do so. Martha's right to access her possessions and property as** desired was not upheld.



# Respect: Self-reflection

- Did I take the time to listen to the person and to understand them as an individual without judgment?
- Did I view the person as an expert on their own life and support them to be involved in planning their care and support as much as possible?
- Did I facilitate people to access their own property and possessions?
- Did I support people to maintain personal relationships with their family and others according to their wishes?



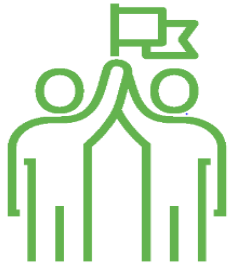
# 3



**Equality**

# Equality

**NB: The principles often overlap**



Equality means people having equal opportunities and being treated no less favourably than other people on the grounds set out in legislation. In an Irish context, these grounds are: age; civil status; disability; family status; gender; membership of the Traveller community; race; colour or nationality; religion or sexual orientation.

- Equality in health and social care is about ensuring that no one is discriminated against because of their status or characteristics.
- Equity in health and social care means recognising that some people using services, because of their needs or circumstances, require additional help and support to achieve the best possible outcome.

# Equality



## How can you uphold equality in your day-to-day work?

### Communicating respectfully:

- Communicate respectfully with all people using the service.
- Ensure that each person using the service is provided with information in a way that is tailored to their individual needs and preferences.
- This individualised approach should occur regardless of who they are or their communication ability.

# Equality



## How can you uphold equality in your day-to-day work?

### Providing quality care and support for all:

- Support people using the service you work in to get the care and support they need regardless of their status or characteristics.
- Ensure that the quality of care and support that you provide is the same for everyone.
- When people have more complex or varying needs, do everything you can to meet these needs so that they are able to achieve the same outcomes as others.

# Equality



## How can you uphold equality in your day-to-day work?

### Presuming and supporting capacity:

- Always presume that a person using the service has decision-making capacity.
- **Never judge a person's decision-making** ability on the basis of age; civil status; disability; family status; gender; membership of the Traveller community; race, colour or nationality; religion, or sexual orientation.

# Equality



## How can you uphold equality in your day-to-day work?

### Promoting participation in society:

- Take effective and appropriate steps to facilitate and promote a **person's full inclusion and participation in society**, for example, support them in their right to:
  - ✓ Vote
  - ✓ Have relationships
  - ✓ Participate in and have valued roles within political, religious, social, cultural and self-help or advocacy organisations.

# Equality



## How can you uphold equality in your day-to-day work?

### Encouraging equality and a human rights-friendly service:

- Promote a culture of equality within the service you work in, to ensure all people receive equitable care and support.
- Ensure that there are no blanket policies, conditions or rules in place in the service that could negatively impact people's human rights.

# Equality



## How can you uphold equality in your day-to-day work?

### Facilitating access to representation:

- When requested or needed, support the right of people using the service to access:
  - ✓ Legal representation of their choice.
  - ✓ Independent advocacy representation of their choice.





## Case study - Equality

Example of equality being upheld in practice:

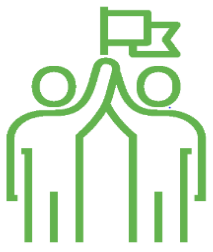
Annan is a Hindu. He is receiving care in an acute setting. Annan's condition has deteriorated and staff inform Annan's family that he is dying. Staff are aware of Annan's beliefs and discuss with his family how they can respect these beliefs. Just before death, Annan's family inform staff that he must be removed from his bed to the floor in keeping with his beliefs. Staff uphold the principle of equality and ensure Annan's religious beliefs are facilitated and respected.



## Case study - Equality

Example of equality not being upheld in practice:

**Sam is in his nineties and is living in an older person's residential centre.** He likes to be able to walk down to the local shops and pub. In the centre, there is a policy in place to keep the front door locked in case residents with cognitive impairments leave the centre unattended. Sam does not have a cognitive impairment and this blanket policy impacts on his right to liberty. Sam is being discriminated against and is frustrated that he has to ask for permission each time he wishes to go outside.



# Equality: Self-reflection

- Did I always presume that a person has decision-making capacity **and never judge a person's decision**-making ability based on age, disability or any other characteristic?
- Did I promote a culture of equality within the service, where all people receive equitable care and support so that they can achieve the best possible outcomes?
- Did I facilitate the right to legal representation and independent advocacy representation for those within the setting I work in?
- Did I take effective and appropriate measures to facilitate and **promote people's full inclusion and participation in society?**

# 4



**Dignity**

# Dignity

**NB: The principles often overlap**



Dignity means treating people with compassion and in a way that values them as human beings and supports their self-respect, even if their wishes are not known at the time.

- All human rights are connected to human dignity.
- When human dignity is upheld, it supports people using services to feel safe and improves their outcomes.
- A lack of dignity can result in feelings of insecurity, guilt, shame, worthlessness, anger, frustration, lack of confidence, inadequacy and reduced motivation.

# Dignity



## How can you uphold dignity in your day-to-day work?

### Meeting basic needs:

- Ensure that people's basic needs are met, for example food, clothing, personal care, and feeling safe, comfortable, valued and respected.
- Ensure that people have access to appropriate food and hydration and offer assistance if support is required to eat or drink.
- Ensure that people are not neglected or treated in any way that is likely to cause harm.

# Dignity



## How can you uphold dignity in your day-to-day work?

### Maintaining privacy:

- Ensure to respect the privacy of people when supporting them with their intimate care and during physical examinations.
- **Make all efforts to ensure a person's privacy when discussing their health and social care with them.**
- **Avoid rushing tasks so as not to impact a person's privacy and dignity.**

# Dignity



## How can you uphold dignity in your day-to-day work?

### Communicating sensitively:

- Address people using the service by their preferred name and gender pronoun and communicate with them in a way that respects their individuality, dignity and personal identity.
- If a person is unable to communicate verbally, work with them and with others who know them, as well as with other team members, to understand the best way to communicate with them.
- Take care not to patronise people, regardless of their age or other status.
- **Maintain a person's dignity at all times, even if they are unconscious.**



# Dignity



## How can you uphold dignity in your day-to-day work?

### Supporting a person's preferred lifestyle:

- Enquire about a person's preferred lifestyle, including routines, pets, personal care, clothing preferences, religious and cultural preferences.
- Facilitate their lifestyle as much as possible in their care and support.
- Where a person's preferred lifestyle is not easily known, consult with others who know them to ascertain their past and present preferences.

# Dignity



## How can you uphold dignity in your day-to-day work?

### Minimising restrictive practices:

- Ensure that a person is supported to move around freely, for example the person is not confined to a bed or a chair when this is unnecessary.



## Case study - Dignity

Example of dignity being upheld in practice:

Fiona is pregnant and has started to experience depression. She has been referred to a midwife with mental health expertise in her local maternity hospital. Fiona does not want others finding out about her depression. The mental health midwife ensures that her privacy is respected at all times. When Fiona is called for her appointment, although the room is a few minutes walk from the waiting area, the midwife ensures they are in the consultation room and cannot be overheard before they begin talking.



## Case study - Dignity

Example of dignity not being upheld in practice:

Daniel has difficulties communicating verbally and is admitted to hospital with complications associated with his diabetes. The healthcare practitioners do not speak to Daniel about what care they are providing to him or what interventions are being carried out, because he cannot communicate verbally. In addition, staff do not assess whether Daniel can understand them and if there are other ways to communicate with him. Daniel is not provided with additional support to help him communicate with staff and therefore is not involved in any decisions regarding his care.



## Dignity: Self-reflection

- Did I ensure that all people I provided support to had their basic needs met, for example that they felt safe, comfortable, valued and respected?
- Did I avoid discussing care and support in public areas and did I ensure that phone calls and meetings were held behind closed doors?
- **Did I take the time to get to know a person's preferred lifestyle and did I facilitate their lifestyle as much as possible?**
- Did I ensure that I did not infantilise or patronise people using the service regardless of their age or any other status?

# 5



**Autonomy**

# Autonomy

NB: The principles often overlap



Autonomy is the ability of a person to direct how they live on a day-to-day basis according to personal values, beliefs and preferences. In a health and social care setting, autonomy involves the person using a service making informed decisions about their care, support or treatment.

- Health and social care staff have a key role in supporting people to make their own decisions regarding their treatment or care.
- Supporting autonomy is a fundamental aspect of person-centred care and support, and involves meaningful communication.
- **Respecting a person's autonomy can involve negotiation and compromise when a person's will and preferences impact on the rights, care and safety of others.**

# Autonomy



## How can you uphold autonomy in your day-to-day work?

### Seeking consent:

- Communicate clearly and effectively with the person using the service by using language or other means of communication that they can understand.
- Provide the person with adequate and relevant information about their care and support options so that they can make a fully-informed decision.



# Autonomy



## How can you uphold autonomy in your day-to-day work?

### Understanding and respecting a person's will and preferences:

- Understand and regularly review the will and preferences of a person in order to promote and support their autonomy when assisting in their decision-making process.
- **Support the person's choice in relation to care and support,** regardless of whether or not you believe it is the right decision.
- Seek advice or support if you observe or are concerned about **undue influence on a person's decision-making.**

# Autonomy



## How can you uphold autonomy in your day-to-day work?

### Supporting decision-making capacity and responding accordingly:

- Always presume a person has decision-making capacity and fully support them to make a decision for themselves.
- Do not presume that a person lacks capacity because they make a decision that seems unwise to you.
- If a person has been assessed as lacking capacity and if an intervention is urgent and it is unlikely the person will recover capacity in the short-term, ensure any action taken is in line with the Assisted Decision-Making (Capacity) Act 2015.

# Autonomy



## How can you uphold autonomy in your day-to-day work?

### Supporting decision-making capacity and responding accordingly:

- Understand that decision-making capacity is time and issue specific and where a person has been assessed as lacking capacity, ensure their capacity is reviewed when it is relevant and possible to do so.
- Where capacity is assessed as limited, support the person to increase capacity or reduce a restriction through skills development.

# Autonomy



## How can you uphold autonomy in your day-to-day work?

### Minimising restrictive practices:

- Always explore options other than restrictive practices when a person displays behaviour that challenges.
- When a restrictive practice is used, ensure that it is proportionate to the behaviour it is being used to restrict, is the least restrictive; is applied for shortest possible time; and is subject to a timely review.

# Autonomy



## How can you uphold autonomy in your day-to-day work?

### Supporting participation:

- Actively encourage the participation of people in the assessment, planning, delivery and evaluation of their care and support.
- **Be aware that a person's wishes to engage in the process may change over time and where a person chooses not to engage, regularly review their interest to re-engage.**

# Autonomy



## How can you uphold autonomy in your day-to-day work?

### Supporting independent living:

- Support people as much as possible to maintain or develop their ability to live independently.
- Support people to develop the skills necessary for community living.



## Case study - Autonomy

### Example of autonomy being upheld in practice:

Jane has a physical disability and had been living in a residential centre. However, she wished to live at home. Following discussion and assessment, her support team in the residential centre felt that this was not ideal, as she was considered to be a person with high needs. Jane and the team discussed this and she understood and agreed that she would not receive the same level of **care at home that she would have in the residential centre. Jane's wishes were** respected and she was supported to take a measured risk. This was not about discharging Jane from the service, but about supporting her to transition from the residential centre and continuing to provide her with care in a different setting. Staff supported Jane in exercising her autonomy by understanding and **respecting Jane's will and preferences and supporting her to live independently.** Staff communicate with Jane on a regular basis to make sure that her new living situation is working well for her and identify any additional supports that she may need.



## Case study - Autonomy

Example of autonomy not being upheld in practice:

Richard is an inpatient in an acute setting; he is suffering from complications associated with Parkinson's disease. Richard likes to eat quickly and on more than one occasion he has nearly choked on his meal. Staff assessed Richard's situation and prescribe that Richard's food be cut up. Richard was not consulted regarding this decision. He was not provided with information in the right format to ensure his understanding of the process and he was not consulted with regarding the next steps in his care plan. Richard does not want his food to be cut up and wishes he had been involved in the decision-making process and supported to participate in the planning of his care.





# Autonomy: Self-reflection

- Did I support people using the service in their choice for their care and support regardless of whether or not I believed it was the right decision?
- When a person was assessed as lacking decision-making capacity, did I ensure that their capacity was continuously reviewed and that changes were made according to the outcome of the review?
- Did I ensure that when a restrictive practice was used, that it was proportionate to the behavior it was being used to restrict; it was the least restrictive option; it was applied for the shortest time possible; and it was subject to a timely review?

# **Section 7:**

## **Case studies, practical exercise and useful resources**



## Case study – Jim

Jim has dementia and lives in a residential centre for older people. Patrick, a nurse, has recently started work in the centre.

On his first day, Patrick introduces himself to Jim and greets him warmly. He sits with Jim and asks him how he is. He speaks slowly to Jim and uses simple language. Throughout his first week at the centre, Patrick familiarises himself **with Jim's notes; reading about the hobbies Jim once engaged in, his family and his views and beliefs.** Patrick is aware of various techniques which could be used in order to make Jim as comfortable as possible, such as reminiscence therapy and art therapy. **Patrick speaks to Jim's family and friends and listens to their opinions on the various interventions that may help him.**

Patrick wants to build a relationship with Jim but this can be challenging as Jim frequently becomes confused and angry. This occurred on one occasion when Patrick assisted Jim in changing his clothes and Jim became frustrated. Although Patrick was under time pressure, he **respected Jim's frustrations and gave him time before trying again. Patrick ensures Jim's privacy is protected when performing intimate care tasks.**

**Respect** is upheld. Patrick takes the time to introduce himself properly to Jim when they first meet and he speaks to him in a way that Jim can understand.

**Autonomy** is upheld. Patrick makes **every effort to determine Jim's individual needs and preferences.** He **also talks to Jim's family and friends** and listens to their suggestions based on their personal knowledge of Jim.

**Dignity** is upheld. Patrick does not **rush tasks that affect Jim's personal privacy.** He communicates with Jim in **a way that respects Jim's individuality** and personal needs and preferences.



## Case study – Jim continued

Jim has told Patrick that he would like his wife to be kept up-to-date about the care he is receiving. With Jim's consent, Patrick meets with Jim's wife regularly to keep her informed about Jim's care. Patrick also views these meetings as opportunities to get feedback from Jim's wife about the care and support provided to Jim.

By spending time with Jim, Patrick begins to understand him more – learning about his history, what works for him, what has not worked for him, and what triggers certain emotions. Jim's notes reveal that he enjoys company and Patrick works to understand how to interact with Jim on a level he feels comfortable with. Patrick initially engaged with Jim as he would with any other person using the service by making conversation. However, this had put a lot of strain on Jim. Every subsequent interaction Patrick has with Jim involves him being present and caring, but not necessarily vocal. Jim likes art and once a week Patrick arranges outings with him to a local art gallery. When communicating with Jim, Patrick makes remarks rather than asking Jim questions, placing no onus on Jim to answer him or engage with him if he would prefer not to. These short interactions allow Patrick to build a more trusting relationship with Jim.

**Fairness** is upheld. Patrick follows Jim's wishes in relation to sharing information about his care. Patrick welcomes feedback on the care and support he provides to Jim.

**Equality** is upheld. It is important to understand the impact that treating Jim the same as everyone else would have on him. Patrick understands that this could lead to indirect discrimination.



## Case study – Claudia

Claudia is in her late 50s and has a physical disability. She lives in a residential care centre. She recently saw a TV advertisement about BreastCheck and wondered why she had not yet received a letter regarding this.

Claudia asked the nurse on duty why she had not received a letter and even though the nurse did not **know, she did not follow up on Claudia's query.** Claudia found it upsetting that her query was not taken seriously and spoke to her support worker, Fiona, about her concerns. Fiona found out that the centre had received the letter but had discarded it. Claudia arranged an appointment with the resident GP to discuss the matter. **At Claudia's request, Fiona accompanied Claudia to her appointment.**

Claudia explained what had happened and although her GP did not know how or why this had happened, he explained to her how she could access the screening programme and provided her with written information about it. Claudia was glad she had visited the GP as she felt she had been listened to and taken seriously.

**Respect** was not upheld. Claudia's nurse did not provide adequate answers to her questions and did not provide her with information on the options available to her. She was not supported to access and realise her rights.

**Dignity** was not upheld. Claudia was not taken seriously by the nurse.

**Equality** was not upheld as Claudia's care did not promote equity of outcomes. It is important that her will and preferences are respected in the same way as others, regardless of her characteristics or status.



## Case study – Claudia continued

Claudia wanted to make a complaint about not receiving the letter as she felt that her health had potentially been put at risk. However, Claudia did not know how to do this as there was no information available in the centre. She asked for assistance from Fiona, who helped her write a letter of complaint to the centre manager. The centre manager sent a letter of apology to Claudia, explaining what had happened to her letter from BreastCheck and stating that all efforts would be made to ensure she received a date for her screening appointment as soon as possible. Claudia was also reassured that procedures would be put in place to prevent this from happening to anyone in the centre again.

**Fairness** was upheld in that Claudia was supported in making a complaint by her care worker. The centre manager upheld fairness by making efforts to rectify the situation by putting proper procedures in place.

**Autonomy** was upheld. Claudia was supported throughout the process by her support worker who ensured her will and preferences are central to it.



## Case study – Mark

Mark is an 80-year-old adult with hearing loss living in a nursing home. Over the past number of years, Mark's sight has deteriorated and he is now legally blind. Mark's wife died a number of years ago and he does not have any children. He is close to his niece, Marie, who visits him regularly. The resident GP comes to see Mark, as he is experiencing severe abdominal pain and vomiting. His GP sends him to the emergency department for further tests, and Mark is diagnosed with appendicitis.

The plan is to proceed with surgery to remove Mark's appendix. Mark's doctor, James, meets with him in his six-bed ward when Marie is visiting him. James introduces himself and asks Mark if he would like anyone to be with him when he receives information about his surgery. Mark says that he would like his niece to stay with him when discussing his care. James closes the curtains halfway around his bed. He knows that Mark has difficulty hearing and therefore moves closer to speak with Mark explaining that he will need surgery.

**Respect** was upheld. Mark was provided with information about his condition and treatment, and had his questions answered in a way he understands. Mark's doctor showed respect in addressing his hearing loss by moving closer to speak with him.

**Equality** was upheld when Mark's will and preferences were respected regardless of his characteristics or status.

**Dignity** was upheld. He was communicated with in a way that acknowledged his personal identity and individuality. However, by not closing the curtain fully, his physical privacy was compromised.



## Case study – Mark continued

James ensures he follows the necessary guidelines for good practice in seeking consent to treatment. He explains to Mark the benefits and risks of the proposed surgery and the consequences of not having surgery. He explains the procedure using simple language and avoids complex medical terminology where possible. He asks Mark how he would like to receive the information. As Mark has difficulties with his sight and hearing, he is provided all relevant written information about the procedure in large bold print which he is able to read. Mark is fully informed and actively involved in the process. James encourages him to ask questions and he **checks Mark's understanding throughout the discussion.** He gives Mark time to reflect on the information and to think of further questions to ask.

Mark is anxious about the surgery and has a number of **questions. Mark's doctor spends time answering these** questions clearly, which eases his fears. Mark gives his consent to undergo surgery for his appendicitis. James is aware that Mark came to this decision by himself.

**Fairness** was upheld as there was a clear and fair process in place governing informed consent and Mark was provided with accessible information in a format of his choice on his treatment options. Mark was supported to participate in the decision-making process.

**Mark's autonomy** was upheld throughout this process, resulting in him making an informed decision to consent to surgery freely and without duress.



# Decision-making flow charts

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### Decision-making flow chart

This document provides a decision-making aid\* that uses a human rights-based approach to care and support. The flow chart is a helpful tool for staff when making decisions in relation to a person's care. The case study set out in the flow chart relates specifically to a situation that can arise in services for end-of-life care, but the process is adaptable across settings.

This document also includes a blank flow chart so that staff can use the aid when making decisions within the health and social care setting they are working in.

- 1. What is the decision?**  
Bill is on an end-of-life pathway and wishes to be discharged from hospital to return home to die, against medical advice.
- 2. Who is affected and how?**  
Bill is directly affected. If he were to remain in hospital against his wishes, he would have less control in his final stage of life. Bill's family are affected by the decision. Bill's consultant who will be discharging Bill is also affected by this decision.
- 3. Who has made the decision?**  
Bill's consultant knows that this is Bill's decision to make, but he is concerned Bill will not receive adequate physical care and pain management at home.
- 4. Will the decision affect anyone's rights as set out in the European Convention on Human Rights (ECHR) Act 2003?**  
Bill's consultant considers which of Bill's rights are impacted in this situation. Discharging Bill will support his personal choices, relationships and mental wellbeing. It will uphold the FREDA principle of Respect, in addition to Article 8 (the right to respect for private and family life), and Article 5 (the right to liberty) of the ECHR. However, discharging Bill may lead to him not receiving appropriate care, such as pain relief. This could impact on the FREDA principle of Dignity, and Article 3 (prohibition of torture).
- 5. If the decision involves a human rights restriction, is it lawful, legitimate and proportionate?**  
Bill's decision to leave may impact on his rights. Therefore the following test must be applied: there must be law or policy that allows the restriction of the rights and there must be legitimate reason for restricting the right and the restriction must be absolutely necessary. Bill's consultant is legally obliged to respect Bill's wishes even though he feels it is an unwise decision. It is Bill's wish to return home and avail of community palliative care.
- 6. If the decision involves a human rights restriction, is it lawful, legitimate and necessary?**  
Bill's consultant explores with him the palliative care and other supports available to him at home. He ensures and documents that Bill has all of the available information necessary to make a decision about his care and support, in a way he can understand, and has had his questions answered in a way he can understand. With Bill's permission, he refers Bill to the palliative care and other supports in the community.

\*This flow chart was developed by the British Institute of Human Rights and has been adapted for an Irish context with permission.

Guidance and the support tools can be accessed at [www.hiqa.ie](http://www.hiqa.ie)

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Available to download [here](#) from the HIQA website

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### The FAIR approach to decision making in health and social care

This document sets out the FAIR approach to decision making in health and social care services, developed by the Scottish Human Rights Commission. This resource has been designed to help staff consider their actions when faced with a decision that may restrict the rights of a person using a service.<sup>1</sup> In this approach, respecting the dignity of a person using services is central to all decisions made by staff. The below chart sets out the type of questions asked and the appropriate responses that should be undertaken by staff using this approach. The example relates specifically to a situation that can arise in a home care setting but the process is adaptable across settings.

This document also includes a blank flow chart for staff to use when faced with such decisions.

- Facts**
  - What is the experience of the individual?
  - Is the individual being heard and if not, do they require support to do so?
  - What are the important facts to understand?

Michael has emphysema and is breathless. He does not appear to want his daughter Lisa to be present when he is being supported to go to the bathroom.
- Analysis of the rights at stake**
  - What are the human rights or issues at stake?
  - Can the right be restricted?
  - What is the justification for restricting the right?
  - Is the restriction on the right 'proportionate'?

Michael's right to privacy is at stake here. This right can be restricted. The justification for the restriction is that Lisa wants to be involved in her father's care. This does not appear to be proportionate as it does not take Michael's wishes into account and is not necessary for his care.
- Identification of shared responsibilities**
  - What changes are necessary?
  - Who has responsibilities for helping to make the necessary changes?

The care workers have a responsibility to explain to Lisa that it is her father's wishes and right to have privacy for his personal care needs. Lisa has a responsibility to take account of her father's right to privacy.
- Review actions**
  - Have the actions taken been recorded and reviewed and has the individual affected been involved?

Has Michael participated in decisions made about his care?  
Have Michael's rights been explained to Lisa?  
Are staff aware of the privacy rights of Michael?  
Have the actions taken and Michael's preferences been recorded?

<sup>1</sup> Scottish Human Rights Commission. A human rights-based approach: an introduction. Scotland. <http://careaboutrights.scotishhumanrights.com/flowchart.html>

Guidance and the support tools can be accessed at [www.hiqa.ie](http://www.hiqa.ie)

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# Practical exercise



# Case study – Jack



Jack **has an intellectual disability and lives at home with his parents. Jack's** parents control his finances as they believe he is not capable of managing his own money.

Jack attends a day centre during the week and has told staff that he would like to manage his own money. Staff are aware that Jack has never been supported to learn the skills of managing his own money. They feel he has the right to choose how he spends his own money and is capable of doing so with training and support.

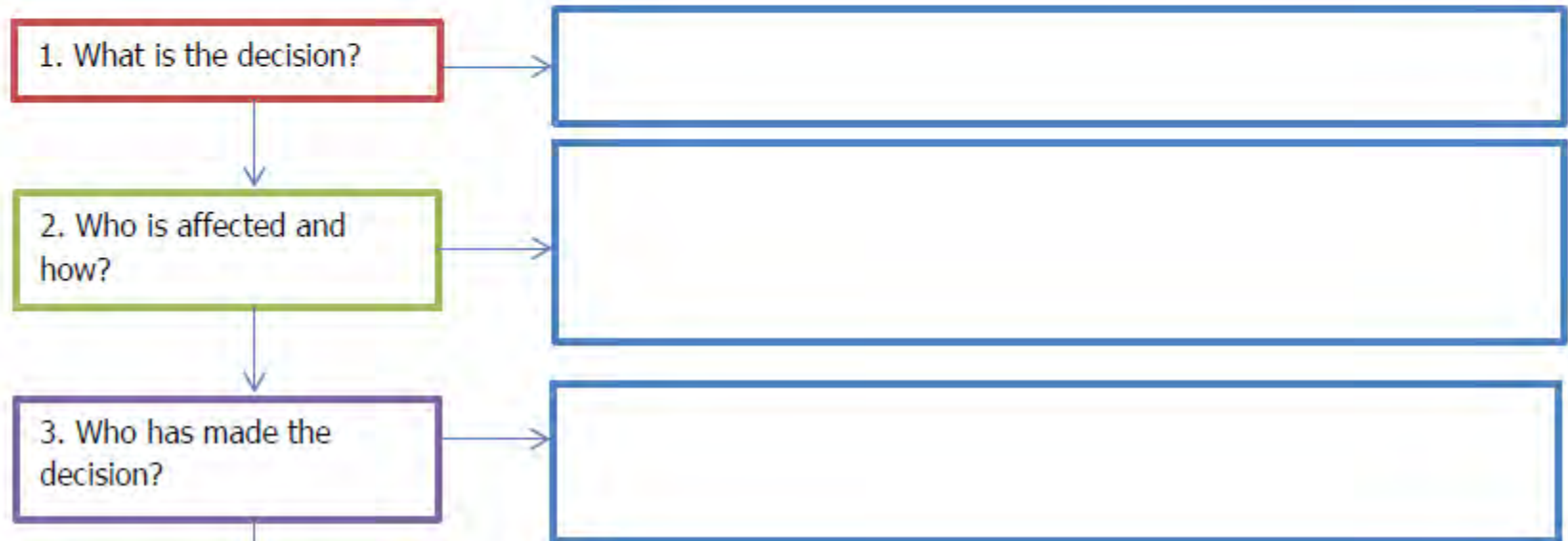
However, **they also feel that Jack's parents know best and do not interfere with their wishes. Both the staff and Jack's parents have prevented Jack from** managing his own money without legal justification. By making this decision without consulting Jack, the staff and Jack's parents have failed to uphold the principle of fairness.



# Decision-making flow chart

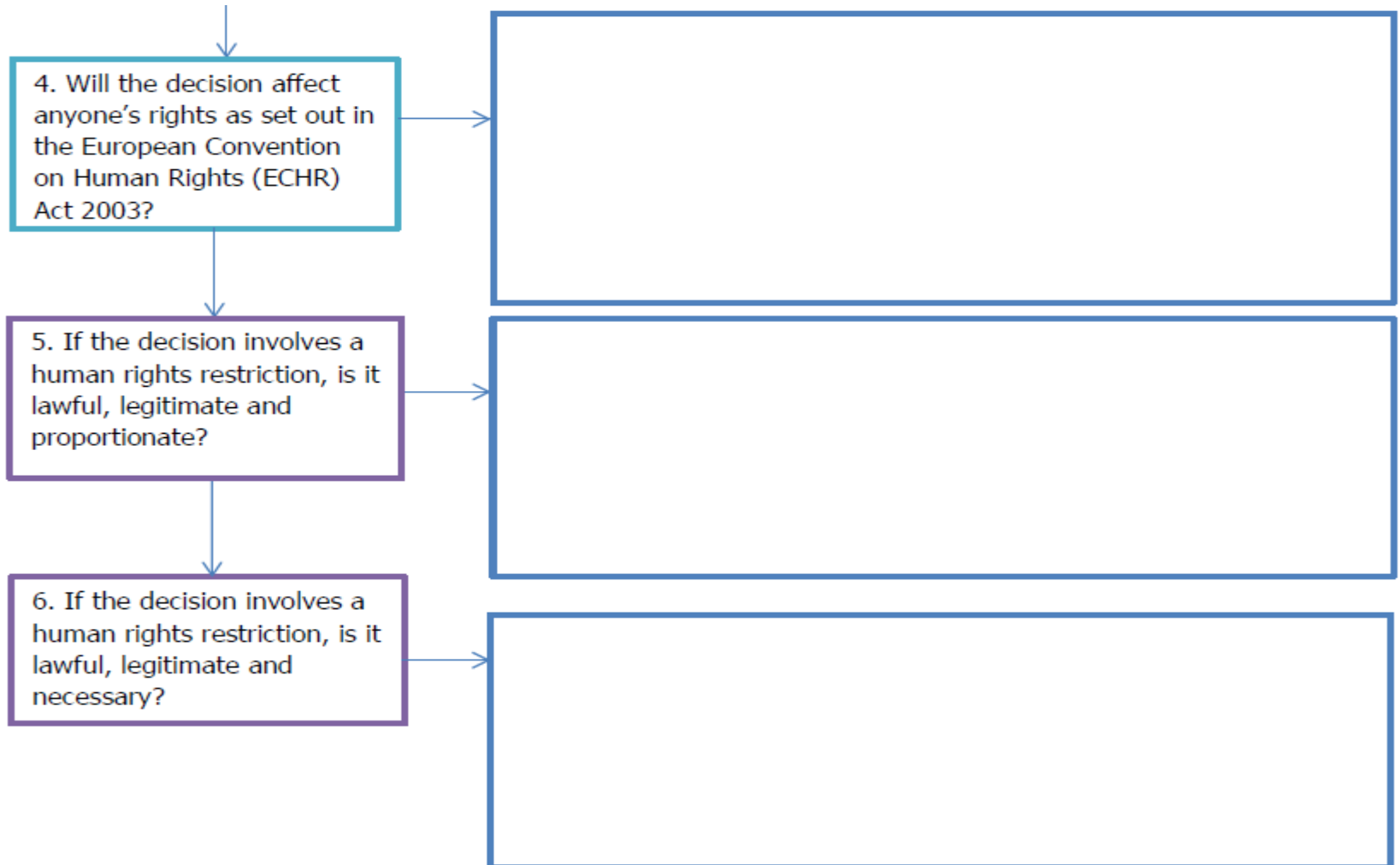


Resources to support the implementation of  
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# Decision-making flow chart



# Human rights complaints procedure in Ireland

- Irish citizens have a number of rights and remedies available to them if they feel their human rights have been violated. The Irish courts are responsible for determining allegations of human rights violations.
- While Ireland has ratified a number of international human rights treaties, under Irish law an individual can only engage the protections afforded under international law if they have been incorporated into national law.
- Irish citizens can bring a case to the European Court of Human Rights if domestic remedies have been exhausted.
- **IHREC provides a 'Your Rights' service, which provides individuals with information on their rights and the remedies available to them under national equality and human rights law.**

Further information available at:

<https://www.ihrec.ie/your-rights/can-we-help/>

# Useful resources

## Resources to aid understanding and support implementation of a human rights-based approach in health and social care services:

- Guidance on a Human Rights-based Approach in Health and Social Care Services
- Frequently asked questions about the Guidance
- An overview of the legal framework underpinning a HRBA
- Decision-making flow chart for health and social care staff
- FAIR Approach to decision making for health and social care staff
- Document linking national standards to human rights
- Background document
- Statement of outcomes

Guidance and additional resources available [here](#) to download from the HIQA website.

# Further reading

## Published documents:

### **National Consent Policy**

Health Service Executive, 2019

Homepage: [www.hse.ie](http://www.hse.ie)

### **Supporting People's Autonomy: A Guidance Document**

HIQA, 2016

Homepage: [www.hiqa.ie](http://www.hiqa.ie)

### **Guidance on promoting a care environment that is free from restrictive practice: Disability Services**

HIQA, 2016

Homepage: [www.hiqa.ie](http://www.hiqa.ie)

### **Information on human rights for staff**

Health Service Executive

Homepage: [www.hse.ie/eng/staff/resources/diversity/](http://www.hse.ie/eng/staff/resources/diversity/)

### **'Hello my name is....' Checklist for Implementation**

Health Service Executive, 2016

Homepage: [www.hse.ie](http://www.hse.ie)

### **Guidance for Designated Centres: Risk Management**

HIQA, 2014

Homepage: [www.hiqa.ie](http://www.hiqa.ie)

### **Guidance on promoting a care environment that is free from restrictive practice: Older People's Services**

HIQA, 2016

Homepage: [www.hiqa.ie](http://www.hiqa.ie)

### **National standards and guidance developed by HIQA**

HIQA

Homepage: [www.hiqa.ie](http://www.hiqa.ie)



# Further reading

## Key legislation:

### **Universal Declaration of Human Rights 2006**

Homepage: [www.un.org/en/universal-declaration-human-rights/](http://www.un.org/en/universal-declaration-human-rights/)

### **European Convention on Human Rights Act 2003**

Homepage: [www.irishstatutebook.ie](http://www.irishstatutebook.ie)

### **The Equal Status Acts 2000-2015**

Homepage: [www.irishstatutebook.ie](http://www.irishstatutebook.ie)

### **The Irish Human Rights and Equality Commission Act 2014**

Homepage: [www.irishstatutebook.ie](http://www.irishstatutebook.ie)

### **European Convention on Human Rights 2003**

Homepage: [www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)

### **United Nations Convention on the Rights of Persons with Disabilities 2006**

Homepage: [www.un.org](http://www.un.org)

### **Assisted Decision-Making (Capacity) Act 2015**

Homepage: [www.irishstatutebook.ie](http://www.irishstatutebook.ie)

### **The Charter of Fundamental Rights of the European Union 2000**

Homepage: [www.citizensinformation.ie](http://www.citizensinformation.ie)

# Thank you

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