NHS Health Scotland and the Scottish Human Rights Commission (the Commission) are working in partnership to promote a greater understanding of human rights in policy and decision making processes across the NHS.

The Commission has a mandate to promote awareness, understanding and respect for human rights in Scotland. The Commission regards impact assessment as one of the key ways in which human rights, and a culture of human rights, can be systematically mainstreamed and embedded into the policies, practices, procedures and priorities of government, public and private bodies.

NHS Health Scotland has a role in supporting the NHS to embed equality into its policy, planning and practice. One of the contributions to this work is promoting and supporting practice on the health inequalities impact assessment (HIIA) approach. The approach is underpinned by the different but complementary drivers of legislation (e.g. Equality Act 2010 and Human Rights Act 1998) and policy (e.g. Equally Well 2008 and NHS Quality Strategy 2010). It brings together consideration of equality, health and human rights issues into the policy and decision making process. It is intended to support better decisions and contribute to improving services for patients, service users and staff.

Delivering improved outcomes for people through the impact assessment process is only as good as the knowledge, understanding and evidence considered in the process. It is recognised that there can be limited understanding of how human rights can relate to policy development and how it is brought into the impact-assessment process.

This short publication aims to demonstrate through case studies how human rights principles and standards are relevant to the design, development and delivery of policy. The case studies relate to the following policy areas:

- Scottish Government’s proposals regarding the integration of health and social care
- NHS Tayside’s Dementia Care Planning
- NHS Ayrshire and Arran’s Community Ward
- see me’s National Campaign Plan (see me is an alliance of five civil society mental health organisations and is funded by the Scottish Government)
Why consider human rights in the impact assessment process?

The case studies illustrate how a human rights perspective has added value to an impact assessment process which otherwise considers differential or discriminatory impacts in relation to equality. This can lead to specific recommendations to inform policy making, resulting in improvements to the care, treatment and experience of patients, and users of our services, their families and our staff.

Human rights provides a starting point for analysis that

‘All human beings are born free and equal in dignity and in rights.’
(Universal Declaration of Human Rights)

The universality of rights and the equal enjoyment of rights by all persons provides a different perspective on some of the policy areas considered in the case studies.

Human rights prompt consideration of how a policy might drive up standards of services and enhance positive impacts for all people, not only those defined by particular characteristics. The analysis also flags up where an impact might reach thresholds which could amount to a violation of rights, including those impacts already identified by an equality analysis.

As well as filling any gaps left by an equality analysis, a human rights based approach requires consideration of the proportionality of impacts and of policy responses. This means giving consideration to whether policy responses are at all times the least restrictive of human rights. This can lead to an analysis which takes a holistic view of the policy and its interrelationship with other policy areas. It can also identify how improvements might be made to enhance positive impacts for people or avoid negative ones.

How to use these case studies

These brief case studies are not intended as a comprehensive study of each of the policy areas but do provide a starting point of human rights considerations. The high-level analysis contained here is considered to be similar to the stage policy makers might reach at the end of the scoping workshop stage of the HIIA process. Further analysis through evidence gathering and research and stakeholder participation would be required as part of the impact assessment process.

We hope that by reading the case studies you may develop your own understanding of how human rights relates to policy making and the types of issues that you might expect to be raised and discussed when using the HIIA, or other human rights impact assessment methodology.

Key human rights impacts are highlighted in bold within each case study.
The Human Rights Act (1998)

The key rights considered in these short case studies are the rights incorporated from the European Convention on Human Rights into the law in Scotland through the Human Rights Act 1998 and the Scotland Act 1998. These include:

- the right to life
- the right not to be tortured or treated in an inhuman or degrading way
- the right to liberty and security
- the right to a fair trial
- the right to respect for private and family life, home and correspondence
- the right to freedom of thought, conscience and religion
- the right to freedom of expression
- the right to freedom of assembly and association
- the right not be discriminated against in relation to the enjoyment of any of the rights contained in the Convention
- the right to peaceful enjoyment of possessions
- the right to education
- the right to free elections.

Human rights protected by the international treaties signed up to by the UK, such as the rights contained in the International Covenant on Economic, Social and Cultural Rights (ICESCR), International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of Persons with Disabilities are also given brief consideration where relevant.

Human rights based approach

The analysis also considers the principles of a human rights based approach as this can provide different ways of analysing certain issues. These are known as the PANEL principles and can be described as following:

- **Participation.** Everyone has the right to participate in decisions which affect their human rights.
- **Accountability.** Accountability requires effective monitoring of human rights standards as well as effective remedies for human rights breaches. For this there must be appropriate laws, policies, institutions, administrative procedures and mechanisms of redress in order to secure human rights.
- **Non-discrimination and equality.** All forms of discrimination in the realisation of rights must be prohibited, prevented and eliminated. It also requires the prioritisation of those in the most marginalised situations who face the biggest barriers to realising their rights.
- **Empowerment.** Individuals and communities should know their rights. It also means that they should be fully supported to participate in the development of policy and practices which affect their lives and to claim rights where necessary.
- **Legality.** A human rights based approach requires the recognition of rights as legally enforceable entitlements and is linked in to national and international human rights law.

Further information about human rights and human rights legislation is available in the appendix to this resource pack.
Further support and resources

If you would like support in applying the health inequalities approach to impact assessment or would like to discuss how to include human rights considerations into your impact assessment processes, please contact Katy Hetherington or Jo Marwaha at NHS Health Scotland.

Contact details

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Programme Manager    Senior Equality Officer
NHS Health Scotland    NHS Health Scotland
Katy.Hetherington@nhs.net     Joanne.Marwaha@nhs.net
Tel: 0131 3137561           Tel: 0141 3542923

Further resources, including specific human rights resources, are available at www.healthscotland.com/equalities/humanrights.aspx

To read more about the work of the Commission, you can visit the Commission’s website at: www.scottishhumanrights.com

This case study resource pack was produced by the Commission and NHS Health Scotland, working with NHS Boards, Scottish Government and see me.
Rationale and aims of policy

The NHS Ayrshire and Arran community ward seeks to develop a multidisciplinary health and social care community-based service for patients considered to be at the highest risk of unplanned hospital admission. It aims to increase the quality of life for those it supports through enabling them to remain at home with care provided in a coordinated and integrated way.

The multidisciplinary approach can involve input from social work, district nursing, carers, GPs, paramedics and others.

Commentary on key human rights impacts

The right to a private home and family life is one of the key rights engaged in several aspects of the implementation of this strategy. Key aspects to this human rights decision are the right to a home life, family life, physical and mental integrity, quality of life, wellbeing, autonomy, legal capacity and the right to participate in decision making. Participation in decision making and legal capacity are key to the realisation of an individual's dignity and rights.

Capacity to make decisions should be assumed and individuals should be provided with the support they require to enable them to make informed decisions – understanding the implications of their decisions. Efforts should be made to understand the previously expressed wishes of an individual who may lack capacity and to support people to make decisions while they have capacity for what should happen to them if their capacity reduces.
The aim of this policy pursues a positive human rights objective of increasing the ability of people to live at home and independently as a member of a community, with adequate support (this also advances the right to independent living). There is a strong presumption that the state should pursue deinstitutionalisation of care, particularly of people with disabilities. Previous pilots of ‘virtual wards’ have led to a significant reduction in acute admissions, patients spending less time in institutional settings and more time at home, increasing contact with their family. However, these positive impacts rely upon staff taking a rights-based, functional (rather than status-based) approach to assessing capacity and supported decision making, which must be built into the policy implementation. Importantly, individuals should be free to decide not to receive care in the community setting should they require hospital care. Some may feel more secure knowing they will have access to hospital care should they require it and to receiving that care in an institutional setting.

The family life as well as the psychological wellbeing of individuals is also at stake in the implementation of this policy. It has been recognised that social isolation affects many older persons as well as carers. In particular, older women who may out-live their partners, or are carers, are vulnerable to these impacts. Access to services and social contact will be essential to the full realisation of this right for those with limited social contact or opportunity to engage in the social, political or cultural life of the community. Steps should be taken to lessen, compensate for or avoid the risk that this policy may contribute to a further sense of isolation.

This policy may have an indirect impact on the autonomy, physical integrity, right to an adequate standard of living and right to work of informal carers. The identification of carers as a differentially impacted group should be followed by a consideration of the proportionality of that impact and the possibility of mitigation (such as respite care, health support, training in lifting and handling), which a human rights assessment highlights. Using a human rights-based approach carers, whose rights will also be affected, should be involved in shaping the policy and have a right to take part in decisions on whether an individual should receive care in a community ward.

The right to life and the right to freedom from inhuman or degrading treatment are absolute rights which include a positive duty to protect individuals from an immediate risk to those rights of which public authorities are or should be aware. In a community setting, oversight of risks to life or of being left in unsanitary conditions may be more challenging than in an institutional setting. The design of this policy should consider all reasonable steps to ensure that this risk is avoided. Previous pilots such as those in Croydon primary care trust (PCT) have used continual individualised assessment of risk with patient review graduated on a scale ranging from daily to monthly.
## Summary of human rights impact analysis

<table>
<thead>
<tr>
<th>Human rights engaged</th>
<th>Positive/negative impacts</th>
<th>Affected population groups</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Right to life</strong> (Article 2, ECHR)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>End of life decisions</td>
<td>Potential <strong>positive</strong> where impact of policy is increased participation in end of life decisions. Potential <strong>positive</strong> impact where the policy maximises time at home at the end of life. Potential <strong>negative</strong> impact if the policy design fails to ensure all reasonable steps to avoid predictable risks to life, connected to factors such as frailty, deprivation, rural living.</td>
<td>Patients, older people, people with disabilities, people with poor mental health, carers, staff</td>
</tr>
<tr>
<td>Risk to patients in community</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Freedom from inhuman and degrading treatment</strong> (Article 3, ECHR)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dignity of treatment monitoring complaint mechanisms</td>
<td>Potential <strong>positive</strong> impact where care in the home maximises dignity. Potential <strong>negative</strong> impact if clinical standards and resources are not maintained. Potential <strong>negative/positive</strong> impact, depending on levels of monitoring, complaint mechanisms and investigation.</td>
<td>Patients, older people, disabled people, carers, staff</td>
</tr>
<tr>
<td>Human rights engaged</td>
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<tr>
<td>----------------------</td>
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</tr>
<tr>
<td>Private and family life (Article 8, ECHR)</td>
<td>Right to home</td>
<td>Potential <strong>positive</strong> impact to increase support and time living in own home.</td>
</tr>
<tr>
<td></td>
<td>Right to family life</td>
<td>Potential <strong>positive</strong> impact through increased contact with family.</td>
</tr>
<tr>
<td></td>
<td>Right to private life</td>
<td>Potential <strong>negative</strong> impact if patients feel multi-agency support represents disproportionate incursion in their home or with their privacy (visits and information sharing).</td>
</tr>
<tr>
<td></td>
<td>Legal capacity and decision making</td>
<td>Potential <strong>positive</strong> impact only if autonomy, participation, capacity and empowerment increased.</td>
</tr>
<tr>
<td></td>
<td>Physical and psychological wellbeing</td>
<td>Potential <strong>negative</strong> impact on carers' and families' right to home life if not adequately supported.</td>
</tr>
<tr>
<td></td>
<td>Rights of persons with disabilities</td>
<td>Potential <strong>negative</strong> impact if risk of social isolation not effectively mitigated.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Potential <strong>negative</strong> impact if staff and carers are not well trained or supported in care regarding food, fluid, and nutritional care, monitoring of covert medication, etc.</td>
</tr>
<tr>
<td>Human rights engaged</td>
<td>Positive/negative impacts</td>
<td>Affected population groups</td>
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<tr>
<td>------------------------------------------</td>
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</tr>
<tr>
<td>Economic, social and cultural rights</td>
<td>- People are appropriately trained. Potential <strong>positive</strong> impact on right to independent living provided people are free to decide to receive care in institutional settings. Potential <strong>negative</strong> impact on right to work and adequate standard of living of carers if appropriate mitigation steps not taken.</td>
<td>carers, family.</td>
</tr>
</tbody>
</table>
Next steps

A robust and meaningful impact assessment should be informed by evidence. This should be recognised where there are gaps in evidence to inform an assessment. It may lead to action to monitor the impact and/or further research or evaluation of the policy to help fill these gaps. Evidence can take different forms: it may be qualitative (e.g. the experiences of service-users) or quantitative (e.g. population demographics) and could also be informed by research of effective interventions (e.g. what works for a particular service).

Having considered the above potential impacts of the policy on human rights, the following research questions have been identified for this policy. These questions seek to investigate the extent of the potential impacts identified, helping to prioritise what the key human rights impacts are and what changes may be required to the policy. This is not an exhaustive list but is intended to give a flavour of the types of questions that might be generated through a consideration of human rights impacts to guide and inform the findings and recommendations.

This example is intended as a starting point to demonstrate the human rights impacts for this policy. It does not therefore follow the impact assessment process right through to demonstrate what actions have resulted from consideration of the evidence gathered as a result of these questions.

Research questions

Right to private, home and family life

- What are the views of patients about receiving coordinated care in their homes? Do patients experience multi-agency delivery in their homes as disproportionate interference with their family life?

International standards

- What is the likely impact on carers?

- To what extent are sufficient opportunities in place for respite for carers?

Gathering evidence from research questions will underpin the findings and recommendations from the impact assessment. It will contribute to policy making by identifying potential issues that need to be addressed to ensure rights are protected and that a human rights based approach is embedded in the policy and its implementation.

The added value of a rights based approach

A rights based analysis of this strategy particularly highlights the need to assess not only those groups which may be differentially impacted but the proportionality of those impacts and how negative impacts may be reduced and positive impacts may be enhanced. The impact on the quality of life of carers and identifying the least restrictive
steps to achieve the legitimate aim of the policy could be discussed. It also highlights the need to ensure issues related to participation in decision making, assessment of capacity and dealing with issues of risk are dealt with in a rights based and rights compliant way in order to achieve the desired outcomes.
Rationale and aims of policy

The NHS Tayside dementia care plan aims to provide specialist services in the Tayside region for people with dementia including:

1. Raising awareness about dementia:
   - Community engagement
   - Awareness raising and training care staff
2. Early identification and intervention:
   - System of assessment
   - Care planning
3. Post diagnostic counselling and providing support for people who care for those with dementia:
   - Joint agreements
   - Specialist brain case service
   - Support for care homes
   - Home support
   - Psychological therapies
   - Services for people in general hospitals
   - Services for young people with dementia

The outcomes identified related to developing an agreed model of intensive case management; establishing a system which provides information on the illness and services available; and improving the management of dementia in care homes.

Commentary on key human rights impacts

The right to a private home and family life is the key right engaged in several aspects of the implementation of this strategy. Key aspects to this right are the right to a home life, family life, physical and mental integrity, wellbeing, autonomy, capacity and right to participate in decision making.
Aspects of how this right is potentially impacted by the policy is summarised in this case study. **Participation in decision making** and **legal capacity** are key to the realisation of an individual's rights and are core to the implementation of the dementia care plan.

The three pillars of this strategy should assist in strengthening the exercise of the right of participation. However, these positive impacts rely upon staff taking a rights based approach. Such an approach considers each person on an individual basis (rather than a status-based approach based on diagnosis) to assess capacity and supported decision making. This should be built into the implementation of the policy.

Capacity to make decisions should be assumed and individuals should be provided with the support they require, enabling them to make informed decisions – understanding the implications of their decisions. Efforts should be made to understand the previously expressed wishes of an individual who may lack capacity and to support people to make decisions while they have capacity for what should happen to them if their capacity reduces.

In relation to **home life** and **participation in decision making**, promoting early identification, intervention and planning, will facilitate the development of user-led contingency plans in the event of a loss of capacity for decision making. This should have a positive impact on assisting people with dementia to spend longer living at home as opposed to in residential care.

The **family life**, as well as the **psychological wellbeing** of individuals, is also at stake in the implementation of this policy. Social isolation affects many older persons who may be at risk of developing dementia, as well as their carers. In particular, older women who may out-live their partners, or are carers, are vulnerable to these impacts. Access to services and social contact will be essential to the full realisation of this right for those with limited social contact or opportunity to engage in the social, political or cultural life of the community.

The **physical** and **mental wellbeing** of people may also be positively impacted where the quality and appropriateness of services is improved through care planning. However, if the key professionals and staff working with service users are not taking a rights based, person-centred approach to service delivery this may be compromised and medical or service-led models may persist. The awareness raising and training of staff should therefore be underpinned by human rights to ensure issues of capacity and dealing with risk are dealt with in a rights compliant way. Rights based concepts, such as proportionality or minimum interference with an individual’s rights to achieve desired outcomes, must be well understood. This will be particularly important in areas such as nutrition, covert medication and assessment of mental capacity for decision making.

The **autonomy** and **capacity** of individuals may also be enhanced through early diagnosis allowing increased participation in decision making, supported decision making and engagement with service providers in directing support packages. The policy should also allow for advance planning of decisions in the event of limited capacity for decision making. Where carers are being relied upon to support decision making they must also be adequately supported and informed of their obligations or the principle of autonomy and capacity for decision making may be compromised in practice.
## Summary of human rights impact analysis

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<th>Affected population groups</th>
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<tbody>
<tr>
<td>Right to life (Article 2, ECHR)</td>
<td>End of life decisions&lt;br&gt;Potential <strong>positive</strong> impact where end of life care is integrated into advanced planning, taking account of the individual's wishes.&lt;br&gt;Potential <strong>positive</strong> impact where advanced planning maximises time at home at end of life.&lt;br&gt;Potential <strong>positive</strong> impact where training reduces missed diagnosis.&lt;br&gt;Potential <strong>negative</strong> impact if (due to factors such as frailty, deprivation, rurality) there is grossly inconsistent or inadequate service provision.&lt;br&gt; <strong>Potential negative</strong> impact depending on levels of monitoring, complaint mechanisms and investigation.</td>
<td>Older people, people with dementia, people with disabilities, staff, carers, women.</td>
</tr>
<tr>
<td>Freedom from inhuman and degrading treatment (Article 3, ECHR)</td>
<td>Dignity of treatment monitoring complaint mechanisms&lt;br&gt;Potential <strong>negative</strong> impact if clinical standards and resources are not maintained.&lt;br&gt;Potential <strong>negative</strong> impact if staff and professionals lack sufficient knowledge and skills to work with dementia patients.&lt;br&gt;Potential <strong>negative/positive</strong> impact depending on levels of monitoring, complaint mechanisms and investigation.</td>
<td>Older people, people with dementia, disabled people, carers, staff</td>
</tr>
<tr>
<td>Liberty and security (Article 5, ECHR)</td>
<td>Liberty from secured institutions&lt;br&gt;Potential <strong>negative</strong> impact if restrictions on deprivation of liberty are wrongly determined and unnecessary or if premature institutionalisation occurs.</td>
<td>People with dementia in institutional settings, staff</td>
</tr>
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<td>Private and family life (Article 8, ECHR)</td>
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<tr>
<td>Right to home</td>
<td>Potential <strong>positive</strong> impact if early diagnosis removes or delays the need for institutionalisation.</td>
<td>People with dementia, carers, staff, family members</td>
</tr>
<tr>
<td>Right to private life</td>
<td>Potential <strong>positive</strong> impact through increased autonomy, participation and empowerment.</td>
<td></td>
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<tr>
<td>Right to family life</td>
<td>Potential <strong>positive</strong> impact if potentially increases time living in own home.</td>
<td></td>
</tr>
<tr>
<td>Physical and psychological wellbeing</td>
<td>Potential <strong>positive</strong> impact on carers and families right to home life if not adequately supported.</td>
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<tr>
<td></td>
<td>Potential <strong>negative</strong> impact if stigma reduced.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Potential <strong>negative</strong> impact if staff not well trained in dementia care regarding food, fluid, and nutritional care, monitoring of psychoactive and covert medication, etc. Human rights based concepts of proportionality need to be incorporated into training to assure rights compliant practices.</td>
<td></td>
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<tr>
<td></td>
<td>Potentially <strong>negative</strong> impact due to risk of missed diagnosis for older women living alone or people with learning disabilities.</td>
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<tr>
<td>Freedom of expression (Article 10, ECHR)</td>
<td>Access to services, information and</td>
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<tr>
<td></td>
<td>Potential <strong>positive</strong> impact where information and access made available to service</td>
<td>BME communities, people with dementia, families of</td>
</tr>
<tr>
<td>Human rights engaged</td>
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</tr>
<tr>
<td>Participation</td>
<td>Potential negative impact if the information provided is not accessible or culturally sensitive. Potential positive impact where service users are provided language support.</td>
<td>People with dementia, staff, carers</td>
</tr>
<tr>
<td>Enjoyment of property (Article 1, EHRC)</td>
<td>Potential positive impact where timeframe for decision making is increased through early diagnosis and advanced planning, allowing individuals to enjoy property and assets for longer and plan for the future. Potential negative impact where there is no protection against risk of fraud or theft of assets.</td>
<td>People with dementia</td>
</tr>
<tr>
<td>International standards</td>
<td>Potential negative impact on highest attainable standard of health if discrepancies in service provision lead to lack of access to services. Potential positive impact on autonomy and legal capacity if staff are appropriately trained in dementia. Potential negative impact if increased awareness of dementia leads to a status-based approach to assessment of capacity and blanket approaches. This can be mitigated by rights based training.</td>
<td>People with dementia</td>
</tr>
</tbody>
</table>
Next steps

A robust and meaningful impact assessment should be informed by evidence. This should be recognised where there are gaps in evidence to inform an assessment. It may lead to action to monitor the impact and/or further research or evaluation of the policy to help fill these gaps. Evidence can take different forms: it may be qualitative (e.g. the experiences of service-users) or quantitative (e.g. population demographics) and could also be informed by research of effective interventions (e.g. what works for a particular service).

Having considered the above potential impacts of the policy on human rights, the following research questions have been identified for this policy. These questions seek to investigate the extent of the potential impacts, helping to prioritise what the key human rights impacts are and what changes may be required to the policy. This is not an exhaustive list but is intended to give a flavour of the types of questions that might be generated through a consideration of human rights impacts to guide and inform the findings and recommendations.

This example is intended as a starting point to demonstrate the human rights impacts for this policy. It does not therefore follow the impact assessment process right through to demonstrate what actions have resulted from consideration of the evidence gathered as a result of these questions.

Research questions

Right to life and prohibition on inhuman or degrading treatment

- What is the prevalence of dementia in people with learning disabilities? In women living alone? Within different minority groups?

- Are there inequalities in access to services to support people with dementia following a diagnosis?

Right to private, home and family life

- What is the demographic profile of carers? (e.g. age, gender, deprivation)

- What support and respite is available for carers?

- How is person-centredness and human rights embedded in core training for staff?

International standards

- Are staff trained in the Adults with Incapacity Act and the underlying human rights based principles around autonomy and decision making?

- Do staff have the skills and knowledge to apply this in day-to-day decision making?

Gathering evidence from research questions will underpin the findings and recommendations from the impact assessment. It will contribute to policy making by identifying potential issues that need to be addressed to ensure rights are protected and that a human rights based approach is embedded in the policy and its implementation.
The added value of a rights based approach

A rights based analysis of this strategy highlights the need for appropriate accountability mechanisms. It highlights the issue of risk from missed diagnosis or inadequate service provision in post-diagnostic support for particular groups such as older women living alone, younger people with learning disabilities, ethnic minority groups or those living in rural areas.

A human rights perspective is distinct from issues that might arise through an equality impact assessment alone. It highlights the potential culture change required by all staff to ensure issues related to participation in decision making, assessment of capacity and dealing with issues of risk are dealt with in a rights based and rights compliant way in order to achieve the desired outcomes of the strategy. Without such an approach being developed, the exercise and enjoyment of all rights in the implementation of the strategy may be undermined.
Rationale and aims of policy

The proposals aim to integrate adult health and social care in Scotland around the needs of individuals, their carers and families, providing a consistency of outcomes in the quality of care for people. This is to be achieved by providing a statutory underpinning, integrated budgets and clear joint accountability for delivering agreed national outcomes with professional leadership by clinicians and social workers. Proportionally, fewer resources will be directed towards institutional care in future and more resources will be directed towards community provision and capacity building to allow people to be supported to live well at home or in the community for as long as possible.

Commentary on key human rights impacts

The right to life and right not to be subject to inhuman or degrading treatment may be engaged in the most extreme circumstances by the proposals where the increased number of vulnerable people being supported in their own homes is not accompanied by the appropriate protection and regulatory measures.

Supporting individuals to remain with family in their own homes for longer periods may have a positive impact on the private home and family life of individuals and their right to live independently in the community. However, this right, and in particular the physical and psychological wellbeing of carers must also be considered where there is an increased reliance on their services. Issues of privacy may also arise in relation to the sharing of data between services.

The realisation of an individual's right to physical and psychological wellbeing, the right to health and the right to independent living; to live and participate in the community are key to meeting the proposed objectives of this policy. In order to achieve improved health and social care outcomes, a corresponding cultural shift for the professionals implementing the proposals, as well as frontline staff delivering the care, will be required, and human rights awareness and understanding must support this.
### Summary of human rights impact analysis

<table>
<thead>
<tr>
<th>Human rights engaged</th>
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<tbody>
<tr>
<td>Right to life (Article 2, ECHR)</td>
<td>Adult protection issues</td>
<td>Older, disabled and vulnerable adults living in their own home.</td>
</tr>
<tr>
<td>Freedom from inhuman and degrading treatment (Article 3, ECHR)</td>
<td>Adult protection issues</td>
<td>Older, disabled and vulnerable adults living in their own home.</td>
</tr>
<tr>
<td>Liberty and security (Article 5, ECHR)</td>
<td>Independence of Mental Health Officers</td>
<td>None</td>
</tr>
<tr>
<td>Private and Family Life (Article 8, ECHR)</td>
<td>Home and family life</td>
<td>All</td>
</tr>
</tbody>
</table>

**Right to life (Article 2, ECHR)**
- Potential negative impact due to increased numbers of vulnerable adults in their own home, particularly when living alone, and threats to the right to life by hidden forms of neglect, abuse or grossly inadequate care provision.
- Potential negative impact and risk to life if a presumption against hospital admissions is assumed or adopted (even where such care is reasonably required) due to proposals or a lack of adequate resources directed to secondary and acute care.

**Freedom from inhuman and degrading treatment (Article 3, ECHR)**
- Potential negative impact due to increased number of vulnerable adults living and being supported in their own home. The framework for the training and qualifications of home-based health and social care workers and the regulation of home-based care services and staff must therefore be considered.

**Liberty and security (Article 5, ECHR)**
- It has been clarified the policy will ensure the ongoing independence of Mental Health Officers (who safeguard the right to liberty) and there are no foreseen negative impacts here.

**Private and Family Life (Article 8, ECHR)**
- Potential positive impact where a focus on preventative, anticipatory and rehabilitative interventions mean people are supported to maintain their private and family life in their own home for longer without unnecessary hospital admission or delayed discharge and a delayed or avoided need for institutional care.
<table>
<thead>
<tr>
<th>Human rights engaged</th>
<th>Positive/negative impacts</th>
<th>Affected population groups</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sharing and access to personal data</td>
<td>Potential <strong>negative</strong> impact on privacy if data sharing across services and systems not well managed with appropriate safeguards. Also a potential <strong>negative</strong> impact on quality of care and physical and psychological integrity if data sharing not carried out where appropriate.</td>
<td>All</td>
</tr>
<tr>
<td>Carers home life</td>
<td>Potential <strong>negative</strong> impact on the family and home life, physical and psychological wellbeing of carers if there is an increased reliance on the care they provide without appropriate support and respite.</td>
<td>Carers, particularly women who are often the primary care givers</td>
</tr>
<tr>
<td>Physical and psychological wellbeing and quality of services</td>
<td>Potential <strong>negative</strong> impact on wellbeing if appropriate levels and quality of care and support services are not available, accessible and of high quality. Commissioning and procurement procedures which prioritise outcome-focused social and human rights considerations related to quality of services over cost considerations will be essential to achieve this. The local planning arrangements supported by health and social care professionals will require a cultural shift to an outcomes-based, less medicalised, approach for the desired outcomes to be achieved. The health and care integration outcomes should cover the full range of human rights to ensure indicators and measurement tools reflect rights based outcomes for everybody. Potential <strong>negative</strong> if risk of social isolation not effectively mitigated.</td>
<td>All</td>
</tr>
<tr>
<td>Human rights engaged</td>
<td>Positive/negative impacts</td>
<td>Affected population groups</td>
</tr>
<tr>
<td>----------------------------------------------------------</td>
<td>------------------------------------------------------------------------------------------</td>
<td>------------------------------------------------</td>
</tr>
<tr>
<td>Children and young people service provision</td>
<td><strong>Potential negative</strong> impact if proposals that focus on adult services indirectly weaken the governance arrangements and integrated, joined up focus of children’s and young people’s services – particularly in the transition from children’s to adult services – thereby leading to less well integrated approaches and poorer outcomes in these areas.</td>
<td>Children and young people</td>
</tr>
<tr>
<td>Freedom of religion (Article 9, ECHR)</td>
<td><strong>Potential negative</strong> impact on right to respect for religion if increased number of home-based service workers are not sensitive to cultural and religious practices maintained within the home.</td>
<td>All, particularly black and minority ethnic (BME) communities</td>
</tr>
<tr>
<td>International standards</td>
<td><strong>Potential positive</strong> impact if policy allows for people to be supported to live independently in the community for as long as possible. <strong>Potential negative</strong> impact if people are not supported to participate in the community with equal choices to others. <strong>Potential positive</strong> impact if proposal improves outcomes in relation to availability, accessibility, acceptability and quality of services, which must be reflected in outcomes. But potential <strong>negative</strong> impact if appropriate services are unavailable or are inadequate as resources are not appropriately allocated between health and social care, and primary and secondary care, and outcomes do not reflect rights protections.</td>
<td>Persons with disabilities</td>
</tr>
<tr>
<td>Right to health</td>
<td><strong>Potential positive</strong> impact if proposal improves outcomes in relation to availability, accessibility, acceptability and quality of services, which must be reflected in outcomes. But potential <strong>negative</strong> impact if appropriate services are unavailable or are inadequate as resources are not appropriately allocated between health and social care, and primary and secondary care, and outcomes do not reflect rights protections.</td>
<td>All</td>
</tr>
</tbody>
</table>


Next steps

A robust and meaningful impact assessment should be informed by evidence. Where there are gaps in evidence to inform an assessment this should be recognised. It may lead to action to monitor the impact and/or further research or evaluation of the policy to help fill these gaps. Evidence can take different forms: it may be qualitative (e.g. the experiences of service-users) or quantitative (e.g. population demographics) and could also be informed by research of effective interventions (e.g. what works for a particular service).

Having considered the above potential impacts of the policy on human rights, the following research questions have been identified for this policy. These questions seek to investigate the extent to of the potential impacts, helping to prioritise what the key human rights impacts are and what changes may be required to the policy. This is not an exhaustive list but is intended to give a flavour of the types of questions that might be generated through a consideration of human rights impacts to guide and inform the findings and recommendations.

This example is intended as a starting point to demonstrate the human rights impacts for this policy. It does not therefore follow the impact assessment process right through to demonstrate what actions have resulted from consideration of the evidence gathered as a result of these questions.

Research questions

Right to life and prohibition on inhuman or degrading treatment

- What do we know about the incidence and risk factors related to neglect or abuse of older adults being cared for at home?

Private, home and family life

- Are there concerns from staff and patients about sharing personal data between different services?
- What is the demographic profile of carers? (e.g. age, gender, deprivation)
- What support and respite is available for carers?
- What evidence is there that shifting the balance of care into the community will promote person-centred care?
- How will the experiences of the person receiving the service be monitored and evaluated?

Gathering evidence from research questions will underpin the findings and recommendations from the impact assessment. It will contribute to policy making by identifying potential issues that need to be addressed to ensure rights are protected and that a human rights based approach is embedded in the policy and its implementation.

The added value of a rights based approach

A number of rights issues are highlighted which are not brought to the fore by an equality analysis alone:
- the vulnerability of people being supported in their own homes
- the health and wellbeing of carers
- issues around data sharing
- a recognition that for improved outcomes to be achieved there requires to be a corresponding cultural shift for all health and social care professionals implementing the proposals. This can be supported by an increase in human rights awareness and understanding.

The human rights impacts identified in this summary highlight the further complementary types of improvement work, beyond the suggested proposals, that must be carried out alongside the system changes proposed in order to ensure that the stated aims and improved health and social care outcomes are achieved in practice.

In particular, as a shift is made from institutional and hospital-based to home-based health and social care, consideration should be given to the need for a focus on adult protection and the regulation and accountability of home-based services for vulnerable individuals, as well as the need for adequate support and respite for carers. Integrated service models also raise the issue of data sharing and privacy that need to be addressed.

A human rights analysis focuses attention on the quality of service provision. It highlights for discussion how the commissioning and procurement of services, goods and facilities and the health and care integration outcomes must adequately reflect human rights considerations to ensure an appropriate shift in the status quo to a more outcomes-focused approach. The analysis highlights the need for a corresponding cultural shift (alongside the organisational changes) away from silo working, protection of budgets and resources and medicalised service models to an outcomes-led and rights enhancing approach which is underpinned by human rights.
Rationale and aims of policy

*see me* is Scotland’s campaign to end stigma and discrimination against people with mental ill health and their supporters. It is an alliance of five civil society mental health organisations and is funded by the Scottish Government. The campaign strategy to 2014/15 has three main objectives:

1. To improve public understanding, attitudes and behaviours.
2. To ensure organisations treat people with mental health problems, and those who support them, with respect and equality.
3. To ensure people with lived experiences of mental ill health have increased capacity to take action against stigma and discrimination. People in general have the opportunity to get involved in the *see me* campaign.

Commentary on key human rights impacts

The right to privacy in home and family life is one of the key rights engaged in several aspects of the implementation of this strategy. Key aspects to this human rights decision are the right to quality of life, wellbeing, autonomy, legal capacity and the right to participate in decision making. Participation in decision making and legal capacity are key to the realisation of an individual’s dignity and rights.

This campaign has the potential to increase awareness of the nature of this right. The campaign objectives could be advanced by raising awareness that people with mental ill health have the right to legal capacity and the right to participate in decision making.

Capacity to make decisions should be assumed and individuals should be provided with the support they require to enable them to make informed decisions – understanding the implications of their decisions. Efforts should be made to understand the previously expressed wishes of an individual who may lack capacity and to support people to make decisions while they have capacity for what should happen to them if their capacity reduces.
This campaign could also have a positive impact on the right to information linked with the right to freedom of expression. Campaign objective 3 could be enhanced by reframing in human rights terms so that people with mental ill health have increased awareness and understanding of their rights and are empowered to take action to combat stigma and discrimination.

In seeking to combat the use of potentially stigmatising language the campaign could have a negative impact on the right to freedom of expression in public expression or in the media. The means used to combat stigmatising language must be proportionate. It is important to bear in mind that this test requires the selection of the least restrictive means among those which are capable of achieving the desired aim. So an approach which would have a greater impact on freedom of expression (such as regulation) may be justified where other, less restrictive, means (such as guidance or public education campaigns) would not be effective.

The campaign could have a positive impact on the right to freedom of association where it supports people with mental ill health (and those who support them) to protest and enable them to speak openly about their own experiences of mental ill health.

The aim of this policy pursues a positive human rights objective of combating stigma and discrimination. This contributes to achieving the right to non-discrimination. A human rights-based approach to the campaign would increase focus on raising awareness of the universality of mental health (everyone has mental health) and of human rights. Campaign objective 1 (see numbered list on page 1) could be reframed in human rights terms to increase awareness that everyone has mental health and of the human rights of people with mental ill health. Campaign objective 2 could also be reframed in human rights terms as organisations recognise that people with mental health problems and those who support them have the same human rights, and are accountable for identifying and addressing barriers to the realisation of those rights. Taking more of a human rights based approach to the strategy would then be more empowering and more consistent with the equal dignity and rights of everyone, rather that premised on the acceptance of difference.

The campaign may also have positive impacts on the realisation of a broad range of other human rights protected by international treaties, including the right to work, the right to the highest attainable standard of mental health, the right to education and the right to an adequate standard of living where it effectively combats stigmatisation in (access to) employment, education and service delivery. It will also potentially contribute to the realisation of rights under the UN Convention on the Rights of Persons with Disabilities, which includes those with a mental disorder.
<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Private and family life (Article 8, ECHR)</td>
<td>Legal capacity and decision making</td>
<td>Potential <strong>positive</strong> impact on the autonomy, participation, capacity empowerment and self-direction of rights determinative issues if a more human rights based approach is taken.</td>
</tr>
<tr>
<td>Freedom of expression and association (Articles 10 and 11, ECHR)</td>
<td>Freedom of expression</td>
<td>Potential <strong>negative</strong> impact on freedom of expression through combating use of stigmatising language, questions of proportionality and effectiveness should be kept in mind.</td>
</tr>
<tr>
<td>Freedom of association</td>
<td>Right to access information</td>
<td>Potential <strong>positive</strong> impact on empowering people with mental ill health to know and claim their rights. Enhanced if a human rights based approach taken</td>
</tr>
<tr>
<td></td>
<td>Freedom of association</td>
<td>Potential <strong>positive</strong> impact on supporting exercise of freedom of expression and association by people with mental ill health and those who support them.</td>
</tr>
<tr>
<td>International standards</td>
<td>Rights of persons with disabilities</td>
<td>Potential <strong>positive</strong> impact on realisation of wide range of rights, enhanced if empowering rights based approach taken.</td>
</tr>
<tr>
<td></td>
<td>Economic, social and cultural rights</td>
<td>Potential <strong>positive</strong> impact on a wide range of rights.</td>
</tr>
</tbody>
</table>
Next steps

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Having considered the above potential impacts of the policy on human rights, the following research questions have been identified for this policy. These questions seek to investigate the extent of the potential impacts, helping to prioritise what the key human rights impacts are and what changes may be required to the policy. This is not an exhaustive list but is intended to give a flavour of the types of questions that might be generated through a consideration of human rights impacts to guide and inform the findings and recommendations.

This example is intended as a starting point to demonstrate the human rights impacts for this policy. It does not therefore follow the impact assessment process right through to demonstrate what actions have resulted from consideration of the evidence gathered as a result of these questions.

Research questions

Right to freedom of expression
- What methods are effective for combating the use of stigmatising language in the media?
- What is known about the knowledge of human rights and how to claim rights in people with mental ill health?

Gathering evidence from research questions will underpin the findings and recommendations from the impact assessment. It will contribute to policy making by identifying potential issues that need to be addressed to ensure rights are protected and that a human rights based approach is embedded in the policy and its implementation.

The added value of a rights based approach

A rights based analysis of this strategy highlights the potential to enhance the empowerment and dignity of people with mental ill health by reframing the campaign objectives and actions which flow from them. From an approach predicated on the acceptance of difference, a human rights based approach highlights the common humanity and the universality of rights and mental health. It highlights the need to combat stigma and other barriers to the realisation of the human rights of people with mental health as a matter of legal duty.
Appendix

Introduction

Human rights are the basic rights and freedoms that everyone is entitled to. We are all entitled to human rights in order to live with dignity.

Human rights demand recognition and respect for the inherent dignity and value of every human being, and provide the shared values as well as the legal basis to ensure that everyone is protected against abuses that undermine their dignity, and give the opportunities they need to realise their full potential, free from discrimination.

Human rights belong to everyone, everywhere, regardless of nationality, sexuality, gender, race, religion or age. The foundation of modern human rights is the Universal Declaration of Human Rights (UDHR), adopted by the United Nations in 1948.

The European Convention on Human Rights

The European Convention on Human Rights (ECHR) was drafted by the nations of the Council of Europe (including the UK) in the aftermath of World War II. The Council of Europe was founded to defend human rights, democracy and the Rule of Law. The Convention allows people who feel their rights have been violated by a state party (a national government) and who cannot get a remedy at the national level to take their case to the European Court of Human Rights.

The Human Rights Act

The UK has incorporated into UK law most of the rights in the European Convention through the Human Rights Act 1998, which came into force in October 2000. The Act gives people in Scotland the opportunity to have their human rights legal case heard in a Scottish court. It is also intended to bring about a human rights culture – placing respect, protection and fulfilment of human rights at the heart of public service.

There are three main ways in which the Human Rights Act should impact on practice of public authorities:

- All public authorities must act compatibly with the rights contained in the Human Rights Act in everything that they do.

- Anyone who is a ‘victim’ under the Human Rights Act can bring a claim against a public authority in the ordinary Scottish courts. To be a victim, a person must be directly affected by the act or omission, which is the subject of the complaint. Anyone in the UK can be a victim – the Act is not limited to UK citizens. Wherever possible, existing laws that health bodies as public authorities deal with on a day-to-day basis must be interpreted and applied in a way that fits with the human rights in the Human Rights Act.

- The Human Rights Act contains 15 rights, six of which are particularly relevant to health (in bold). The rights contained within the Human Rights Act are:

  - Article 2: the right to life
Each of the rights in the Human Rights Act is either: absolute, limited or qualified.

**Absolute** rights cannot be interfered with under any circumstances, i.e. they cannot be balanced against any public interest. These include articles 2 and 3.

**Limited** rights are subject to predetermined exceptions. These include articles 5 and 6.

**Qualified** rights can be interfered with where there is legal basis for the interference, where it is in pursuit of a legitimate aim and where the interference is necessary (a proportionate means of achieving the legitimate aim). These include articles 8 and 9.

Any interference with or limitation on a Convention right must have a legal basis. Even if the interference or limitation is according to the law, it must also be proportionate.

Reference for appendix: