

Age UK is the new force combining

AGE and **HELPTHEAGED** WE WILL
Concern



Review response

Age UK's response to the UN Human Rights Council's Universal Periodic Review

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1. Introduction

Age UK is the new force combining Age Concern and Help the Aged. We are working for a better later life today and tomorrow. We celebrate ageing and work to create opportunity in later life. And we fight and challenge disadvantage and unfairness wherever we find it.

Every day Age UK is in touch with thousands of people who we support to speak up for themselves. We understand the change that is needed to transform people's lives for the better. We have a positive, forward looking vision for our ageing society.

Age UK is very pleased to have the opportunity to comment on the UK Government's domestic human rights record over the past four years.

This report details the most significant areas where the human rights of older people in the UK are abused. It also examines the UK Government's record of reporting on the human rights situation of older people to the UN human rights treaty bodies.

2. Key Points and Recommendations

The UK Government should:

- 2.1. Protect the 1998 Human Rights Act (HRA) and ensure any changes emanating from the Bill of Rights Commission build on the rights and enforcement mechanisms in the HRA.
- 2.2. Reframe the debate on human rights in the UK emphasising the valuable protection it provides to older people at their most vulnerable.
- 2.3. Extend the protection provided by the HRA to older people by ensuring that providers of residential and homecare services are regarded as public authorities regardless of who is funding the service provided.
- 2.4. Use existing human rights treaties more effectively to safeguard the human rights of older people and significantly improve its reporting of the situation affecting older people when making submissions to UN human rights treaty bodies.

3. Progress since the previous report

- 3.1. The last universal periodic review included the recommendation that the UK Government should “provide more care and attention to the rights of the elderly”¹. The UK Government accepted this recommendation.
- 3.2. In the mid-term review the UK Government reported that it was introducing legislation which would outlaw age discrimination against the over 18s in the provision of goods and services and introduce an integrated public sector equality duty (PSED). This legislation was introduced in the 2010 Equality Act.
- 3.3. Age UK welcomes this legislation having campaigned for many years to combat the age discrimination which affects tens of thousands of older people on a daily basis. We are however concerned by the wide ranging exemption on financial services that has been introduced and the lack as yet of regulations needed to ensure the relevant provisions are in place as promised by April 2012.
- 3.4. However despite this legislation and the HRA, the human rights of older people in the UK continue to be regularly infringed. Numerous reports have documented the breaches that occur particularly in relation to health and social care. For example the recent report by the Parliamentary and Health Service ombudsman highlights examples of older people suffering unnecessary pain, indignity and distress while in the care of the NHS, specifically a lack of dignity, poor nutrition, poorly planned discharge from hospital and personal care, staff attitude and poor communication.²

4. Article 2 – Right to Life

The most serious instances of malpractice and abuse in health and social care settings can result in patients’ deaths.

4.1. *Malnutrition in hospitals and care homes*

- 4.1.1. Successive reports have found that older people do not always receive appropriate food and drink or get the needed help with eating. In 2010 Age UK found the number of people leaving hospital malnourished increased from 157,175 in 2007–8 to 185,446 in 2008–9³. In addition 239 patients died because of malnutrition in English hospitals in 2007, although because malnutrition is under-reported, the true figure may be much higher.⁴

¹ Recommendation 10

² Parliamentary and Health Service Ombudsman (2011) *Care and Compassion? Report of the Health Service Ombudsman on ten investigations into NHS care of older people*

³ <http://www.stephenobrien.org.uk/type2show.asp?ref=857&ID=80>

⁴ *Nutrition Action Plan Delivery Board End of Year Progress Report, 2009*

4.1.2. The Care Quality Commission's (CQC) October 2011 report on dignity and nutrition found 17 of the 100 hospitals it inspected were failing to meet older people's nutritional needs.

"Patients were not given the help they needed to eat, meaning they struggled to eat or were physically unable to eat meals. Patients were interrupted during meals and had to leave their food unfinished. The needs of patients were not always assessed properly, which meant they didn't always get the care they needed. Records of food and drink were not kept accurately, so progress was not monitored."⁵

4.2. Abuse of anti-psychotic drugs

4.2.1. A study found that 40% of people with dementia in care homes are prescribed neuroleptic drugs.⁶ Neuroleptics are not licensed for use in dementia care but have become part of routine treatment, despite evidence on the increased risk of death.⁷

4.2.2. In 2008, the All Party Parliamentary Group on Dementia completed an inquiry into the prescription of anti-psychotic drugs as a means of sedation in care homes and found it to be widespread despite guidance to the contrary.⁸

4.2.3. Paul Burstow, the Secretary of State for Social Care, recently said that anti-psychotic drugs prescribed against the evidence, without clinical justification, amounted to a deprivation of liberty and warned that prescribing needs to be cut by two-thirds.⁹

5. Article 3 – Right to freedom from inhuman and degrading treatment

5.1. Age UK is aware of many cases of older people being treated in ways which do not uphold this right. The CQC's recent report states:

5.2. "Time and time again, we found patients treated by staff in a way that stripped them of their dignity and respect. People were spoken over and not spoken to; people were left without call bells, ignored for hours on end, or not given assistance to do the basics of life – to eat, drink, or go to the toilet."¹⁰

5.3. Action on Elder Abuse estimates that 324,000 older people are subject to abuse at any one time in the UK.¹¹ They have documented many cases of

⁵ Dignity and nutrition inspection programme p4 Care Quality Commission October 2011 p14

⁶ Margallo-Lana, M et al, (2001) *Management of behavioural and psychiatric symptoms amongst dementia sufferers living in care environment*. International Journal of Geriatric Psychiatry.

⁷ The Human Rights of Older People in Healthcare - Joint Committee on Human Rights Aug 2007 p14

⁸ On the Right Track Age Concern p32 2008

⁹ Speech at Dementia Congress Liverpool 3 November 2011

¹⁰ Dignity and nutrition inspection programme p4 Care Quality Commission October 2011

¹¹ UK Study of Abuse and Neglect of Older People Prevalence Survey Report 2007 p3

physical, sexual and psychological abuse including hitting, dragging and pulling the hair of elderly care home residents.¹²

Case study:

Mrs S, aged 102, felt isolated, disrespected and neglected while she was in hospital. Despite being blind, her meals and drinks were left on a trolley - in most cases without her being alerted. For the most part, staff also did not offer any assistance with eating or drinking. As a result, many of the meals were removed untouched. Mrs S also suffered a great indignity when she asked for a commode, but was told by a nurse that she could use her incontinence pad. Staff frequently talked over her and about her rather than to her in the mistaken belief that she was unable to talk for herself.¹³

6. Article 8 - Right to respect for private and family life, home and correspondence

The protection offered by Article 8 is of particular importance to older people.

6.1. *Use of the toilet in private*

Many older people have their privacy violated when they use the toilet in hospital or care homes. The British Geriatrics Society reports of older people being forced to use commodes and bed-pans in wards when they could have gone to the toilet with assistance, older people being left on commodes/bed-pans for unnecessarily long periods of time, patients being left in view of others when using toilets, and staff entering closed curtains without ascertaining why they were closed. The CQC's report found that eight hospitals had serious failings in staff respecting patients' dignity.¹⁴

6.2. *Older couples being separated in different care homes*

Age UK is aware of incidences of older couples being separated by sending them to different care homes or by moving a person into a care home but not allowing their partner to join them.

Case study

A husband and wife had lived together for over 65 years. He was unable to walk unaided and relied on his wife. She was blind and used her husband as her eyes. They were separated after he fell ill and was moved into residential care. She asked to go with him, but was told by the local authority that she did not fit the

¹² Action on Elder Abuse (2004) *Hidden Voices: Older People's experience of Abuse*, London

¹³ Age Concern (2008) *On the Right Track?*

¹⁴ Dignity and nutrition inspection programme p11 Care Quality Commission October 2011

criteria. She said: 'We have never been separated in all our years and for it to happen now, when we need each other so much, is so upsetting. I am lost without him – we were a partnership.' A campaign launched by the family and various human rights experts and organisations, argued that the local authority had breached the couple's right to respect for family life. The authority agreed to reverse its decision.¹⁵

6.3. *Homecare*

The Equalities and Human Rights Commission is currently investigating how well the home based care system in England is protecting the rights of people over 65 and the report will be published in November 2011. It uncovered cases including people being left in bed for 17 hours or more between care visits, failure to wash people regularly and provide people with the support they need to eat and drink and people being left in soiled beds and clothes for long periods.¹⁶

7. Current Gaps in protection

7.1. Currently only those older people whose residential care costs in private care homes are met by the local authority are protected by the HRA. Those people who fund their own placement remain outside its protection. Age UK believes that all older people in residential care should be covered by the HRA regardless of who is funding the placement.

7.2. Older people who receive publicly funded homecare from independent home care providers are also not protected by the HRA as independent home care providers are not public authorities for the purposes of the HRA. We are concerned that where older people are arranging care without the involvement of the local authority there is little oversight of how their human rights are being protected. Age UK believes that independent home care providers should fall under the remit of the HRA.

8. Review of the UK Government's Reporting to UN Human Rights Bodies

8.1. Age UK carried out a systematic review¹⁷ of twenty one reports presented by the UK Government to the UN human rights treaty bodies since 1995.¹⁸ The review analysed the UK Government's reporting for references to older people to assess the effectiveness of existing human rights treaties for meeting the needs of older people.

¹⁵ BIHR (2008) *The Human Rights Act – Changing lives*, 2nd edition

¹⁶ EHRC Press release 20 June 2011

¹⁷ The unpublished Age UK review carried out in October 2011 is available upon request.

¹⁸ The review analysed reports available electronically submitted to the following bodies since 1995: CAT, ICCPR, ICESCR, CERD, CEDAW, as well as the Universal Periodic Review. The analysis excludes reports on Crown Dependencies and Overseas Territories.

- 8.2. The research found little or no substantive reporting on the human rights situation of older people across all of the reports. References to age were made in the broader context of equality with regards to equalities legislation and did not address specific abuses of human rights for older people.
- 8.3. For example, General Comment 2 of the Convention Against Torture makes explicit reference to protecting the human rights of older people “*States’ parties should prohibit, prevent and redress torture and ill-treatment in, inter alia, institutions that engage in the care of the aged*” (paragraph 15) yet none of the UK Government’s reporting to this treaty body makes reference to the human rights abuses detailed elsewhere in this report.
- 8.4. The research also found a consistent lack of disaggregated data on older people across all of the reporting to all of the treaty bodies.
- 8.5. In addition to the UK Government needing to strengthen human rights protection for older people, considerable attention must be paid to using existing human rights instruments and treaty bodies more effectively.

9. Threats to Human Rights in the UK

- 9.1. One of the main threats to human rights within the UK is the hostility which is frequently displayed by the media and some politicians including ministers and even the Prime Minister to the Human Rights Act
- 9.2. In July 2006 the Department for Constitutional Affairs Review of the Implementation of the Human Rights Act highlighted the myths and misperceptions that surrounded the HRA. It found that the HRA was widely misunderstood by the public and that a number of damaging myths had taken root in the popular imagination. It advised the Government to ensure that the public was better informed about the HRA.
- 9.3. In the five years since that report these myths and misconceptions have not only persisted but have become more firmly entrenched. There is little evidence that any Government has ensured better information is available. A recent poll found that fewer than 1 in 10 people can remember ever receiving or seeing any information from the Government explaining the HRA.¹⁹
- 9.4. We believe the UK Government should educate the public about the HRA and how it has and can be used to protect the rights of everybody, including older people against human rights abuses by the state. There are practical ways to encourage a more positive environment in which human rights can be promoted and the UK Government should leading this.
- 9.5. Our experience is that when people are given information they readily understand the relevance and value human rights have for them. Age UK and the British Institute of Human Rights recently undertook a three year project to empower older people to use human rights. The project offered local groups training and advice on using human rights arguments to influence services and

¹⁹ Human Rights Survey conducted by ComRes for Liberty, September 2010

policy. All the groups found that once people have been given information and training they easily understood how human rights principles and legislation applied to their daily lives. By the end of the project, the participants had improved their knowledge and understanding and were confident to use human rights arguments to challenge public agencies or to campaign on specific local issues.²⁰

²⁰ Older People and Human Rights Project Evaluation Report p 21 Age UK and BIHR Sept 2011