



Gofal Cymdeithasol **Cymru**
Social Care **Wales**



Noddir gan
Lywodraeth Cymru
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Making rights work for older people

Guidelines for health and social care



Foreword

Welsh Government has committed to embed older people's rights across the Welsh public service. To achieve this, we must identify how to use rights as a practical tool to combat ageism and inequality and to improve the daily lives of all older people. I am clear that age does not diminish an individual's human rights.

Raising awareness of rights can empower older people to take control and recognise when their rights are being compromised, but it is equally important to raise awareness of rights amongst professionals. The Social Services and Well-being (Wales) Act requires local authorities to have due regard to the United Nations Principles for Older Persons. Due regard means more than simply being aware of the UN Principles. It means that local authorities must actively consider how the duties impact on the decisions they make.

This guidance uses practical examples to illustrate how local authorities can have due regard to the UN Principles. It shows how simple changes to the way we work can uphold an individual's human rights and have a major impact on their well-being. For many, this guidance will provide a reaffirmation that the approach they are taking is the right one. However, I want this guidance to be used to inform all aspects of service design, commissioning, tendering, delivery and evaluation.

We worked with older people and professionals to coproduce this guidance as part of Welsh Government's wider commitment to *Make Rights Real for Older People*. We are also reviewing our guidance on *Escalating Concerns on Closures of Care Homes* so that no older person is put at risk due to the closure of the place where they live and call home. In January, a publicity campaign was launched that aims to raise awareness of older people's rights under the Social Services and Well-being (Wales) Act.

We have also produced a version of this guidance for older people. I hope that these two documents will be used together to guide conversations and inspire a common understanding of the transformative effect of a rights-based approach.

Deputy Minister for Health and Social Services

Introduction

This document is for local authorities and any persons or organisations that are providing care and support to older people under the Social Services and Well-being (Wales) Act 2014.

This practical guidance is to help with the understanding that working under the 2014 Act and the UN Principles are not mutually exclusive and must complement one another.

It is designed to support local authorities and other service providers in meeting the duty to have “due regard” to the United Nations Principles for Older Persons under the 2014 Act and to comply with the Human Rights Act 1998.

Under the Regulation and Inspection of Social Care (Wales) Act 2016, the Government must include information in its annual report to show how the due regard duty has affected regulatory processes.

There is an opportunity for the guidelines to be used, for example, within the provision of services at strategic, service provider and individual levels. It may also be used as part of tender processes and documentation and provide clarification around service provision.

This document includes:

- a short narrative around due regard
- human rights and well-being
- eight stories
- a set of examples of principles with stories that underpin how these principles may be achieved.

This document supports the Welsh Government’s Strategy for an Ageing Society. The Welsh Government is committed to expanding this work to support the health sector to have further consideration around having due regard to the UN Principles for Older Persons.

This document was developed by Social Care Wales with support from the Making Rights Real working group. The group’s membership consists of:

- Care and Repair Cymru
- Cymru Older People’s Alliance
- Older People’s Commissioner for Wales
- Welsh Government
- Social Care Wales
- Welsh Senate of Older People
- University of Swansea
- University of Aberystwyth
- Age Alliance Wales
- Public Health Wales
- Lorraine Morgan – Independent Consultant on Ageing.

Key aspects of due regard

The duty of due regard comes from equalities law. The courts help us decide how the duty should be applied. In doing so, the courts have considered how it should be applied in principle, as well as how it should be applied in practice.

In principle: The courts have created guidelines that can be used as the basis for making sure you comply with the due regard duty in practice.

In practice: The courts have recognised the danger of working in a way that relies too heavily on paperwork and have encouraged the idea that there does not need to be an extensive paper trail for every decision.

Here's a summary of the main principles of due regard taken from key cases¹:

1. Anyone who is responsible for a due regard duty must know about the duty and what they need to do
2. The duty cannot be passed to others: a person or authority who is responsible for carrying out the duty can give specific tasks to others, but the responsible person or authority will ultimately be responsible for carrying out the duty
3. The duty must be carried out before (such as in the planning stages) and at the time a decision is made or an action is taken
4. The duty must be exercised in substance, with rigour and an open mind
 - a. Substance means the duty will be completed as part of the decision-making process and action, and will not just be a 'tick box' exercise
 - b. Rigour means taking account of any relevant information that is based on relevant evidence
 - c. Open-mind includes the possibility of considering new or different options when making decisions
5. It is good practice to keep a record of how the duty was carried out. For example, what information was taken into account and what evidence it was based on
6. Although it is good practice to keep a record (as noted in point 5 above), keeping a record does not determine whether you have complied with the due regard duty – this is an issue of substance
7. The due regard duty is a continuing one: it must constantly be reviewed.

1. Due regard is a formal legal requirement. The summary included in this note should not be treated as legal advice, nor as a complete summary. Anyone under a regard duty should ensure that they are familiar with relevant case-law, or that they are properly advised by someone with appropriate expertise.

The clear message from case law is that knowledge and awareness of human rights documents (such as the UN Principles for Older Persons), and regularly considering them in your practice are essential in making sure you comply with the due regard duty. You should automatically consider human rights in your processes, decisions and actions.

Human rights and well-being

1. The idea of 'well-being' is an extremely important part of the Social Services and Well-being (Wales) Act 2014 and the Well-being of Future Generations (Wales) Act 2015.
2. Human rights are embedded in the 2014 and the 2015 acts. For example, the right to be protected from abuse and neglect, and to a safe community are part of several rights in the European Convention on Human Rights, the Charter of Fundamental Rights, and the United Nations Principles for Older Persons.
3. Regardless of the many links between well-being and human rights, it is important not to merge the two. The terms are not interchangeable. Human rights are much broader than well-being. For example, dignity is not mentioned in either definition and yet it is widely accepted as an important part of human rights. The right to liberty is not mentioned, nor is the right to a private life. The rights to access justice and to an effective remedy are also not mentioned.
4. To focus 'making rights real' on the idea of well-being (as defined in the 2014 and 2015 acts) alone would lead to a limited understanding of human rights and would not provide full protection. It would not allow many vulnerable and disadvantaged people the right to be fully involved in society and to be treated in a non-discriminatory way. Important though well-being is to human rights, it does not provide a total picture or explain the genuine expectations of the people of Wales to have all their human rights promoted and protected.

Stories

Below are short stories (available on Social Care Wales's [personal outcomes webpages](#)) that show how the UN Principles for Older Persons are being applied – in relation to dignity, independence, participation, care, self-fulfilment and rights. They set out the importance of everyday small actions when providing care and support that address these important principles.

The stories show how individuals' personal outcomes can be achieved and that working in a personal outcomes-focused way complements a rights-based approach.

It is important to note that the rights to personal care, eating and drinking must be upheld as a fundamental aspect of human rights.

Mary



Mary, a grandmother, living with chronic obstructive pulmonary disease (COPD), wanted to go out to buy Christmas gifts for her grandchildren before she passed away. Her care worker supported this to take place by listening to what was important to her and organising all the necessary equipment for this trip. She went out with the care worker and while having a chat, completed her Christmas shopping and had a coffee at Starbucks for the first time.

David



David was being encouraged to move into sheltered accommodation but had been told to give up his cat. A newly allocated social worker understood that David's cat (Cassie) was important to him, as the cat was present when his wife was still alive. The social worker liaised with the sheltered accommodation to allow his cat to live with him and made plans as to who would look after the cat whenever David went into hospital. David now serves on the committee at his complex, given his previous experience as a councillor.

Mal



Mal, living with multiple sclerosis, went to bed at 9pm every night, as that was the time the care workers visited. At a review meeting, Mal explained that he preferred to be able to pick his own bedtime. The occupational therapist was involved in providing a solution, which resulted in Mal being provided with a recliner that doubled as a bed. He can now choose his own bedtime.

Older people in prison



A prison that included older people would often provide mismatched walkers to those who found it difficult to walk. This meant that they could not freely walk around the prison, the same as other prisoners. The Social Services and Well-Being (Wales) Act 2014 outlines that the responsibility to provide social care falls to local authorities, not prisons. But an internal 'buddy system' working with a social care team was able to make sure that those needing walkers could have matching ones that suited their individual needs. Working together with the buddies and the social care team meant that, on release, the individuals were already more independent and aware of how social care could support them in the community if it was needed.

Marilyn



Marilyn was a carer for her husband. Unfortunately, she broke her ankle which meant she might have had to stay in hospital for up to three weeks. This would have further compounded her anxiety because she wanted to be at home to care for her husband. A service worked with her in a way that allowed her to go home and provided her with the support needed so she could continue to care for her husband at home.

Care home



Relationships and people are central to the approach in a care home, which meant that residents felt like they were part of a family. Staff were encouraged, in addition to focusing on work-based tasks, to sit down and have a cup of tea and a chat with residents. A small resident-run shop on site, where other residents could buy things and socialise, also created a sense of community.

Eileen



Before Eileen became ill and started to use a wheelchair, she had a long-term stay in hospital. She had always been an active person involved in committee and charity work and had wanted to continue to participate. By working with her provider, Eileen was able to plan her support around her life by attending committee meetings and personal appointments. She was able to bank any unused support hours and then 'spend' them by going out into the community. Before this was in place, she would spend up to 20 hours per day watching television.

St John's Ambulance



St John's Ambulance runs a day centre where older people can get together and engage in activities such as dancing, singing and socialising. There is a pond on site where people living with dementia can sit and watch the fish. Older people can do gardening activities such as growing and picking fruit and vegetables.

UN Principles for Older Persons and Human Rights

The following short stories show how the UN principles of dignity, independence, participation, care and self-fulfilment have been upheld. There are also some stories that discuss examples in relation to the Human Rights Act.

Dignity

Older persons should be able to live in dignity and security and be free of exploitation and physical or mental abuse.

David



His dignity and right to choose were preserved by respecting his views and acknowledging that the cat was important to him.

Mal



By having his evening call removed and instead being provided with a bed/chair, Mal was able to enjoy dignity by going to bed whenever he wanted rather than at 9pm every night.

Eileen



She regained control by banking her hours, so she was able to maintain her dignity by being able to plan her care around her interests and appointments.

Older people in prison



Before receiving the walkers, older prisoners were trying to 'get by' with mismatched sticks. It could be argued that if they had continued using these sticks, they would have been deprived of their dignity and may have felt humiliated. Those who received walkers were able to move around the prison with dignity.

Care home



The residents' dignity was preserved and promoted by the staff having a cup of tea and conversations with them and using a person-centred approach, as the care provided was not solely task driven.

St John's Ambulance



At the day centre, older persons were encouraged to have fun and participate fully in various activities, which meant their dignity was preserved.

Older persons should be treated fairly regardless of age, gender, racial or ethnic background, disability or other status, and be valued independently of their economic contribution.

Mary



She was respected and treated equally as a person in her role as a grandmother, rather than just being treated as someone living with chronic obstructive pulmonary disease.

David



He previously was not treated fairly as he was encouraged to get rid of his cat. Once it was understood the cat was what really mattered to him, he was treated fairly.

Mal



Although he had to leave his job and was living with MS he was still treated fairly, regardless of his status and health issues. He was seen as an individual in his role as a husband and as a person who could partake in voluntary work.

Eileen



She was treated fairly in that she had been able to explain what was important to her, particularly in relation to being able to bank her hours. She was treated as an individual, rather than as someone who 'needed support'.

Independence

Older persons should be able to live in environments that are safe and adaptable to personal preferences and changing capacities.

Mal



As a recliner was provided instead of a regular 9pm visit, he was able to live in a safe and adaptable environment that suited both him and his wife's personal preferences.

Eileen



As her hours were being banked, she was able to have choice and control according to her own personal preferences. The care worker was able to adapt her living room so that her personal items were placed in locations that Eileen was able to access quickly, easily and safely.

Older people in prison



Older prisoners being provided with walkers meant that they were able to access the library and prison wings safely and independently.

Marilyn



The scheme supported Marilyn to go home and continue supporting her husband despite her injury. The service enabled Marilyn to be adaptable according to her husband's needs.

Care home



The staff were encouraged to focus on a person-centred practice, which meant that residents were able to enjoy being in safe and adaptable family environments based on their own personal preferences.

Older persons should be able to reside
at home for as long as possible.

Mal



The new arrangement meant that Mal could continue living at home.

Eileen



With the care package in place and hours being banked, Eileen could stay at home after a long stay in hospital.

Marilyn



The service enabled Marilyn to go home and stay there rather than remain in the hospital for up to three weeks.

Participation

Older persons should remain integrated in society, participate actively in the formulation and implementation of policies that directly affect their well-being and share their knowledge and skills with younger generations.

David



Being involved in the committee at his complex, he was able to actively participate and contribute to any policies that would have an impact on his well-being.

Older persons should be able to seek and develop opportunities for service to the community and to serve as volunteers in positions appropriate to their interests and capabilities.

David



Through his involvement in the committee, David had a voice and could represent others in the complex in which they lived. Even though his days as a councillor were over, he was still able to serve in a similar manner.

Mal



Although Mal had initially resigned from work on grounds of ill-health, he was encouraged to participate in some volunteering opportunities.

Eileen



She was able to continue volunteering and be involved in charity work.

Older people in prison



The scheme meant that older people in prison could become buddies to serve their own prison community.

Care home



The shop, which was run by residents, provided a service to the community within the care home.

St John's Ambulance



Older persons could provide a service to the centre's community as they had the opportunity to pick vegetables, such as runner beans.

Older persons should be able to form movements
or associations of older persons.

Older people in prison



By setting up the buddy scheme, older people in prison were free to form an association to support each other.

Care

Older persons should benefit from family and community care and protection in accordance with each society's system of cultural values.

Mary



The community care meant that she was able to identify with her role as a grandmother, and the values that this role has, rather than just identifying as a person living with COPD.

David



He eventually received support which respected his cultural values. This is in line with David's cultural values where animals are considered to be an important part of family and private life.

Mal



He had previously been waiting to go to bed at 9pm every evening. It is generally accepted that individuals may go to bed at a time of their own choosing, depending on their activities that day. Now that Mal was able to choose his own bedtime, he would benefit from spending more time with his family.

Eileen



The value of an individual having choice and control is an essential part of people's cultures. Eileen was able to bank her care hours and use them flexibly according to her own personal appointments.

Marilyn



It is often the case that a spouse or partner will take on a caring role if their partner is unwell. In this case, Marilyn was able to look after her husband as the service worked with her to make this happen.

Care home



Family inclusion is a generally accepted value within our society's culture. Rather than feeling like they were living in a home and had people working there, the residents felt they were part of a larger family that included the care staff.

St John's Ambulance



Within society's cultural norms people should have the opportunity to enjoy nature. The day centre offered people living with dementia the same opportunity.

Older persons should have access to health care to help them to maintain or regain the optimum level of physical, mental and emotional well-being and to prevent or delay the onset of illness.

Mary



She had access to health care in a way that meant she could be mobile outside the home. Arranging for her to go out, experiencing something new and having a conversation would have been positive for her mental and emotional well-being.

David



Worrying about who would look after his cat when he needed to go into hospital was making him unwell. When David was finally heard and received support from social care in a person-centred way, he was able to access health care without worrying about Cassie. As a result, he regained his emotional and physical well-being.

Mal



The health care provider was able to respond to what Mal said was important to him. He no longer had to wait to go to bed at the same time every day, so his mental and emotional well-being were maintained.

Eileen



Using hours that she had banked, Eileen learnt to use public transport to help address her mental and emotional well-being. She travelled to Barry by train to have chips and is now planning bus journeys.

Older people in prison



The older people in prison had access to social/health care and were given walkers so they were able to remain physically active. They were able to visit the library, which meant that they were also able to remain mentally active.

Marilyn



By being able to go home and look after her husband, her mental and emotional well-being were addressed. If Marilyn had stayed in hospital, it could have caused considerable distress.

Care home



Residents felt they were part of a family, which meant their mental and emotional well-being were maintained.

St John's Ambulance



One of the day centre participants experienced a loss in confidence, which meant she felt that she had not gone out for four months. This project supported her to be able to attend the centre and meet others, which in turn restored her confidence. This had the additional benefit of addressing her mental and emotional well-being, as well as preventing/delaying other possible illness.

Older persons should have access to social and legal services to enhance their autonomy, protection and care.

Mary



Having an adaptable care package (i.e. responding to her personal outcomes) enabled Mary to have access to social services, maintaining her autonomy as a grandmother, not just as a person living with COPD.

David



Having access to appropriate social care meant that he could still care for Cassie. Furthermore, receiving support at his complex meant he was able to maintain his role as a committee member, maintaining autonomy, rather than being viewed only as an older person who needed to be cared for.

Mal



Accessing social care services, in line with the Social Services and Well-being (Wales) Act 2014, meant that he shared what was important to him and was able to make choices around his bedtime. Appropriate care enhanced his autonomy.

Eileen



Banking her hours meant her care was provided in a way that allowed her to retain her autonomy.

Older people in prison



Older people in prison had access to social services and were given proper equipment rather than sticks that were not useful or safe. This preserved their autonomy.

Marilyn



As a result of accessing social services, she could continue in her role as a wife and carer rather than just being treated as a patient with a broken ankle who needed to stay in hospital.

St John's Ambulance



At the centre, the activities such as dancing, listening to music and gardening showed that the service enabled older people to maintain their autonomy by engaging in activities that interested them. Transport was provided to ensure that older people could get to the centre.

Older persons should be able to utilize appropriate levels of institutional care providing protection, rehabilitation and social and mental stimulation in a humane and secure environment.

Older people in prison



The buddy system meant that those being supported and those providing the support to other inmates benefitted from improved social and mental stimulation.

Care home



Social interactions themselves can be a form of rehabilitation. The on-site activities, including the shop, social events and having a cup of tea with residents and care staff, meant that they received mental stimulation.

Older persons should be able to enjoy human rights and fundamental freedoms when residing in any shelter, care or treatment facility, including full respect for their dignity, beliefs, needs and privacy and for the right to make decisions about their care and the quality of their lives.

David



Having the freedom to visit his friend's flat independently and attending film nights meant he was able to maintain his privacy. Being a member of the committee enabled him to be part of the decision-making process in approaches to care in his complex.

Self-fulfilment

Older persons should be able to pursue opportunities for the full development of their potential.

David



By being involved in the committee, David had opportunities to develop his potential.

Mal



He had opportunities to engage in various activities and was encouraged to do some volunteering work that might allow for the full development of his potential.

Eileen



Her care package, which included the banking of hours, meant that Eileen was able to attend meetings and pursue opportunities. Eileen had choice and control over how her care hours were allocated.

Older people in prison



The buddy system meant that older people in prison were given the opportunity to become a buddy and participate in activities, such as visiting and using the library, which could develop their potential.

Care home



Residents could develop their potential by working in the shop and serving other residents.

Older persons should have access to the educational, cultural, spiritual and recreational resources of society.

Mary



Doing Christmas shopping and seeing the lights and decorations in public spaces can be considered part of Christmas 'culture' and tradition. The grandmother participated in the 'recreational resources of society' by engaging in shopping and having a coffee in Starbucks.

Eileen



As a result of the flexible care package, Eileen was able to visit Barry Island for chips. She could enjoy accessing recreational opportunities outside her own home.

Care home



The on-site shop meant that residents were able to have access to recreational activities. Having a cup of tea with staff and other residents allowed recreational engagement through personal interactions.

St John's Ambulance



The older people could access cultural, spiritual and recreational resources through a range of activities such as music, singing, going out into the garden and enjoying the pond.

Human Rights Act 1998

In addition to the due regard duty under the Social Services and Well-being (Wales) Act 2014, the Human Rights Act 1998 makes it unlawful for a public authority (and that includes some private providers) to act in a way that is incompatible with a right under the European Convention on Human Rights. This is a much stronger duty than the due regard one – public authorities must be able to show that their actions are compatible with the person’s rights under the convention.

Article 3: Freedom from torture and inhuman or degrading treatment

Older people in prison



The older people in prison did not receive the degrading treatment they would have had if they had continued to rely on mismatched equipment. Having the walkers meant they received humane treatment and kept their dignity.

Article 5: Right to liberty and security

Mary



The worker, using person-centred and outcome-focused principles, organised the necessary equipment to support the grandmother to go out, meaning she was not deprived of her liberty and had the freedom to go out of the house.

Eileen



She had previously stayed at home and watched television for up to 20 hours a day. However, with the ability to bank her hours, Eileen had the freedom to visit different places.

Marilyn



With support from the service, Marilyn was able to go home and so her right to liberty was preserved.

St John’s Ambulance



The day service provided transport, which meant older persons could leave their homes, have the liberty to meet others and have fun.

Article 8: Respect for your private and family life, home and correspondence

Mary



Her personal outcomes were to buy gifts for her grandchildren. Supporting this activity enabled her to maintain her family life. She was able to buy the presents herself rather than relying on a third party, such as a support service or a shopping/courier service, and, as such, her privacy and right to choose were maintained.

David



Acknowledging that the cat was a fundamental part of his life and home meant that social care staff respected his wishes and right to choose. His private life was protected.

Mal



His home and private life was respected in terms of his decisions and choice to have a bed/chair in the living room. It also meant that he was able to enjoy his family life.

Marilyn



It was important to Marilyn to be at home to look after her husband. A long stay in hospital would have meant not having access to her family life.

Protocol 1, Article 1: Right to peaceful enjoyment of your property

David



He was moved to a property where he was able to keep Cassie and was able to enjoy his home peacefully. Contingency plans for the care of the cat also meant that David was reassured that Cassie would be looked after when he was not at home.

Mal



He was able to enjoy his property peacefully once there were fewer care workers visiting his property.

Marilyn



By being supported by the service to go home quickly, Marilyn's right to the peaceful enjoyment of her property was preserved.