

# **Provider guidance for Residential/Nursing homes and Supported Living placements – Covid 19**

## **Section 1:**

This document sets out advice and guidance in relation to Service Users who may be deprived of their liberty in residential/nursing and supported living placements, during regulations and restrictions relating to Covid 19. This guidance also aims to clarify questions raised by providers following national/local advice.

**This guidance has been informed by – Responding to COVID 19: the ethical framework for adult social care (published 19/03/2020).**

Local authorities and the wider health and care workforce including Residential/Nursing and Supported Living providers will be faced with difficult decisions for individuals for whom they provide daily care and support. Going forward providers will be required to make difficult decisions with limited resources or information. These decisions will relate to individuals personal situations and their families, carers and members of their staff team. All decisions will need to be informed by law and official guidance issued, which is applicable at the time, while meeting their professional responsibilities.

This paper informed by the ethical framework guidance, aims to provide support to ongoing planning and decision-making to ensure that sufficient consideration is given to ethical values and principles when organising and delivering social care for adults. When making decisions in urgent or uncertain circumstances, it is likely that there will be a tension between balancing the values and principles and the particular context of the decision.

Fundamentally, all decisions should be informed by respect and reasonableness, as underpinning principles which guide and inform judgements regarding care and support.

### **The Values and Principles:**

Each principle must be considered in the context of each circumstance which has been risk assessed, consideration of wellbeing, while taking into account available information and resources.

#### **1. Respect**

This principle is defined as recognising that every person has human rights, their personal choices, safety and dignity matters.

To ensure people are treated with respect, those making decisions should:

- provide people with the opportunity to express their views on matters that affect their care, support and treatment
- respect people's personal choices as much as possible, while considering and communicating implications for the present and future
- keep people as informed as possible of what is happening or what is expected to happen in any given circumstance

- where a person may lack capacity (as defined in the [Mental Capacity Act](#)), ensure that a person's best interests and support needs are considered by those who are responsible or have relevant legal authority to decide on their behalf
- strive to support people to get what they are entitled to, subject to available resources, ensuring that there is a fair judgement and clear justification for any decisions made on prioritisation

## **2. Reasonableness**

This principle is defined as ensuring that decisions are rational, fair, practical, and grounded in appropriate processes, available evidence and a clear justification.

When considering how reasonable a decision is, those making decisions should:

- ensure the decision made is practical with a reasonable chance of working
- base decisions on the evidence and information that is available at the time, being conscious of known risks and benefits that might be experienced
- consider alternative options and ways of thinking, being conscious of diverse views from cultures and communities
- use a clear, fair decision-making process which is appropriate for the time and context a decision must be made in, and allows for contributions to be considered seriously

This principle should be considered alongside relevant equalities-related legal and policy frameworks. Although resources may become stretched, it should be upheld that people with comparable needs should have the same opportunity to have those needs met.

## **3. Minimising harm**

This principle is defined as striving to reduce the amount of physical, psychological, social and economic harm that the outbreak might cause to individuals and communities. In turn, this involves ensuring that individual organisations and society as a whole cope with and recover from it to their best ability.

It's important that those responsible strive to:

- acknowledge and communicate that everyone has a role to play in minimising spread, for example by practicing thorough hand-washing or social distancing
- minimise the risk of complications in the event that someone is unwell
- provide regular and accurate updates within communities and organisations
- share learning from local, national and global experiences about the best way to treat and respond to the outbreak as understanding of COVID-19 develops
- enable care workers and volunteers to make informed decisions which support vulnerable people

## **4. Inclusiveness**

This principle is defined as ensuring that people are given a fair opportunity to understand situations, be included in decisions that affect them, and offer their views and challenge. In turn, decisions and actions should aim to minimise inequalities as much as possible.

To ensure inclusiveness to the extent possible, those making decisions should:

- involve people in aspects of planning that affect them, their care and treatment, and their communities
- involve families and carers in aspects of planning that affect them and the individual who they care for
- ensure that no particular person or group is excluded from becoming involved
- consider any disproportionate impacts of a decision on particular people or groups
- provide appropriate communications to all involved, using the range of communication methods and formats needed to reach different people and communities
- be transparent and have a clear justification when it is decided to treat a person or group in a different manner than others, that which shows why it is fair to do so

Where appropriate, the above should be considered alongside relevant equalities-related legal and policy frameworks that will inform inclusive decision-making by ensuring that specific barriers to service use are minimised for those who may be or become disadvantaged as the outbreak develops.

## **5. Accountability**

This principle is defined as holding people, and ourselves, to account for how and which decisions are made. In turn, this requires being transparent about why decisions are made and who is responsible for making and communicating them.

Those responsible must be accountable for their decisions and actions by:

- acting on and delivering the outcomes required by their responsibilities and duties to individuals, their families and carers, and staff
- adhering to official guidance, statutory duties, and professional regulations at the time
- being transparent about how and which decisions need to be made and on what basis
- being prepared to justify which decisions are made and why, ensuring that appropriate records are being kept
- supporting others to take responsibility for their decisions and actions

Within organisations, this will also entail:

- continuing to carry out professional roles and responsibilities unless it is deemed reasonable not to do so
- providing an environment in which staff can work safely, effectively and collaboratively, which protects their health and wellbeing as the outbreak develops
- providing appropriate guidance and support to staff who may be asked to work outside of their normal area of expertise or be unable to carry out some of their daily activities
- having locally-agreed processes in place to handle ethical challenges during and in the aftermath of the outbreak

## **6. Flexibility**

This principle is defined as being responsive, able, and willing to adapt when faced with changed or new circumstances. It is vital that this principle is applied to the health and care workforce and wider sector, to facilitate agile and collaborative working.

To ensure flexibility, those making decisions should be prepared to:

- respond and adapt to changes as and when they occur, for example in the event of new information arising or changed levels of demand
- ensure that plans and policy have room for flexibility and innovation where necessary
- provide people with as much opportunity as possible to challenge decisions that affect them in the time that is available
- ensure that the health and care workforce is supported to work collaboratively across disciplines and organisations, as agile and resilient as possible
- review organisational practices, standard approaches and contractual arrangements that may obstruct these ambitions

## **7. Proportionality**

This principle is defined as providing support that is proportional to needs and abilities of people, communities and staff, and the benefits and risks that are identified through decision-making processes.

When considering proportionality, those responsible should:

- assist people with care and support needs to the extent possible
- act on statutory or special responsibilities, while noting any duties that might be amended as the outbreak develops
- provide support for those who have extra or new responsibilities to care for others
- provide support for those who are asked to take increased risks or face increased burdens, while attempting to minimise these as far as possible
- provide appropriate support and communications to staff who may experience unexpected or new pressures

## **8. Community**

This principle is defined as a commitment to get through the outbreak together by supporting one another and strengthening our communities to the best of our ability.

Everyone involved will have a role to play in the response to the outbreak and will be affected in one way or another, and therefore should:

- work with and support one another to plan for, respond to, and cope with the outbreak
- support our networks and communities to strengthen their response and meet needs that arise, for example by helping and caring for neighbors, friends and family
- be conscious of our own behaviour and decisions, and how this may impact on others
- share learning from our own experiences that may help others

We are aware that some Residential and Nursing placements have ‘closed their doors’ to visitors from friends or relatives which may have deemed as ‘unnecessary visits’. The purpose of this restriction is clearly to protect residents and staff from the risk of Covid 19. This action likely to have been informed following concern regarding the medical status of residents, many of whom will fall into the over 70 years age group and are also likely to have additional underlying medical conditions putting them at serious risk should they contract Covid-19.

## Section 2:

### Social care Intervention and Human Rights:

As a provider of services, you provide care and support for people whose independence and autonomy might be at risk, as a result of their personal and or social circumstances at this time (for example during the current COVID 19 emergency), the aims of social care intervention should align with human rights values, this includes supporting people to :

- Be protected from harm where they are unable to protect themselves and may be at immediate risk from themselves or others
- Live their lives in accordance with their own wishes and beliefs
- To be treated fairly and with dignity especially when then may be placed in vulnerable situations

Therefore providers should only consider an intervention where there is:

- Evidence of serious risk of abuse/neglect or a risk to life
- Supporting the person and appropriate (where possible) to be involved in the decision as much as possible
- Consideration of the impact of the intervention and whether the intervention proposed is proportionate to the risk

### Article 8 Rights:

Article 8, protects the private life of individuals, however, there are certain circumstances when contact with the families/friends may be breached (see link below).

<https://www.equalityhumanrights.com/en/human-rights-act/article-8-respect-your-private-and-family-life>, to maintain public health as well as protecting the health of the individual. This link also relates to the Public Health (Control of Disease Act 1984) Part 2A, which may supersede other legislation.

Both staff and residents share the right to be kept as safe as possible from a potential life threatening infection. For residents who may be prevented from contact with those they love, we acknowledge that friends and families play a vital part in maintaining morale and making individuals feel safe and loved. Naturally concerns have been raised by families who wish to continue to visit their loved ones.

In order for individuals to maintain contact with friends and loved ones, we suggest wherever practicable that residents could maintain contact via the internet, using Skype or the telephone and for residential/nursing/supported provision to continue activities within the home as much as possible.

### Care Act 2014:

The Coronavirus Bill has **proposed** changes to current duties (such as assessments etc.), however the Human Rights Act provisions remain and providers continue to have a duty to comply with these articles as a minimum.

## **Lasting Power of Attorney:**

Homes should also take into account where relatives have 'Lasting Power of Attorney for Health and Welfare', ensuring details for LPA's are detailed (including dates/registration dates) within case notes. Where an LPA for Health and Welfare has been appointed, providers should ensure consultation with appointees regarding any proposed change in access arrangements, consultation should be undertaken with relatives/family/friends.

## **COVID 19 – Advice and Guidance:**

Due to the nature of the crisis, advice from the government is dynamic and changing rapidly, current guidance is: For those who are at risk of severe illness from Coronavirus (COVID 19) individuals should adhere to the following advice:

### **Shielding: (See attached guidance on shielding and protecting people defined on medical grounds as extremely vulnerable from Covid -19.**

The Government has strongly advised people with serious underlying health conditions, which put them at high risk of severe illness from coronavirus (COVID 19), to rigorously follow shielding measures in order to keep them safe. (See attached guidance for those who are included in this category).

The NHS in England is directly contacting people with these conditions to provide further advice. Individuals within this group are being strongly advised to stay at home at all times and avoid face to face contact for a period of 12 weeks from the day individuals receive their letter. There is a note of caution that this period may change.

### **Social Distancing:**

The Government has strongly advised that the following individuals (see below) who are at increased risk of severe illness from Coronavirus (COVID -19) to be particularly stringent in social distancing measures when in the community /or when in shared spaces.

This is likely to be difficult, but will involve residents ideally sitting approx. 2 metres apart, should residents wish to go out into the community (e.g.: Drive in the country/walk in the park), they should stay away from highly populated areas, again staying 2 metres apart from other members of the public. These arrangements should be captured in a best interest decision and recorded within the individual's care notes. Please note time within the community has now been limited pending review of the Health Protection (Coronavirus) (Regulations) Bill 2020 to one hour for exercise and individuals should only leave their accommodation for the essential shopping/health/care.

**Social Isolation:** This term relates to individuals who need to be cared for in a separate area away from other residents. Where an individual has demonstrated symptoms and personal care or essential care is required, carers will wear protective clothing/equipment and will take specific measures to mitigate the risk of the spread of any potential infection.

Where a resident whom lacks capacity refuses to self-isolate, decisions, including why this is deemed necessary, this decision will need to be considered in their 'best interest' following a capacity assessment (see flow chart)

(See attached links at the end of this document for further detail and guidance)

### **Nursing and Residential Care Homes:**

- In the wake of new restrictions from the Government (announced on 23/03/2020) and the introduction of the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020, the request is that everyone should stay at home and not go out unless absolutely necessary, in addition individuals should not be meeting up with relatives they don't normally live with, this would include relatives in nursing or residential homes.
- Please do request that non -essential visits do not take place at this time while the current restrictions are in place, as they are likely to pose a risk to vulnerable people.
- Visits from individuals which have been considered non -essential, have been asked to utilise other mediums for contact other than face to face contact where possible.
- End of Life or Palliative Care – As a Provider you may wish to consider where limited family members who wish to support their relative (and has not demonstrated symptoms) but is requiring palliative or end of life care, to wear protective clothing (such as aprons/gloves/hand gel) on arrival and to dispose of it appropriately on leaving the building in line with recommended guidelines.

Ultimately any decision making should be informed by the above principles (as described in **section 1** of this guidance ) and the risk to the individual, should mitigating measures not be instigated.

Guidance from the judiciary (judges/legal advisors) states visits to individuals should be made, only where absolutely necessary. Alternative arrangements as described below should always be considered first, such as telephone, facetime or skype calls, with visits to care homes **being strongly discouraged**.

Where it is considered that an individual would be disadvantaged in relation to litigation by the absence of a visit following referral to the Court of Protection, this should be brought to the attention of the legal representative for the individual, who will subsequently raise with it with legal advisors /Regional Lead Judge.

## **Section 3:**

### **Mental Capacity Assessments and Best Interest Decisions:**

#### **Mental Capacity Assessments:**

In the wake of the introduction of the Coronavirus Bill and regulations, it is important to know if the individual you are caring for understands the new regulations and the impact for them, e.g. Not being able to leave the care home freely, not being able to go out for more than 1 hour a day for exercise with/ without support. Before an assessment takes place, the following criteria must have been met.

1. The person being assessed is at least 16 years old
2. They have an impairment of, or a disturbance in the functioning of , the mind or brain
3. The decision being made relates to their health, social care or finances

There are four parts to the test and failure on any one part indicates a lack of capacity to make a specific decision in questions at the particular time the decision needs to be made.

**To have capacity to make a decision a person must be able to:**

1. Understand the information relevant to the decision  
and
2. Retain that information (long enough to make the decision)  
and
3. Use and weigh the information (accepted and took account of the information)  
and
4. Communicate the decision (in any recognisable way)

**Understand:** As the assessment of capacity is decision specific you must be clear in regard what the decision is you are assessing, what they need to be able to understand to make the decision. The assessment is decision specific, e.g.: do not assume because they are unable to make a decision about their medication, they are not able to make a decision regarding adherence to the guidelines around self-isolation/access to the community. This needs to be clearly set out and recorded.

**Retain:** They need to demonstrate that they can retain this information and repeat it back to you (can be in their own words), shortly after you have explained it to them.

**Use and Weigh:** Are they able to understand the impacts/potential impact of going out /not adhering to advice or regulations

**Communicate :** Are they able to communicate in response to your explanation of the required decision ?, this may be via sign language, Makaton, using pictures , photo's the easy read guide, a Speech and Language therapist may be able to advise the best mechanism for individuals who struggle with Verbal communication.

**Following the Capacity Assessment, you should document all carefully.**

- What the decision was
- The questions you asked
- Their responses

The measures required to ensure some who lacks capacity self isolates/social distances/limits their contact with others will vary depending on the individual and in accordance with the mental Capacity Act must be the least restrictive measures to keep them safe.

**Your conclusion:** If you have assessed the individual as lacking capacity (this decision can also be made on the balance of probabilities if you are not a 100% sure). The conclusion will

need to be recorded in the individuals care file/personal file. This will then need to be followed by a Best Interest Decision.

### **Best Interest Decision:**

This again will need to be decision specific, it should be noted whether you have undertaken an assessment of capacity and made a best interest decision in respect of:

- Self-Isolation
- Social Distancing
- Limited time in the community/community access
- Restriction of face to face access to family /friends/relatives

### **Deprivation of Liberty /Mental Capacity:**

Deprivation of Liberty Safeguards applies to individuals who are: under complete supervision and control, are not free to leave and whom lack capacity to consent to their essential care, treatment and accommodation. It is likely that a number of your residents who do not have capacity will already have a Dols authorisation in place, or referrals for assessment may be in progress following submission to the Deprivation of Liberty Team.

Some individuals in residential settings will have the mental capacity to agree to 'self – isolate', however for those who do not have capacity regarding their accommodation/care and treatment (following a capacity assessment – remember capacity assessments are decision specific), please submit a referral (Form1) to the Deprivation of Liberty Team for an assessment. For those who live in a supported living setting/shared lives and do not have capacity, please discuss your concerns with the individuals allocated social worker or Deprivation of Liberty Team, in consideration of a referral for a 'domestic Dol' via the Court of Protection.

### **DOLS Authorisation: Does the individual I support require a review of their current authorisation?**

As the authority is currently dealing with a public health emergency and the restrictions imposed/proposed are in order to comply with the advice from Public Health England, it is the council's view those with a current authorisation in place , do not automatically require a review at the moment. However, where restrictions apply to an incapacitated person, regard must be given to the Mental Capacity Act, staff/practitioners should work through the best interests checklist in a practicable manner and give due importance to the public health imperatives of the situation. Some of the restrictions can be justified in the interest of the person, as they aim to protect the person from harm if they are exposed to the virus. Clear recording as described below highlighting the risk to the person is essential noting the current public health imperative.

**IMCA's/IMHA's/Advocacy** – Where individuals receive support/visits from advocates, face to face visits can be replaced by utilising internet/skype/telephone, if residents are unable to engage with this medium, staff should note and record any significant objection, change in behaviour and the impact of the change in arrangements or access as a result of Covid 19, this information should then be sent to the appropriate advocate/agency.

If you require any clarification regarding MCA/DOLS matters, do contact the Deprivation of Liberty Safeguards Team via email: [dols@bristol.gov.uk](mailto:dols@bristol.gov.uk) or Tel: 0117 9036460

### **Non Compliance:**

**(See guidance link below – The Mental Capacity Act ( 2005) (MCA) and Deprivation of Liberty Safeguards (DoLs) During the Coronavirus (COVID -19) Pandemic Guidance for Hospitals, Care Homes and Supervisory Bodies [v0.1] (Published 09 April)**

If it is suspected or confirmed that a person who lacks the relevant mental capacity has become infected with COVID 19, it may be necessary to restrict their movements. In the first instance, those caring for the person should explore the use of the MCA as far as possible if they suspect a person has contracted COVID-19.

This guidance should be read in conjunction with the attached flow diagram and applies when someone with care and support needs who continues to go into the community and fails to respond to the government's guidance about social distancing or self-isolating due to Covid -19 restrictions.

Supporting Individuals with understanding the risks of infection from COVID-19 and the requirement of compliance with local and national advice may be difficult for some residents to understand. Where individuals refuse to comply with government/national advice to practice social distancing/or Self Isolate - should be noted and recorded in case notes as described at the end of this guidance.

**Additional restrictive measures (for service users) to prevent the spread of the virus must be:**

- **Necessary**
- **Proportionate**
- **Respectful of human dignity**
- **For no longer than is necessary**

Where there are concerns regarding individuals regarding their safety or the safety of others, Providers should request **advice via Care Direct or via their allocated social worker in the first instance.**

If there are concerns that a response under Safeguarding may be required due risk of harm during the Covid-19 emergency, professionals should try to discuss this in the first instance by calling the Safeguarding Hotline number on: 9 – 4.30pm Mon – Fri 0117 90 36629. **This number is for professionals only.**

Where individuals disregard regulations set out in the new regulations you should be clear whether you consider them to have the capacity to understand the consequences of them disregarding the regulations set out in the Coronavirus Bill 2020. It is likely individuals may be challenged by the Police/PCSO's while in the community; therefore you could consider contacting your local community team to advise that this is a possibility concerning individuals you support. (See attached flow chart for guidance).

The Coronavirus Bill 2020 is time limited and is scheduled for review, however at this time there are statutory restrictions on every person leaving the place where they are living

“without reasonable excuse”. A reasonable excuse includes : taking exercise , as well as to avoid illness or injury or to escape a risk of harm .There are statutory steps which can be taken to enforce this, including the power for a relevant person to direct the person to return to the place where they are living. A disregard for the regulations may be seen as a criminal offence and result in a fixed penalty notice.

The attached easy read guide may help you inform individuals who may be confused by new requests informed by national or local guidance such as social distancing/self -isolation.

### **Case Note Recording- Please ensure recording as below:**

- Where providers are concerned of the impact on residents or where there has been a change to access from members of the family/friends please ensure it is recorded in case notes /individuals file:
- Why there has been a decision taken to change an individual's access to family/visitors/restriction of community access or to fellow residents (if displaying symptoms)
- What the restriction is/duration?
- Whether the individual has capacity to consent to the change in arrangements
- The views of the individual concerned
- Why the change is considered proportionate to the risk involved informing the change
- Whether there is a deprivation of liberty authorisation in place or whether there has been an application made to the Court of Protection
- When the restriction or change will be reviewed
- A risk assessment should be completed to accompany the above documentation, setting out the potential impacts, e.g. self -harm, distress etc.
- Record any advice from professionals – NHS 111, GP's Nurses, CPN, Best Interest Assessors/Advocates
- Recording – family members
- All notes should clearly note the date and by whom the decision was taken

**In addition to the attached guidance, please attached links below for a summary of the Coronavirus bill and the latest guidance:**

<https://www.gov.uk/government/publications/coronavirus-bill-summary-of-impacts/coronavirus-bill-summary-of-impacts>

### **Additional information:**

COVID-19: guidance on residential care provision

<https://www.gov.uk/government/publications/covid-19-residential-care-supported-living-and-home-care-guidance/covid-19-guidance-on-residential-care-provision>

COVID-19: guidance for supported living provision

<https://www.gov.uk/government/publications/covid-19-residential-care-supported-living-and-home-care-guidance/covid-19-guidance-for-supported-living-provision>

COVID-19: guidance on home care provision <https://www.gov.uk/government/publications/covid-19-residential-care-supported-living-and-home-care-guidance/covid-19-guidance-on-home-care-provision>

Guidance on shielding and protecting people defined on medical grounds as extremely vulnerable from COVID-19 <https://www.gov.uk/government/publications/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19> - note the following

Guidance on Social Distancing for everyone in the UK.

<https://www.gov.uk/government/publications/covid-19-guidance-on-social-distancing-and-for-vulnerable-people/guidance-on-social-distancing-for-everyone-in-the-uk-and-protecting-older-people-and-vulnerable-adults>

Guidance on MCA/Dols during Covid 19 Pandemic

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/878910/Emergency\\_MCA\\_DoLS\\_Guidance\\_COVID19.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/878910/Emergency_MCA_DoLS_Guidance_COVID19.pdf)