

## **Covid-19 testing and consent**

**This information is about how to apply the Mental Capacity Act when testing and isolating people in a care home environment.**

In July 2020, the Government announced the need for regular testing for Covid-19 for anyone who works or lives in a care home.

Some people who live in care homes may not be able to consent to testing because conditions that can affect their decisions, for example dementia or an acquired brain injury. For these people, a person responsible for making decisions to undertake the test (for example the care home manager) will need to decide if it is in the person's 'best interests' to undertake that test.

In these situations:

- The decision made must not be based on a person's age, appearance or condition or behaviour.
- The person's wishes and feelings should be taken into account
- People interested in the person's care and welfare should be consulted (this could include an advocate if there is no one suitable to consult)
- They least restrictive option for the person should be considered
- The decision can only be made based on risks to the person - not to others.

If a person's capacity to consent to a test fluctuates during the day, they should be supported to make the decision at a time where they are better able to consent. Alternatively, staff should work with them to complete a statement to cover the time where they are unable to consent.

### **Isolation and consent**

The increase in testing may mean that some people need to be isolated. People may also need to be isolated because they:

- were recently admitted to the care home,
- have Covid-19 symptoms, or
- have been in contact with someone who is symptomatic.

Whatever the reason, consent should always be addressed as part of planning a period of isolation. A person may be considered to be 'deprived of their liberty' if they:

- are not able to consent to where they live to receive support with their care and welfare; and

- are under ‘continuous supervision and control’ (meaning they receive regular support during a 24-hour period and decisions are made on their behalf on a daily basis); and
- are not free to leave the place where they live permanently; and
- are not receiving [‘life saving treatment’](#)

This does not mean that someone should not be receiving this care, it indicates that a further assessment is required to ensure that the arrangements that are in place are in the person’s best interests.

If a person has already had an assessment for a ‘Deprivation of Liberty’ and it has been ‘authorised’ (signed off by the Local Authority) this process will likely cover the time the person is isolated.

If the person has not been assessed, the care home has a responsibility to apply to the Local Authority to ask for the person to be assessed.

If a person has had an assessment but their isolation means they are restricted more than they would have been before the COVID-19 pandemic – the care home should request a ‘review’ of the Deprivation of Liberty Safeguards to ensure they are still in the person’s best interests.

If a person is in their own home, or in supported living and appears to be ‘Deprived of their Liberty’ then a social care or health professional should apply to the Court of Protection to ‘sign off’ that the placement is in the person’s best interests.

### **For more information**

To ask questions or discuss any of this information further, please contact the Mental Capacity Act /Deprivation of Liberty Safeguards Team:

- Email: [dols@northyorks.gov.uk](mailto:dols@northyorks.gov.uk)
  - Phone: 01609 536829
- Government guidance on mental capacity and deprivation of liberty during the current pandemic is available here:  
<https://www.gov.uk/government/collections/mental-capacity-act-making-decisions>
  - For North Yorkshire County Council information on deprivation of liberty please visit: <https://www.northyorks.gov.uk/deprivation-liberty>

**31<sup>st</sup> July 2020**