Redcar & Cleveland Borough Council – Adult Social Care

MCA/DOLS Guidance for Care Homes

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1. About this guide

Care homes face a very significant challenge during the COVID-19 pandemic. Many care home residents will be at high risk of serious illness or death if they contract the virus, but many residents also lack the capacity to understand the need for extra precautions.

Over the recent months, you will have had to implement additional restrictions that residents have not understood or not been able to agree to and may have shown objection to. Some restrictions may have to be implemented mainly for the benefit of other residents, not the person being restricted. **These restrictions must be regularly reviewed and proportionate to mitigate the risks of spreading COVID-19.**

The Department of Health and Social Care has issued updated guidance on how the Mental Capacity Act (MCA) Deprivation of Liberty Safeguards (DoLS) should apply during the epidemic: https://www.gov.uk/government/publications/coronavirus-covid-19-looking-after-people-who-lack- mental-capacity/the-mental-capacity-act-2005-mca-and-deprivation-of-liberty-safeguards-DoLS- during-the-coronavirus-covid-19-pandemic

2. Summary

This guide is intended to help Managers and staff working in care homes to make the difficult decisions that you are already facing, and to protect all your residents whilst adhering to the 'proportionate and reasonable' principles of the MCA.

An overview of key points is provided below:

- **a.** all MCA/DOLS duties remain in force: decisions should continue to be taken on the basis of a 'reasonable belief' regarding lack of capacity and best interests. But Managing Authorities and Supervisory Bodies should take a proportionate approach and prioritise according to need;

b. decision-making has to focus on the individual; ‘blanket’ decisions regarding groups of people are not acceptable;

c. the individual and his/her family/friends/representative should be engaged in the MCA process as much as is practicable (but ‘blanket’ decisions not to attempt engagement will not be acceptable);

d. DOLS assessors are not visiting care homes but arranging to undertake assessments remotely and your cooperation with this is appreciated;

e. if care home residents need to be restricted for their own safety and/or the safety of others then the MCA/DOLS framework should be used wherever possible. Restrictions must be reasonable to mitigate the risks of COVID-19 and individualised, taking into consideration the individual needs of residents.

f. if residents in other settings (e.g. supported living, foster placements for 16 – 17-year olds) need to be detained then legal advice should be sought regarding: applying to the Court of Protection;

g. if the MCA/DOLS framework cannot be used (e.g. a care home resident with mental capacity who declines to follow the Public Health Protection guidelines) then the Health Protection Team may need to advise on how Public Health protection powers can be used.

3. General issues

If residents are unwell with COVID-19 infection they are likely to be less mobile. But some residents who are not symptomatic may become more mobile or display new actions because of changes to the routine in the home, e.g., turnover of residents and/or staff.

You should mitigate risks wherever possible. For example, you can ensure any residents who walk around the areas are monitored / supported / distracted with activities to reduce contact with other residents and do not enter their fellow residents' rooms or flats. Best practice examples that have been shared nationally are included at Appendix 1.

The layout of the home should also be considered, and whether some residents should move temporarily in order for restrictions to be minimized and implemented effectively for example on a floor where there are more active residents who will move around the unit therefore making social distancing difficult to follow.

Extra vigilance is required regarding infection control measures around the individual and communal areas, again examples of this are shared at Appendix 1 which includes creative ideas of promoting good hand hygiene that can also reduce the impact of less social contact which is important to your residents.

You should provide as much information as you can to family members and friends on any additional measures that are being implemented in the home and promote contact between residents and family/friends using whatever means are available (e.g., telephone, Skype etc.). This needs to be done in such a way that everyone has a fair opportunity for contact, but you are still able to provide essential care to residents. Again, examples are shared at Appendix 1 including homes that have arranged booking daily slots for family to contact using technology.

4. Mental Capacity Act 2005

All MCA requirements remain in force during the COVID-19 emergency. This means that you and you must have a 'reasonable belief' that a person lacks capacity, and of what is in his/her best interests, before taking any action.

It may be challenging to comply with these requirements during the

pandemic. There may be very little time to assess residents' capacity due to the pressure of caring responsibilities and staff shortages. You should make use of any information you have available to assess a resident's capacity, and to make best interests' decisions. The views of family and friends should always be taken into account. If the situation is an emergency, then you should act promptly to preserve life and limb. However, the resident's capacity/best interests should then be reviewed as soon as possible.

All assessments and best interests' decisions should be clearly recorded and regularly reviewed as the situation in the care home develops. This should be done on an individual basis with a COVID-19 care plan. (See the 'mental capacity assessment' and 'best interests' templates at Section 11 of this document for guidance on how to do this.)

5. Restrictions and DOLS

Some care home residents who lack the capacity to consent to their care and support may require additional restrictions at times during the pandemic. This may be because the resident is at risk of infection, or the resident has COVID-19 infection and poses a risk to others.

Restrictions should only be imposed in line with the Public Health guidance currently in force.
These restrictions should only be reasonable to mitigate the risks of spreading COVID-
19. A risk assessment should be carried out and mental capacity/best interests addressed. If the resident is not already subject to DOLS, then you should put an urgent authorisation in place and apply to the Redcar and Cleveland Borough Council (RCBC) DOLS Team for a standard authorisation via email – DoLS@redcar-cleveland.gov.uk

6. Urgent authorisation

During the pandemic, a shortened DoLS form 1B was introduced nationally to grant an urgent authorisation and request an extension to that urgent authorisation, from the supervisory body. RCBC during the ongoing pandemic, are accepting either this or the usual Form 1. This should be submitted as soon as is practically possible after the deprivation of liberty has been identified and started. This guidance makes no changes to the process for a standard authorisation, which should be followed as usual, when required.

Family and friends should be consulted as part of the best interests' decision whenever it is practicable to do so. Where relevant, the relevant person's representative (RPR) should be involved. **It is not acceptable to have a 'blanket' policy of not contacting family/friends.**

7. Risk assessment

The risk assessment should ensure that any restrictions are necessary and proportionate to mitigate risks and take into consideration the impact on the individual:

- **necessary** means that the individual will be harmed if the restrictions are not put in place; and

- **proportionate** means that the benefits of the restrictions are greater than the burdens, and they are the minimum necessary and for the minimum time to comply with the Public Health guidance.

If the person is not already subject to DOLS, the restrictions will amount to a deprivation of liberty, and if the resident lacks the capacity to consent to them, a DOLS authorisation **must be requested.**

8. Restrictions to comply with the Government directive on social distancing and self-isolation

You should comply with the Public Health guidance after assessing risk and considering mental capacity and best interests**. You should inform the RCBC DOLS team if you need to impose any additional restrictions on a resident that the resident and / or family / representative is objecting to.** In addition, you must inform us if any of these restrictions are primarily to protect the other residents of the home. **Any additional restrictions must be reasonable to mitigate risks.**

9. Family contact / visits

Support to maintain regular contact with loved ones during the pandemic should be encouraged as far as is practical and some examples are shared in **Appendix 1.** Whilst recognising the whole nations restrictions around this and the recognised vulnerability of those in care homes, as lockdown eases but risks remain for those in care homes, imaginative ways to maintain this vital contact must continue to be explored. When entry to care homes is not possible in line with local Public Health guidance, examples shared are actively encouraged by RCBC and if not done so beyond reasonable steps to mitigate risks, conditions attached to DOLS may be considered by BIA's. Recent case law also advocates this approach, and we all need to 'think outside the box'.

10. Do I need to complete DOLS form F10 for every resident who has restrictions in place to comply with the Governments directive on social isolating?

We are not expecting you to complete an F10 for every resident where restrictions are in place for social distancing. The restrictions should be recorded in the individual's care records, with a MCA / Best Interests decision recorded and a care plan with evidence of actions taken to

reduce the impact of restrictions imposed. *i.e., reduced group activities but increased 1-1 time with staff on a daily basis.*

You would need to complete an F10 in some cases, e.g., if the person was objecting or clearly not happy with the additional restrictions. The DOLS team will be able to advise you if an F10 is needed.

11. Support during this period from the RCBC DOLS team

The best interests' assessors (BIAs) from the DoLS team can offer a platform to discuss concerns or queries that may arise from the actions required. They can be contacted on via 01642 771 788 or DoLS@redcar-cleveland.gov.uk

Example text templates are provided below: -

Mental capacity

a. "This assessment occurred at a time when public health measures had been put in place by HM Government to contain the spread of the COVID-19 virus. This limited the support I was able to offer P when making this decision, and the information I was able to gather from others.

b. "To have the capacity to make this decision, P needs to understand/retain/use and weigh the fact that he/she is at high risk of COVID-19 infection and needs to isolate from other residents to minimise the chances of contracting COVID-19 as per national guidance; **OR** P has contracted COVID-19 and needs to isolate from other residents to protect them from infection. This is in line with national guidance under the Coronavirus Act and I believe P would fully comply with this if able to make a capacitated decision.

c. I believe that P is not able to understand/retain/use and weigh the information because... I therefore believe that on balance of probabilities P lacks the capacity to make this decision."

d. “The options available are (1) for P to be isolated or (2) P to maintain his/her usual routine. Based on my conversation with P it is my view that P’s wishes are … The views of others are … Taking all the information into account, I believe that on balance of probabilities option 1 is in P’s best interests at this time and is the least restrictive option. This decision will be kept under ongoing review in the light of changing circumstances and any further national or local guidance. Measures taken to reduce the impact to P’s wellbeing and prevent the negative impact of isolation includes …….”

DoLS

e. “The following additional restrictions are being applied to P because of P’s ill health due to COVID-19 infection/P’s risk of contracting COVID-19 etc (*list the restrictions*). I believe that P does not have the capacity to consent to these restrictions, they are necessary and proportionate to prevent harm to P, and they are in P’s best interests. I have informed the DOLS team and RPR. These restrictions will be kept under review and will be lifted when they are no longer necessary.”

Appendix 1: Examples of initiatives to mitigate the impact of restrictions

Hallmark Group Homes regularly facilitated residents washing their hands, making hand-washing a positive experience. This also provided an opportunity to offer comfort and physical contact for some residents.

Darlington Manor, Manor Care Home Group noticed that some residents were becoming agitated when they were taken outside to the garden area for visits with their family. They provided a gazebo so that there was a shaded area for visits and asked family members to bring sunglasses for them.

Marigold Nursing Home, Sunderland frequently checked that chairs were 2 metres apart. Also, a staff member was on corridor-duty to gently separate residents when they were walking too closely together.

Akari Care Homes undertook regular checks of symptoms as well as more subtle checks about unusual presentations of individuals. Covid-19 has been shown to have many different symptoms, and so staff kept an eye on anyone who was presenting out of character, including loss of appetite, loss of smell or a dip in mood.

Orchard Mews, Benwell required staff dressed in PPE to wear a large, laminated picture of themselves on a lanyard, and show it to the resident prior to giving any personal care. Staff were also encouraged to take more time to connect with a resident prior to undertaking any intimate care tasks.

Hallmark Care Homes trained staff to help with technology platforms (FaceTime, Skype, and their RelsApp) to ensure contact could be maintained with families. This approach also increased residents' sense of belonging. It was really important that the staff got to know the technology well, because it was frustrating when good connectivity

could not be made.

Care homes in Northern Ireland were advised to engage residents in conversations about their son/ daughter/ husband/ wife/ significant other and support residents to look at photographs if available. This helped people experience familiarity, connection and to feel safe and secure. The staff also worked with families and friends to ensure there were personal objects and photographs in residents' rooms.

Care homes in Teesside supported to create walking spaces within segregated areas for those residents who continually wanted to walk

Care homes across Teesside offered family members bookable slots for virtual meetings with relatives vis Portal and iPad from the beginning of the lockdown period.

Care homes in Durham and Darlington were encouraged to use soft toys and weighted dolls. These provided opportunities for touch, cuddling and squeezing. Residents were also encouraged to use weighted blankets and photo-cushions with pictures of family members to hug.

Care homes in Durham and Darlington provided individualised 'meaningful' engagement boxes for residents with late-stage dementia. These were shoe-sized boxes of non-valuable items that had meaning to the person, including objects that they could grasp and hold to provide comfort. Objects in the boxes needed

Darlington Manor, Manor Care Home Group asked family members to record some video messages for a resident so that these could be played to her regularly by care home staff to improve her wellbeing and reduce her agitation.

Milford Care encouraged the local community to use pen pal schemes

with the local schools that were open for the children of key workers.

CHD Living promoted an ‘adopt a granny scheme’, where tech-savvy volunteers made regular contact with residents in the home.

Hawthornes Care Homes increased contact via social media with the neighbourhood and local businesses. As a consequence, food was delivered by dressed-up superheroes, and there were socially-distanced parties and film afternoons

Willow View Care Home and Warrior Park Care Home were concerned about potential increases in depression amongst their residents and so developed a garden- based activity hub, set up car park karaoke, and had music events in the grounds.

Springwater Lodge, HC-One asked residents what words of wisdom they wanted to share with other and then posted these on their **Facebook page, #wednesdaywisdom.** The residents were extremely proud to offer their advice. One resident’s words of wisdom were “Do unto others as you would do to yourself”

The Grove, Gosforth gave residents cleaning equipment to give them the option for additional disinfecting of their own rooms. This helped to maintain existing skills and reduce anxiety because it allowed residents to clean their rooms to their own standards during the pandemic.

Care homes in Durham and Darlington supported care homes to develop individualised meaningful engagement boxes for their residents. For those residents who needed to be active the box could include, balls, balloon games, paper aeroplanes, catalogues to carry in shopping bags, watering cans to water the garden.

The Whitehouse Residential Home Stockton introduced daily exercise for residents, including the ‘10 Minute Home Chair Workout for

Seniors' by the Body Coach Joe Wicks.

Akari Care Homes earmarked dedicated time each day for a 1:1 fun activity for residents who were isolated in their room. This included playing with a balloon, listening to music or watching songs on an electronic tablet.

Care homes in Teesside accessed five internet radio stations for people living with dementia and their carers playing era-specific and mixed music for making memories again and again at **www.musicfordementia.org.uk**

Ascot Nursing and Residential Home, Middlesbrough incorporated comedians and public messages of support into the daily routine. Peter Kay's videos were a particular hit for boosting morale of staff and residents.

Allington House Care Home, Bondcare had a piper playing his bag pipes in the home's garden, playing tunes for both the residents and staff.

Appendix 2 - An example of how to consider the use of safety gate as a way of restricting a resident to ensure self-isolation

- any restrictions (including safety gates) have to be considered on a case-by-case basis. You can't make a decision to use them for all residents, or for a group of residents, without considering each resident's individual circumstances;

- if the resident has the capacity to consent to the restrictions, then his/her consent is needed. If he/she lacks capacity, then you have to have evidence for this and make a best interests decision;

- the best interest's decision has to take account of the views of the person and family/friends/advocates etc. it's difficult to communicate with people at the moment but you need to do your best;

- safety gates can protect the resident, but they can also put him/her at risk. Why is a safety gate the least restrictive option for this person? Can it be safely installed in the person's doorway? What alternatives might there be, e.g., movement sensors, moving the person temporarily to another area of the home;

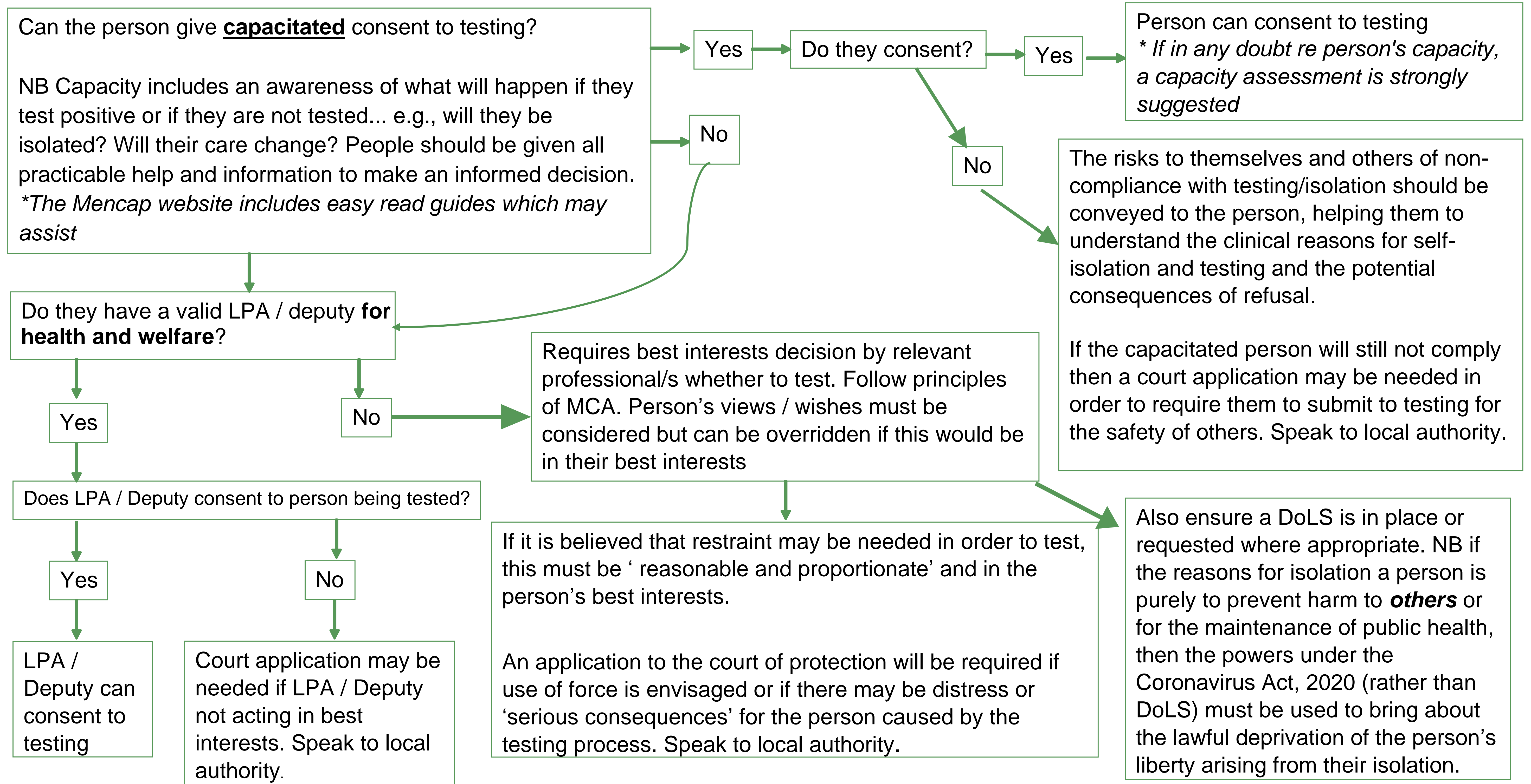
- any restrictions must be kept under review and removed as soon as they are no longer needed;

- if the resident is already subject to DOLS please contact the DOLS Duty worker to let them know about the use of a safety gate. We will then advise you whether a review of the DOLS is needed; and

- if the resident is not already subject to DOLS please apply for DOLS as soon as possible and refer to the safety gate in the application

Appendix 3 - Guidance on Covid-19 Testing for people who may lack capacity to consent

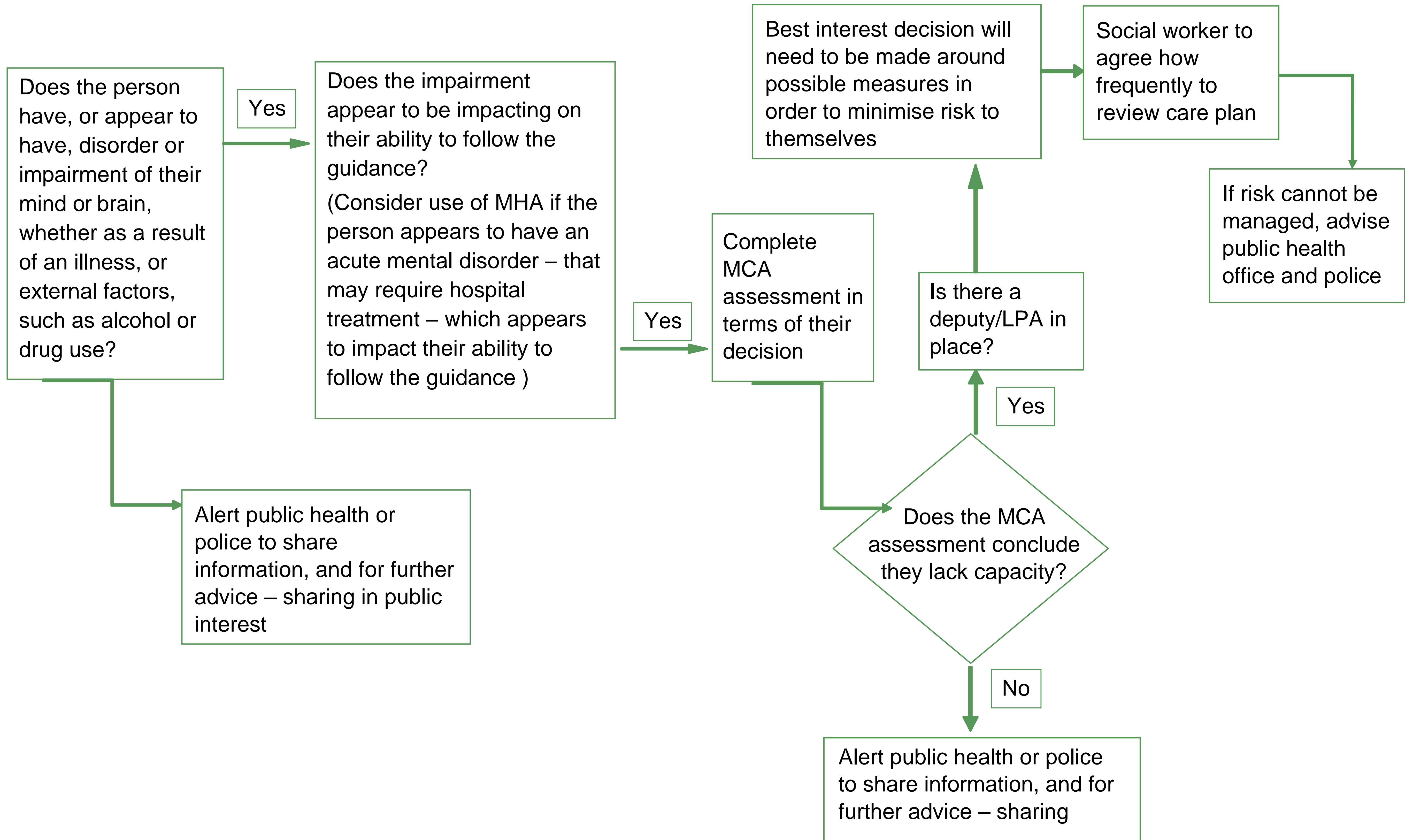
There cannot be a 'blanket' decision that testing is in the best interests of a group of residents or patients, as this would be contrary to the requirement of the Mental Capacity Act 2005 that it is the best interests of that **particular person at that particular time** which are determinative. Testing is, in most cases, likely to be in the person's best interests assuming that, if tested positive, any steps taken to isolate the person are taken in such a way that reflects the principle of least restriction and minimises the impact of any restrictions upon him or her.



Guidance date 19/06/20 with thanks and acknowledgement to 39, Essex Street Chamber. For latest advice visit https://www.gov.uk/government/collections/coronavirus-covid-19-list-of-guidance

Appendix 4 - Process for social care staff when a person is not following guidance on social distancing or self- isolating

To use in situations where standard discussions with the person (and/or family/carers) have already taken place and the person (who has, or appears to have, care and support needs) continues to present an apparent risk.



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