



## Review Sheet

Last Reviewed  
25 Feb '21Last Amended  
25 Feb '21Next Planned Review in 12 months, or  
sooner as required.

Business impact



Minimal action required circulate information amongst relevant parties.

Reason for this review

Scheduled review

Were changes made?

Yes

Summary:

The Human Rights Act 1998, the Convention on the Rights of Persons with Disabilities, the Mental Capacity Act 2005, and the Equalities Act 2010 all prohibit inhumane and degrading treatment and set boundaries on when a person's rights to liberty or to a private and family life can be breached. When human rights are the framework for providing care and treatment, there is far less risk of callous or thoughtless cruelty or neglect within services, especially for people with significant care and support needs. The policy has had minor changes to language style to enable greater accessibility. Changes are minor, to update this vital policy. Human rights underpin all interactions in health and social care.

Relevant legislation:

- Health and Social Care Act 2012 Section 250 (Information Standards)
- The Care Act 2014
- Equality Act 2010
- Equality Act 2010: Chapter 1 (Protected Characteristics) Chapter 2 (Prohibited Conduct) and Chapter 3 (Services and Public Functions)
- Human Rights Act 1998
- Mental Capacity Act 2005
- Mental Capacity Act Code of Practice
- Gender Recognition Act 2004

Underpinning knowledge - What have we used to ensure that the policy is current:

- Author: Equality and Human Rights Commission, (2019), *Human rights in health and social care*. [Online] Available from: <https://www.equalityhumanrights.com/en/advice-and-guidance/human-rights-health-and-social-care> [Accessed: 25/2/2021]
- Author: HM Government, (2020), *Mental Capacity Act Code of Practice*. [Online] Available from: <https://www.gov.uk/government/publications/mental-capacity-act-code-of-practice> [Accessed: 25/2/2021]
- Author: Equality and Human Rights Commission, (2020), *UN Convention on the Rights of Persons with Disabilities (CRPD)*. [Online] Available from: <https://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/un-convention-rights-persons-disabilities> [Accessed: 25/2/2021]
- Author: CQC, (2020), *Our human rights approach for how we regulate health and social care services*. [Online] Available from: [https://www.cqc.org.uk/sites/default/files/20200922\\_Our\\_human\\_rights\\_approach\\_post\\_con](https://www.cqc.org.uk/sites/default/files/20200922_Our_human_rights_approach_post_con) [Accessed: 25/2/2021]
- Author: NHS England, (2020), *Accessible Information Standard*. [Online] Available from: <https://www.england.nhs.uk/ourwork/accessibleinfo/> [Accessed: 25/2/2021]

Equality Impact Assessment:

QCS have undertaken an equality analysis during the review of this policy. This statement is a written record that demonstrates that we have shown due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations with respect to the characteristics protected by equality law.



## 1. Purpose

1.1 To enable Holbeach & East Elloe Hospital Trust to meet the legal requirements to promote and protect the equality and human rights of Service Users.

1.2 To promote the autonomy, wellbeing and independence of Service Users by respecting and enhancing their human rights.

1.3 This policy focuses on the promotion of equality and human rights for Service Users. Equality and human rights for staff are not addressed in this policy.

1.4 To support Holbeach & East Elloe Hospital Trust in meeting the following Key Lines of Enquiry:

Key Question	Key Lines of Enquiry
CARING	C3: How are people's privacy, dignity and independence respected and promoted?
EFFECTIVE	E7: Is consent to care and treatment always sought in line with legislation and guidance?
SAFE	S2: How are risks to people assessed and their safety monitored and managed so they are supported to stay safe and their freedom is respected?
WELL-LED	W1: Is there a clear vision and credible strategy to deliver high-quality care and support, and promote a positive culture that is person-centred, open, inclusive and empowering, which achieves good outcomes for people?

1.5 To meet the legal requirements of the regulated activities that {Holbeach & East Elloe Hospital Trust} is registered to provide:

- Health and Social Care Act 2012 Section 250 (Information Standards)
- The Care Act 2014
- Equality Act 2010
- Equality Act 2010: Chapter 1 (Protected Characteristics) Chapter 2 (Prohibited Conduct) and Chapter 3 (Services and Public Functions)
- Human Rights Act 1998
- Mental Capacity Act 2005
- Mental Capacity Act Code of Practice
- Gender Recognition Act 2004



## 2. Scope

2.1 The following roles may be affected by this policy:

- All staff
- Volunteers

2.2 The following Service Users may be affected by this policy:

- Service Users

2.3 The following stakeholders may be affected by this policy:

- Family
- Advocates
- Representatives
- Commissioners
- External health professionals
- Local Authority
- NHS



## 3. Objectives

- 3.1** Service Users are honoured in all their uniqueness and diversity, and their rights to live as they choose are not restricted, except where strictly both necessary and proportionate, and in accordance with this policy.
- 3.2** Care Plans show ongoing commitment to respecting and promoting the human rights of Service Users, through demonstrating knowledge of the person's wishes and feelings, and making these the framework for the way services are provided.
- 3.3** Staff show, by their actions, a commitment to equality and diversity, by enabling Service Users to maintain or create hobbies and interests, community links, friendships and memberships of religious or community organisations.
- 3.4** The service reflects, through staff, volunteers or pro-active community involvement, the cultural, religious and social make-up of the local community, so that Service Users do not feel distanced from those who share their culture or background.
- 3.5** To ensure that the 5 outcomes of the Accessible Information Standards are met and staff at Holbeach & East Elloe Hospital Trust understand and have processes in place to meet the standards.



## 4. Policy

- 4.1** Actions and decisions that affect Service Users are compliant with relevant human rights law, that is, the Human Rights Act 1998, the Equality Act 2010, and, where Service Users aged 16 or over may lack mental capacity, the Mental Capacity Act 2005.
- 4.2** Care Plans demonstrate the importance that Holbeach & East Elloe Hospital Trust gives to protecting the human rights of Service Users, by being clearly person-centred and individual, and reflecting a real commitment to people's rights to live as they choose.
- 4.3** Holbeach & East Elloe Hospital Trust is committed to identify and remove any 'blanket rules' governing how Service Users live, demonstrating this by person-centred planning that enables, for example, specific religious or cultural practices that are important to an individual.
- 4.4** The management team shows its commitment to equal opportunities, diversity and human rights, by pro-actively ensuring that Service Users have access to, and engagement with, their communities.
- 4.5** We recognise that everyone is different, and want to make sure our services practice respect, promote and celebrate these differences. We will not tolerate unlawful discrimination, victimisation, bullying or harassment based on:
- Age
  - Disability
  - Gender reassignment
  - Marriage and civil partnership
  - Pregnancy and maternity
  - Race (this includes ethnic or national origins, colour or nationality)
  - Religion or belief (this includes lack of belief)
  - Sex (male and female)
  - Sexual orientation
- 4.6** Human rights, equality and diversity, and the wishes and feelings of individual Service Users, are considered in all supervisions and team meetings.



## 5. Procedure

**5.1** Staff know which of the following Articles of the Human Rights Act are at risk of being breached in health and social care and how to deliver care and support in a way that promotes and enhances human rights.

**5.2** Article 2 - Everyone has the right to life. Holbeach & East Elloe Hospital Trust should take reasonable steps to protect and maintain a Service User's life except when it is reaching its inevitable close. Holbeach & East Elloe Hospital Trust will establish end of life care plans detailing wishes, including up-to-date information on any advance decisions to refuse treatment, powers given by a Service User to a trusted relative or friend through a health and welfare lasting power of attorney, to consent to or refuse life-sustaining treatment in the person's best interests, and any 'Do Not Attempt Cardio-Pulmonary Resuscitation' recommendations.

**5.3** Article 3 - The right to protection from torture and inhumane and degrading treatment must **never** be breached. It underpins all care decisions, and staff receive training on how to deliver care that enhances Service Users' dignity; formal training is reinforced in team meetings and supervision. Examples of breaches of Article 3 are:

- Physical or mental abuse
- Failure to address, swiftly and discreetly, the physical and emotional results of incontinence (for example, by replacing soiled linen or clothing in a non-judgmental way)
- Leaving food or drinks without helping the Service User to eat or drink, when they are too frail or forgetful to feed themselves
- Any disproportionate, unnecessary or inappropriate force to restrain Service Users
- Carrying out care tasks, such as washing or dressing Service Users, without full and ongoing regard to their feelings, individuality, self-esteem and dignity

**5.4** Article 5 - The right to liberty and freedom of movement is recognised, and only breached when deprivation of liberty is both necessary and proportionate to the risk of harm to the Service User; action is always taken to reduce or minimise, if possible, the risk of deprivation of liberty.

**5.5** Article 5 - Where deprivation of liberty is in the Service User's best interests, and no less restrictive option can be identified to keep them safe, Holbeach & East Elloe Hospital Trust seeks authorisation swiftly, through the deprivation of liberty safeguards (DoLS) process or from the Court of Protection, to protect the Service User's rights.

**5.6** Article 8 - Service Users' rights to maintain contact with their family and friends under Article 8 are not breached, except where this is unavoidable, to protect the health of the Service User or others. Legal advice is sought about the possible need for authorisation from the Court of Protection if a decision is made in the best interests of the Service User that they should cease contact by all available means with a relative or friend.

**5.7** Article 8 - Except as restricted for public health reasons, rights to a private and family life are proactively respected and enabled, for example, by providing privacy and a pleasant environment for visits and respecting the Service User's right to sexual and other relationships.

**5.8** Article 8 - Monitoring by CCTV or other surveillance techniques may breach Article 8 (rights to privacy). Use of such recordings must adhere to the CQC guidance on surveillance which can be located [here](#).

**5.9** Holbeach & East Elloe Hospital Trust will ensure that staff understand their responsibilities under the [Accessible Information Standard](#) and there are mechanisms in place to ensure a specific, consistent approach to identifying, recording, flagging, sharing and meeting the information and communication support needs of Service Users, carers with a disability, impairment or sensory loss. Holbeach & East Elloe Hospital Trust will ensure that staff read and understand the Service Users with Communication Difficulties Policy and Procedure at Holbeach & East Elloe Hospital Trust.



## 6. Definitions

### 6.1 Mental Capacity Act 2005 (MCA)

- In England and Wales, the MCA defines capacity as the ability to make a specific decision at the time it needs to be made
- Everyone aged 16 or over is presumed to have this capacity unless there are reasons to question it, in which case the person's capacity should be assessed in the way described in the MCA and its code of practice
- The MCA balances the rights of Service Users to live as they choose, express their wishes and make their own decisions as long as they are not harming others, against the requirement to protect people who lack mental capacity, by finding the least restrictive options to meet identified needs in the best interests of the person

### 6.2 'Acid Test' for Identifying Deprivation of Liberty

- Article 5 in health and care settings - It can be lawful under human rights and mental capacity law to deprive a person aged 16 and over of their liberty in order to give them necessary care or treatment, provided that the person lacks capacity to consent to the necessary arrangements to give them such care or treatment, and that this is authorised. The 'acid test' clarifies that a person lacking capacity to consent to arrangements to give them necessary care or treatment is deprived of their liberty if they are both:
  - Not free to leave (meaning, even though they may go out accompanied, they must return) and
  - Under continuous supervision and control

### 6.3 Human Rights Act 1998: Article 8

- Everyone has the right to live as they choose, and for the State not to interfere in their private life
- This includes the right to have contact with relatives and friends and to have privacy during those contacts, whether face to face, by letter or phone
- These rights can be breached if the breach is necessary and proportionate to prevent harm to the person or to protect public health, for example, by preventing the spread of infection. However, in health and social care settings, interference with this right should usually be extremely rare, and where it is unavoidable, the effects on the person must be recognised and mitigated as far as possible

### 6.4 Human Rights Protected by the Human Rights Act

- Human rights are the basic rights and freedoms that belong to every person in the world. In the UK, human rights are protected by the Human Rights Act 1998
- The Human Rights Act 1998 incorporates into UK law the European Convention on Human Rights, and makes it unlawful for a public body, or anyone acting on behalf of a public body, to behave in a way that is incompatible with the Convention. The rights most likely to be relevant in health and social care are Article 3, Article 5, and Article 8. All the rights protected by the Convention are listed below, with some of their implications for adult social care.
- **Article 2** (Article 1 is just the preamble): **The right to life.** "Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally, save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law".  
Note that this makes so-called 'mercy killing' unlawful, though it is lawful and good practice sometimes to recognise when treatment should be withdrawn or not started in circumstances when it would lead to pain or distress without prolonging life.  
In addition, any adult can lawfully make advance decisions to refuse treatment under the Mental Capacity Act; these will then apply when the person has lost capacity to make their own decision to accept or refuse treatment
- **Article 3: The complete prohibition of torture under any circumstances.** "No one shall be subjected to torture or to inhuman or degrading treatment or punishment".  
It is a tragic fact that some so-called 'care' can include inhuman or degrading treatment or punishment; there is no place for this in care services, and any tendency, however slight, to bully, punish or degrade Service Users must be rooted out
- **Article 4: Prohibition of slavery and forced labour**
  - "No one shall be held in slavery or servitude





Holbeach & East Elloe Hospital Trust  
Boston Road North, Holbeach, Spalding, Lincolnshire, PE12 8AQ

- No one shall be required to perform forced or compulsory labour".

This is now strengthened by the Modern Slavery Act 2015, which forbids slavery or forced labour, and includes trafficking. Holbeach & East Elloe Hospital Trust must ensure that it is not, even unwittingly, employing people who do not enjoy the rights available to other staff due to being trafficked or forced to pass on their pay to a trafficker

- **Article 5: Right to liberty and security of person.** This is not an absolute right but no one shall be deprived of his liberty except in certain circumstances, which includes Article 5(1)(e) - 'the lawful detention of persons...of unsound mind'. If someone is to be deprived of their liberty, it must be 'in accordance with a procedure laid down in law' and Article 5(4) - 'Everyone who is deprived of his liberty...shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.'  
This is why the deprivation of liberty safeguards (DoLS) were created, to ensure there is a framework to protect people lacking capacity. Before DoLS, this vulnerable group of people could be deprived of their liberty on the say-so of a doctor, for example, without any clear way of asking a court whether this was legal or not. DoLS can only be used in hospitals and care homes, to protect the rights of people aged 18 and over, who lack capacity to make relevant decisions.  
The Article 5 rights of people who lack capacity in community settings (such as supported living or shared lives) or in their own homes, or of young people aged 16 or 17 in any setting, who are deprived of their liberty in their best interests, can at this time only be protected by application to the Court of Protection. This is usually arranged by the commissioner or the Local Authority
- **Article 6: Right to a fair trial.** This includes being presumed innocent until there is evidence of guilt
- **Article 7: No punishment without law.** Nobody can be found guilty of something which was not a crime at the time it was committed
- **Article 9: Freedom of thought, conscience and religion.** This is not an absolute right but can only be limited when necessary in a democracy, 'in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.' It includes the right to decide to change one's religion
- **Article 10: Freedom of expression.** This is not an absolute right and carries with it duties and responsibilities. It can be limited, where necessary, in a democracy, in a range of circumstances, including 'for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the reputation or rights of others'
- **Article 11: Freedom of peaceful assembly with others.** This is the right to meet up with other people and, for example, join a trade union. This is not an absolute right, and can be limited, where necessary in a democracy, for public safety or protection or the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights of others. States have the right to restrict this right among armed forces, the police, and other areas of public administration
- **Article 12: The right to marry.** Men and women of marriageable age can marry and found a family in accordance with national laws. Together with Article 8, this protects the rights of people with learning disabilities who have the capacity to consent to marriage, to enter into a marriage and have children
- **Article 14: Prohibition of discrimination.** This is an absolute right. 'The enjoyment of the rights and freedoms set forth in this convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.' This phrase 'other status' includes people living with certain diagnoses or lacking mental capacity to make their own decisions, and highlights that human rights are for everyone

### 6.5 Convention on the Rights of Persons with Disabilities (CRPD)

- The UK is a signatory to the CRPD, and bound to work within it
- The CRPD aims to wipe out all discrimination and barriers to inclusion that face people with disabilities. This means the UK must develop and carry out policies and laws that secure the rights recognised in the Human Rights Act 1998, and abolish laws, regulations, customs and practices that constitute discrimination (Article 4)
- The UK is also committed to combatting stereotypes and prejudices, and promoting awareness of the capabilities of people with disabilities (Article 8)
- The CRPD demands guarantees that people with disabilities enjoy their inherent right to life on an equal basis with others (Article 10), ensures the equal rights and advancement of women and girls with



disabilities (Article 6) and protects children with disabilities (Article 7)

## 6.6 The Equality Act 2010

- This Act makes it unlawful to discriminate against people, both in the workplace and in wider society
- It combines several earlier pieces of legislation, such as the Sex Discrimination Act 1975, the Race Relations Act 1976, and the Disability Discrimination Act 1995
- 'Protected Characteristics', that people must not be subjected to discrimination on the basis of, are laid out in Section 4. They are:
  - Age
  - Disability
  - Gender reassignment
  - Marriage and civil partnership
  - Pregnancy and maternity
  - Race
  - Religion or belief
  - Sex
  - Sexual orientation

## 6.7 Deprivation of Liberty Safeguards DoLS: Human rights protection

- The Deprivation of Liberty Safeguards (DoLS) were set up as part of the Mental Capacity Act to protect the rights of people aged 18 and over in hospitals and care homes, lacking mental capacity, under the Human Rights Act Article 5
- The DoLS do this by laying out a procedure defined in law, so that anyone subject to an authorisation under DoLS knows what has led to this authorisation, and also by laying out how it can be challenged
- The protections for a person include:
  - Any conditions attached to the authorisation
  - Independent scrutiny of their Care Plan by a DoLS assessor
  - Independent assessment by a DoLS assessor of their capacity to consent to the Care Plan
  - The appointment of a relevant person's representative (RPR): usually a relative, this is someone to act for them
  - The right to ask the Local Authority who granted the authorisation to review it or any part of it
  - Their right of access to an Independent Mental Capacity Advocate (IMCA)
  - Their right to go to the Court of Protection, for a full hearing of their views and examination of the authorisation

An additional protection is that no authorisation can last for longer than 12 months and must then be re-assessed by the independent assessors

## 6.8 Equality

- The Equality and Human Rights Commission defines 'equality' as 'ensuring that every individual has an equal opportunity to make the most of their lives and talents and believing that no one should have poorer life chances because of where, what or to whom they were born or because of other characteristics'



### Key Facts - Professionals

Professionals providing this service should be aware of the following:

- The Human Rights Act 1998, and, where relevant, the Mental Capacity Act 2005, provide the essential framework for decisions and actions in health and social care
- Rights can be absolute (such as Article 3, the prohibition of inhuman or degrading treatment) or qualified (such as Article 5, the right to liberty, and Article 8, the right to a private and family life) but are the starting point for good care
- The Mental Capacity Act 2005 and its code of practice provide detailed guidance on human rights for people who lack mental capacity
- Any breach of a person's human rights is a serious matter and all attempts must be made to avoid it or minimise its extent and effects on the person



### Key Facts - People affected by the service

People affected by this service should be aware of the following:

- You, or your relatives, have legal rights under the Human Rights Act 1998 and, where relevant, the Mental Capacity Act 2005
- Some rights can never be taken away or lessened; these include a person's right never to be tortured or treated in a way that is degrading or inhuman. This is explained in the Human Rights Act, Article 3
- Some rights can be restricted, but only if it is in your best interests (or those of your relatives or friends who receive services) or to protect public health. These are your rights to liberty (Article 5) and your right to live as you choose, including your contacts (Article 8)
- Any interference by a public authority (or anyone commissioned by it) in someone's rights must be the least restrictive option that can be found and can be challenged in court



### Further Reading

As well as the information in the 'underpinning knowledge' section of the review sheet we recommend that you add to your understanding in this policy area by considering the following materials:

**Equality and Human Rights Commission - Practical guidance for health and social care staff:**

<https://www.equalityhumanrights.com/en/practical-guidance-health-and-social-care-staff>



### Outstanding Practice

To be 'outstanding' in this policy area you could provide evidence that:

- Human rights values are central whenever decisions are taken about or for someone lacking capacity to make a specific decision or series of linked decisions, and there is evidence of all practicable attempts being made to enable them to make these decisions for themselves
- Staff are trained and can discuss the main human rights that are at risk of being breached in health and social care
- Care Plans show that human rights are always considered in finding the least restrictive option for meeting an identified need, and this is evidenced by direct quotes from the person or those who care for them
- The Service User's rights are always discussed in team meetings and individual supervision and evidenced by recording evidence of creative person-centred planning
- Whenever Care Plans are reviewed, records show a pro-active search for ways to enhance and promote the rights of individuals to live as they wish





## Forms

Currently there is no form attached to this policy.