

RESPONDING TO COVID-19: THE ETHICAL FRAMEWORK FOR ADULT SOCIAL CARE

CareTech Community Services CTCS

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Contents

Introduction.....	1
Appropriate records must be kept of which decisions are taken and their justifications to both ensure accountability and to share learning with others during and as the outbreak develops.	2
How to use the framework	2
The Mental Health Act	3
The values and principles	3
1. Respect	4
2. Reasonableness	4
3. Minimising harm	4
4. Inclusiveness	5
5. Accountability	5
6. Flexibility	6
7. Proportionality	6
8. Community	6

Introduction

The current novel coronavirus (COVID-19) outbreak, which began in December 2019, will have major implications for health and care services in the UK.

Local authorities and the wider health and care workforce are faced with difficult decisions every day. However, planning for and responding to COVID-19 as it develops will undoubtedly require making difficult decisions under new and exceptional pressures with limited time, resources or information.

Decisions will need to be made in accordance with the law and official guidance issued and applicable at the time, and while meeting statutory duties and professional responsibilities. The Court of Protection has issued guidance on attendance at court and visits to care premises. This can be found here:

<https://1f2ca7mxjow42e65q49871m1-wpengine.netdna-ssl.com/wp-content/uploads/2020/03/COP-Covid-19-Additional-Guidance-18-March-2020.pdf>

The framework intends to provide support to ongoing response planning and decision-making to ensure that ample consideration is given to a series of ethical values and principles when organising and delivering social care for adults.

When recognising increasing pressures and expected demand, it might become necessary to make challenging decisions on how to redirect resources where they are most needed and to prioritise individual care needs.

Every site within Adult services has begun this process with individual Business Continuity Planning including:

- Minimum safe staffing levels
- Reduction in delivery of commissioned hours with a reduced workforce
- Impact of restriction upon freedom of movement due to reduced workforce
 - Impact of restriction upon freedom of movement due to externally imposed conditions
 - Impact of restriction upon freedom of movement due to health risks to an individual or others within a service



This framework intends to serve as a guide for these types of decisions and reinforce consideration of any potential harm that might be suffered, and that the needs of all individuals, are always central to decision-making.

As the outbreak affects society as a whole, everyone will have their role to play to support the ongoing and future response. It is vital that professionals, organisations and public agencies work together at local and national level, and that planning and response activities at national, regional and local level are well-coordinated.

Appropriate records must be kept of which decisions are taken and their justifications to both ensure accountability and to share learning with others during and as the outbreak develops.

How to use the framework

The framework is aimed at planners and strategic policy makers at local, regional and national level to support response planning and organisation of adult social care during and as COVID-19 develops.



The values and principles should serve as a starting point to guide decision-making, supported by the views of lead professionals, collaboration across disciplines and organisations, and the extent of information available in each particular circumstance.

The ethical values and principles are equally relevant to those in need of social care who may face increased vulnerability, those who may become in need of social care, and the health and social care workforce who may face new and unexpected burdens when making difficult decisions and providing care and support during and as COVID-19 develops.

It might be useful to use the framework as a checklist to ensure ethical considerations are taken in to account, however, the values and principles described in this document are not exhaustive. When implementing the ethical values and principles in urgent and uncertain circumstances, you may encounter tension between them, which will require a judgement to be made on the extent that a particular value or principle can be applied in the context of each particular decision.

In all instances, respect and reasonableness should be used as the fundamental, underpinning principles which guide planning and support judgements.



There will be difficult decisions to be made to support our individuals to stay safe. It is essential that capacity be fully assessed before imposing restrictions on individuals. Support with capacity assessments where a restriction is proposed and this appears to be against the expressed wishes of a person, must be made with the input of a multi-disciplinary team.

Advice may be sought from our Consultant Psychologist, genevieve.singabrayen@caretech-uk.com

Where individuals are deemed to have capacity, and continue to place themselves or others at risk, advice should be sought from MDT (Care manager/Local authority) and the Health protection team.

In supported living, any restrictions made will need to be managed by the Court of Protection. Services should contact the persons deputy or the placing Local Authority.

A placing authority or deputy can apply to the Court of Protection to get an urgent or emergency court order in certain circumstances, for example when someone's life or welfare is at risk and a decision has to be made without delay. If the court agrees, the necessary decision on behalf of the person who lacks mental capacity can be made.

You will not get a court order unless the court decides it's a serious matter with an unavoidable time limit.

The Mental Health Act

The Mental Health Act must continue to function effectively throughout the Covid-19 pandemic, in order to ensure the safety, care, and treatment of people severely affected by mental illness.

Emergency legislation has been introduced to Parliament which includes temporary measures to change the Mental Health Act. This is because the government is concerned that Covid-19 will reduce the number of mental health professionals available to help people whose mental health places them at risk.

The changes will not apply from the moment the legislation is passed - they may be activated if the crisis worsens. They will only happen if staff numbers are significantly reduced. Please see the link below for more details:

<https://www.gov.uk/government/publications/coronavirus-bill-what-it-will-do/what-the-coronavirus-bill-will-do>

The values and principles

This section outlines each ethical value and principle and associated actions and best practice when considering and applying them. These should be considered alongside professional codes of conduct and the most recent official guidance and legislation where these apply. The principles are numbered for ease of reference but are not ranked in order of significance or exhaustive. There are no absolute answers to making the correct or most ethical decisions. Where resources are constrained and there are surges in demand, it may not be feasible to consider all the principles or the actions below them.

Each principle must be considered to the extent possible in the context of each circumstance with appropriate risk management and considerations of individual wellbeing, overall public good and available information and resources.

1. Respect

This principle is defined as recognising that every person and their human rights, 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 practising 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 neighbours, friends and family
- be conscious of own behaviour and decisions, and how this may impact on others
- share learning from own experiences that may help others

This document has been adapted and refreshed from the ethical framework first developed by the Committee on Ethical Aspects of Pandemic Influenza in 2007, which was later revised by the Department of Health and Social Care (DHSC) in 2017. Other references are included in text.