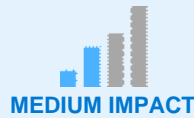




Review Sheet

Last Reviewed
10 Jul '24Last Amended
10 Jul '24Next Planned Review in 12 months, or
sooner as required.

Business impact



Changes are important, but urgent implementation is not required, incorporate into your existing workflow.

Reason for this review

Scheduled review

Were changes made?

Yes

Summary:

Human rights underpin all interactions in health and social care. 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 inhuman 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. This policy has been reviewed with additional content added across multiple sections to provide clear guidance in line with the CQC guidance on this topic. Additional content can be found across the policy but specifically in Sections 4.7 Partnership Working, 5.9 Record Keeping and 5.10 Challenging Discrimination. A full policy read is recommended. References have been checked and updated to ensure they remain current. For some customers, the policy reference number will have changed.

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
- UK GDPR

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

- Author: Equality and Human Rights Commission, (2024), *Equality and human rights in social care*. [Online] Available from: <https://content.equalityhumanrights.com/equality-and-human-rights-in-social-care/index.html> [Accessed: 10/7/2024]
- 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: 10/7/2024]
- Author: Equality and Human Rights Commission, (2020), *The United Nations Convention on the Rights of People with Disabilities*. [Online] Available from: https://www.equalityhumanrights.com/sites/default/files/uncrpdguide_0.pdf [Accessed: 10/7/2024]
- Author: CQC, (2023), *Our updated human rights approach*. [Online] Available from: <https://www.cqc.org.uk/about-us/our-updated-human-rights-approach#:~:text=As%20a%20human%20rights%20focused,rights%20issues%20that%20we%20find> [Accessed: 10/7/2024]
- Author: NHS England, (2020), *Accessible Information Standard*. [Online] Available from: <https://www.england.nhs.uk/ourwork/accessibleinfo/> [Accessed: 10/7/2024]

Suggested action:

- Encourage sharing the policy through the use of the QCS App



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 Cornerstone Healthcare Group Ltd 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 Cornerstone Healthcare Group in meeting the following Key Lines of Enquiry/Quality Statements (New):

Key Question	Key Lines of Enquiry	Quality Statements (New)
CARING	C3: How are people's privacy, dignity and independence respected and promoted?	QSC1: Kindness, compassion and dignity QSC3: Independence, choice and control
EFFECTIVE	E7: Is consent to care and treatment always sought in line with legislation and guidance?	QSE6: Consent to care and treatment
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?	QSS4: Involving people to manage risks QSS5: Safe environments
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?	QSW1: Shared direction and culture QSW2: Capable, compassionate and inclusive leaders
RESPONSIVE	No equivalent KLOE	QSR5: Equity in access
RESPONSIVE	No equivalent KLOE	QSR6: Equity in experiences and outcomes

1.5 To meet the legal requirements of the regulated activities that Cornerstone Healthcare Group 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
- UK GDPR



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 Cornerstone Healthcare Group has a clear and ongoing commitment to promoting and respecting the rights of all individual Service Users, regardless of their situation and protected characteristics.

Cornerstone Healthcare Group provides care fairly and indiscriminately by ensuring that each Service User is treated as an individual and care is tailored specifically to meet their needs.

3.2 Service Users are honoured in all their uniqueness and diversity, and their rights to live as they choose are not restricted, except where this is strictly both necessary and proportionate, and in accordance with this policy.

3.3 Individual Care Plans are created individually and show ongoing commitment to respecting and promoting the human rights of Service Users:

- Through demonstrating knowledge of the person's wishes and feelings
- Making these the framework for the way services are provided

3.4 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.

3.5 Cornerstone Healthcare Group reflects, through staff, volunteers or proactive 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.

3.6 To ensure that the five outcomes of the Accessible Information Standard are met and staff at Cornerstone Healthcare Group understand them and have processes in place to meet the standards.

- Ask
- Record
- Highlight
- Share
- Act



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 Person-Centred Care

Care Plans demonstrate the importance that Cornerstone Healthcare Group Ltd 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 Cornerstone Healthcare Group Ltd 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 Importance of Communities

Cornerstone Healthcare Group operates a continuous commitment to equal opportunities, diversity and human rights, by proactively ensuring that Service Users have access to, and engagement with, their communities, health providers and other important professionals, coordinated around the individual Service User.

Cornerstone Healthcare Group recognises the importance of providing opportunities for Service Users to connect with their individual community.

4.5 Protected Characteristics

Cornerstone Healthcare Group recognises that everyone is different and wants to make sure its service's practice respects, promotes and celebrates these differences. It will not tolerate unlawful discrimination, victimisation, bullying or harassment of any kind, including the protected characteristics outlined in the Equality Act 2010:

- Age
- Disability
- Gender reassignment or self-identification
- 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.

4.7 Partnership Working

Cornerstone Healthcare Group provides its care to support individual Service Users to live the life they choose. In order to ensure that this is successful and meaningful, this means a transparent working partnership with other professionals to ensure the best individual outcomes for individual Service Users.



5. Procedure

5.1 'Care that respects people's rights is good care – we call this **'rights-respecting care'**. Where there is good care there are **'rights-respecting cultures'**, but where there is poor care, the opposite is true, and we can describe these as **'rights-rejecting cultures'**. The CQC 2023

5.2 Cornerstone Healthcare Group provides all Service User care using a person-centred approach, respecting the individual needs, wishes and capabilities of the Service User and promoting their human rights.

This is reflected in the company values that support an open and transparent culture, which is dedicated to cultivating rights-respected care.

5.3 Cornerstone Healthcare Group places significant value in training staff to ensure that they understand the following Articles of the Human Rights Act and can recognise when any of them is at risk of being breached. Cornerstone Healthcare Group is committed to delivering care and support in a way that promotes and enhances the human rights of all.

5.4 Right to Life

Article 2 - Everyone has the right to life. Cornerstone Healthcare Group takes reasonable steps to protect and maintain a Service User's life except in circumstances where it is reaching its inevitable and natural close.

Cornerstone Healthcare Group has clear policies and procedures on supporting individual Service Users' end of life wishes and their care provision, which includes:

- Advance decisions to refuse treatment
- Powers given by a Service User by way of lasting power of attorney for health and welfare to a trusted relative or friend, to consent to or refuse life-sustaining treatment in the person's best interests, and
- 'Do Not Attempt Cardiopulmonary Resuscitation' (DNRCPR) recommendations

Please see the advance decision policies at Cornerstone Healthcare Group for further information.

5.5 Freedom from Torture and Inhuman or Degrading Treatment

Article 3 - It is essential that the right to protection from torture and inhumane and degrading treatment must **never** be breached. It underpins all care commitments. Staff receive formal training on how to deliver respectful care that enhances Service Users' dignity. Formal training is reinforced on a daily basis by adhering to the company values, as well as being a focus 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

5.6 Article 8 - Service Users' rights to maintain contact with their families and friends under Article 8 are supported and never breached, except where this is unavoidable to protect the health of the Service User or others.

It is the right of a Service User with the capacity to do so, to make their own decisions about the level of contact, if any, with their personal network.

Legal advice is sought about the possible need for Court authorisation if a decision by Cornerstone Healthcare Group is likely regarding any Service User that they should cease contact by all available means with a relative or friend.

5.7 Your Right to Respect for your Private and Family Life

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 CCTV

Article 8 - Monitoring by CCTV or other surveillance techniques may breach Article 8 (rights to privacy).

The use of such recordings must adhere to the CQC guidance on surveillance which can be located [here](#).

5.9 Accessible Information Standard



Cornerstone Healthcare Group recognises the importance of sharing information in a way that is accessible and that people



understand. Cornerstone Healthcare Group has a clear policy to ensure that, as part of the individual Service User Care Plan process, Service Users' communication needs are assessed and discussed. Following this, Cornerstone Healthcare Group takes a proactive approach and ensures that there are consistent methods in place for recording, flagging, sharing and meeting the information and communication support needs of Service Users and carers as well as any changing needs.

Please refer to the Accessible Information Standard Policy and Procedure and Supporting Communication and Sensory Needs Policy and Procedure at Cornerstone Healthcare Group.

5.10 Record Keeping

Cornerstone Healthcare Group has rigorous record keeping protocols which ensure that daily care notes are accurate, transparent and reflect the individual person-centred care provided in real time.

Cornerstone Healthcare Group is able to share records appropriately (with consent) with other professionals as and when necessary to ensure the best interests of each Service User.

There is a clear ethos of partnership working throughout the organisation.

Please refer to the Record Keeping Policy and Procedure and Overarching UK GDPR Policy and Procedure for further information.

5.11 Challenging Discrimination

As part of formal training, all staff will receive an education on the following topics:

- Equality, Diversity and Inclusion
- Safeguarding Adults
- Whistleblowing

Cornerstone Healthcare Group ensures that staff have a clear understanding and sound knowledge base for recognising the traits of discrimination and abuse and what to do about it.

Staff must follow the procedure outlined in the Raising Concerns, Freedom to Speak Up and Whistleblowing Policy and Procedure and raise any concerns, seeking support from the Home Manager immediately.



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

- 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 (meaning, that staff always know approximately where they are and what they are doing)
- This relates to Article 5 in health and care settings

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, phone, or over the internet
- 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 always proportionate to the risk and likelihood of harm if no action is taken
- 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
- 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. Cornerstone Healthcare Group Ltd 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 choosing to express a different gender identity from the one they had at birth, or living with certain diagnoses (such as dementia or learning disability), 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. They protect the rights of people aged 18 and over in hospitals and care homes, lacking mental capacity, who are deprived of their liberty, as required by 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 complete 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 free contact with those you care about (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
- You can expect to receive indiscriminate care that reflects your individual needs



Further Reading

There is no further reading for this policy, but we recommend the 'underpinning knowledge' section of the review sheet to increase your knowledge and understanding.



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 know about, 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 proactive search for ways to enhance and promote the rights of individuals to live as they wish
- There is a clear approach to partnership working with other professionals and as part of a multidisciplinary team to create the best outcomes for the Service User
- The wide understanding of the policy is enabled by proactive use of the QCS App



Forms

Currently there is no form attached to this policy.