Using human rights as a practitioner

Removing a person from their own home to a care home

This flowchart is for practitioners considering moving a person with mental capacity issues from their own home and placing them in care, to help you use a human rights approach.

Which of my Human Rights Act duties are triggered?

- Duty to protect life or from inhuman/degrading treatment
- Duty to respect private/family life and home
- Duty to respect right to liberty

Step 1

Is the person’s life at risk or are they at risk of serious abuse or neglect?

- YES
  - Take immediate action and arrange mental capacity assessment:
    - If person has capacity to decide: provide support and keep under very close review.
  - Move to step 2.
- NO
  - Less serious abuse and neglect is protected by right to private life. Arrange mental capacity assessment. Move to step 2.

Step 2

Are you considering removing a person against their will?

- YES
  - The person’s right to private life (autonomy), family life and home will all be engaged. These rights can be restricted but you need to follow the three stage test:
    1. **Lawful**: MCA allows removal if person assessed as lacking capacity to make this decision themselves and it is in their best interests.
    2. **Legitimate**: Is it necessary to remove the person to protect them from harm or abuse/neglect?
    3. **Proportionate**: Is the removal proportionate to the severity of harm that is likely to occur if the person isn’t removed? Are there other options?
  - If the person is willing to move, support them to participate in the decision about moving and exit flowchart.
  - If there are concerns about the person’s capacity on this, or capacity changes, you will need to revisit the flowchart.
- NO TO ANY
  - Support the person to stay in their own home or consider a move with their consent.

Step 3

Are you still considering removing the person against their will, or do they lack capacity to decide about moving?

- YES
  - The right to liberty can be limited if necessary, for example where:
    - person is assessed as lacking capacity to decide this; and
    - removal is the only way to protect their other rights; and
    - family/carer/advocate have been consulted; and
    - removal is in person’s best interests
    A DoL Authorisation is needed.
- NO
  - If the person is willing to move, support them to participate in the decision about moving and exit flowchart.
  - If there are concerns about the person’s capacity on this, or capacity changes, you will need to revisit the flowchart.

This flowchart is taken from BIHR’s toolkit ‘Social Care Intervention and Human Rights: A practitioner’s guide’

The toolkit gives more information on these rights, your duties as a practitioner and covers other key issues for social care intervention.

Other toolkits in this series include flowcharts on key issues for dementia, young people and rehab. Get your free copy at:

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