 **Promise Care Services Ltd**

**DEPRIVATION OF LIBERTY IN COMMUNITY SETTINGS**

Scope

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Policy Statement

The purpose of this policy is to explain the organisation’s approach to people who use our service, who might lack the mental capacity to make decisions about their care and treatment and who could have their freedom restricted to the point where they are deprived of their liberty as defined by the Cheshire West Supreme Court judgement.

The organisation’s policy has been established to comply with the provisions of the Mental Capacity Act 2005 including the Deprivation of Liberty (DoLS) Safeguards. These have been in force since April 2009.

However, DoLS are only applicable in the care home and hospital settings. They cannot be used in community settings. These settings include supported living, adult placement/shared lives and domiciliary care provided in a Service User’s own home. In these settings, an application for a deprivation of liberty order must be made to the Court of Protection. These are sometimes also known as Community DoLS or Judicial Authorisations.

Our organisation is aware of the restrictive factors that indicate a Service User may be at risk of being deprived of their liberty. We will take action where we identify this risk, by alerting the local social services community team or the local authority DoLS team as appropriate. This is to ensure that situations involving our Service Users that may amount to a deprivation of liberty are recognised and acted upon to make sure they are lawful.

This Deprivation of Liberty in Community Settings Policy should be read and used in conjunction with the organisation’s broader Mental Capacity Act Policy.

Deprivation of Liberty Safeguards during Covid-19 pandemic

We recognised that during the Coronavirus (COVID-19) pandemic we are under increased pressure and working in very difficult circumstances. Good use of the Mental Capacity Act can help us support people using services around areas of consent and decision-making, and in upholding human rights.

We still assume capacity for a wide range of decisions unless there is evidence to suggest otherwise.

We refer to the latest government guidance on MCA and DoLS concerning coronavirus issues.

We still seek consent on all aspects of care to which the person can still consent.

The Policy

Sometimes people who lack capacity to decide for themselves, need to receive care or treatment in their own home or other community setting and the only way they can get the care or treatment they need and be safe is for there to be restrictions in place.

The Human Rights Act states that no one can be “deprived of their liberty” except in certain situations and only when very specific procedures are in place which must be used. This is to protect a Service User from being deprived of their liberty without anyone looking at the circumstances and approving the actions.

The 2014 Supreme Court Cheshire West judgement widened and clarified the definition of a deprivation of liberty, known as the ‘acid test’, The Care Quality Commission (CQC) issued a briefing note for health and social care providers which can be read here.

https://www.cqc.org.uk/guidance-providers/supreme-court-judgement-deprivation-liberty

This briefing note for health and social care providers should be used in conjunction with advice from the supervisory body, i.e. your local authority (LA).

In summary, the ‘acid test’ confirms two key questions to ask for people lacking capacity to consent to the arrangements for care and/or treatment:

* Is the person subject to continuous supervision and control?
* Is the person free to leave? (The person may seem happy to stay, but the issue is about how staff would react if the person did try to leave).

It is now clear that, if a person lacking capacity to consent to the arrangements, is subject both to continuous supervision and control and is not free to leave, they are deprived of their liberty.

It may not be a deprivation of liberty, although the person is not free to leave if the person is not supervised or monitored all the time and is able to make decisions about what to do and when that is not subject to agreement by others.

The Supreme Court also ruled that the following factors are ***not*** relevant to whether or not someone is deprived of their liberty:

* The person’s compliance or happiness or lack of objection.
* The suitability or relative normality of the placement (after comparing the person’s circumstances with another person of similar age and condition).
* The reason or purpose leading to a particular placement, although, of course, all these factors are still relevant to whether or not the situation is in the person’s best interests and should be authorised.

When a Service User is assessed as being deprived of their liberty the local authority will apply to the court of protection for a deprivation of liberty order. The application to the court of protection is usually made by a social worker or community health nurse. If the Service User’s care is entirely privately funded (such as personal injury compensation) the rules still apply. In this case, it will most likely be the person’s Finance Deputy who informs the Council about the care arrangements.

In the majority of cases, there will be no need for anyone to go to Court - it should all be decided by the paperwork the Judge receives. In some cases, such as where there may be a disagreement then a hearing will be needed. Once the order is made it will usually be for one year and then will be renewed again if still required at the end of this period.

**Organisations Responsibilities**

**To ensure our Service User’s human rights are protected, our organisation will:**

* Consider the situation of Service Users who lack the mental capacity to agree to their living arrangements, as identified in their care plan to identify any risks that they may be deprived of their liberty.
* Liaise with commissioners of the service, if we think we might be depriving someone of their liberty and cannot find a less restrictive option for providing care or treatment.
* Liaise with the local authority DoLS team where a Service User is self-funding their care and we feel there is a risk that the restrictions in place amount to a deprivation of liberty.
* While this is happening, continue to provide care and attention to the Service User.
* By doing so our organisation will protect our Service User’s article 5 human rights. In addition, our review of the circumstances and arrangements. including any restrictions will enable us to assess whether the restrictions can safely be reduced, or the person’s capacity enhanced so that they can make relevant decisions for themselves. Any changes to the care plan that could lessen restrictions will be alerted to the commissioners for their advice and guidance.

The Law Society (2015) provided guidance to help establish whether an individual is deprived of their liberty in domiciliary care settings which states:

* Is the person prescribed or administered medication to control their behaviour, including on a PRN basis?
* What level of support is provided with aspects of daily living? And is that support provided to a timetable set by the individual or by others?
* Is technology used to monitor the individual’s location within the home or to monitor when they leave?
* Does the individual’s care plan provide for the regular use of restraint? If so, under what circumstances and for how long?
* Is the door to the individual’s home locked? If so, do they have the key (or the code to a keypad)?
* Are they free to come and go from their own home unaccompanied as they please?
* Are they regularly locked in their room (or an area of their home) or otherwise prevented from moving freely about their home?
* Are restrictions placed upon them by professionals as to who they can and cannot see?

The Law Society (2015) provided guidance to help establish whether an individual is deprived of their liberty in supported living settings which identify factors including:

* Decision on where to live being taken by others.
* Decision on contact with others not being taken by the individual.
* Doors of the property locked, and/or chained, and/or bolted for security reasons or to prevent residents from leaving.
* Access to the community being limited by staff availability.
* A member or members of staff accompanying a resident to access the community to support and meet their care needs.
* Mechanical restraint, such as wheelchairs with a lap strap or harness (e.g. Crelling), reinforced glass in mobility vehicles, protective helmets.
* Varying levels of staffing and frequency of observation by staff.
* Restricted access to finances, with money being controlled by staff or welfare benefits appointee.
* Restricted access to personal items to prevent harm.
* Restricted access to parts of the property, such as the kitchen or certain. cupboards therein, to minimise health and safety risks.
* Chemical restraint, such as medication with a sedative or tranquilising effect.
* Physical restraint/intervention, such as with personal care tasks, breakaway or block techniques, distraction methods, staff withdrawing, physical touches or holds.
* Restricted access to modes of social communication, such as the internet, landline or mobile telephone, correspondence.
* Positive behavioural reward systems, to reward “good” behaviour.”
* Restricted access to family, depending on the level of risk and availability of staff and resources.
* Lack of flexibility, in terms of having activities timetabled, set mealtimes, expected sleep times.

**To ensure our Service User’s human rights are protected the registered manager will:**

* Consider the initial care plan and/or their prior knowledge of the Service User (where appropriate, with LA care managers) to determine whether there are any restrictions in place and if so, whether they may amount to a deprivation of liberty.
* Alert any risk of a deprivation of liberty to the local authority to ensure the Service User’s rights are protected.
* Work within the principles of the Mental Capacity Act, e.g. by doing everything possible to empower people to make as many decisions for themself as they can.
* Ensure that decision-specific capacity assessments are completed where required.
* Ensure that best interests decisions are completed where a Service User lacks the capacity to agree to arrangements for their care or treatment. This organisation is likely to be the decision-maker for day-to-day best interests decisions, but significant decisions including the use of restrictions are more likely to be carried out by commissioners of care.
* Participate in best interests decisions where the decision maker is a health or social care professional.
* Ensure that restrictions on the freedom of anyone lacking capacity to consent to them are proportionate to the risk and seriousness of harm to that person and that no less restrictive option can be identified (Useful guidance on care planning within an empowering ethos is available in the Mental Capacity Act Code of Practice).
* Liaise with commissioners of services and, as appropriate, either liaising with the LA supervisory body for the DoLS or seeking legal advice, as to how to ensure the protection of the human rights of vulnerable people who use services.

**The Care Worker will:**

* Work within the five statutory principles of the Mental Capacity Act, e.g. by doing everything possible to empower people to make as many decisions for themself as they can.
* Engage in the training provided on MCA and deprivations of liberty in community settings.
* Raise any concerns, including concerns about restrictions with the registered manager.
* Read this policy.

CQC Notifications

You must notify CQC about any applications to deprive a Service User of their liberty under the Mental Capacity Act 2005 and about the outcome of those applications. You can do this using one standard form as soon as you know the outcome of the application.

Read the CQC guidance for notifications here: https://www.cqc.org.uk/sites/default/files/20161101\_100501\_v7\_guidance\_on\_statutory\_notifications\_ASC\_IH\_PDC\_PA\_Reg\_Persons.pdf

Key definitions

**Deprivation of Liberty Orders -** are also known as Community DoLS or Judicial Authorisations. They are Orders made by the Court of Protection to deprive someone of their liberty.

**Deprivation of Liberty Safeguards (DoLS)** – Apply for people aged 18 and over and legally authorise restrictive care situations for people in a **hospital or care home** who lack capacity to consent to the arrangements for their care or treatment.

**Supervisory Body (SB**) – is the Local Authority responsible for arranging assessments and granting authorisations. In community settings, a judge is responsible for granting authorisations and commissioners of the care, e.g., a social worker or continuing health care nurse is responsible for the assessment and application to the Court of Protection.

**Liberty Protection Safeguards**

Under the Mental Capacity (Amendment) Act 2019, the DoLS will be replaced by the Liberty Protection Safeguards (LPS). The Liberty Protection Safeguards will provide protection for people aged 16 and above who are or who need to be deprived of their liberty in order to enable their care or treatment and lack the mental capacity to consent to their arrangements. They were introduced in the Mental Capacity (Amendment) Act 2019 and will replace the Deprivation of Liberty Safeguards (DoLS) system.

The Liberty Protection Safeguards will deliver improved outcomes for people who are or who need to be deprived of their liberty. They have been designed to put the rights and wishes of those people at the centre of all decision-making on deprivation of liberty.

LPS will apply to a deprivation of liberty, for a person aged 16 and above, in any setting in England and Wales. That includes:

* Care homes – registered care homes in which care is provided
* NHS hospitals – a health service hospital that is part of the national health service
* Education facilities – including day and residential schools and sixth form colleges
* Independent hospitals – a hospital that is not an NHS hospital, for example, one run by a private company or a charity
* A person’s own home – when a person is receiving care or treatment in their own home. This includes:
* Supported living – services designed to help individuals with disabilities keep their independence in their local community
* Shared lives – carers sharing their home and family life with individuals using a shared lives arrangement

This change ensures that all individuals who need to be deprived of their liberty will be protected under the Liberty Protection Safeguards, regardless of where they reside, without the need to go to court.

The Liberty Protection Safeguards are planned to come into force in April 2022. A set of transitional regulations will set out the legal framework for LPS and DoLS to run alongside each other for the first year of implementation. This will ensure that people who are subject to a DoLS authorisation or a CourtOrder that runs into the first year of LPS implementation, are still able to access the necessary safeguards until their authorisation or Order ends.

* Local Authority Mental Capacity Act assessment team and safeguarding **[INSERT CONTACT DETAILS]**
* **London Borough Of** **Barking And Dagenham Safeguarding Adult Team. Address: 90 Stour Road, Dagenham, Essex RM10 7 JD.** **Tel:02082272915/02082272446** **Out of hours** **Tel:02085948356****, Email:intaketeam@lbbd.gov.uk**

  Local Authority Designated Officer(LADO) Address:**Room 119, Town Hall Barking IG11 7LU. Tel: 02082272265, email:** **Lado@lbbd.gcsx.gov.uk**

 **Local Police team Call 999 in an emergency or call 101 if your are worried**

 **Care Quality Commission (CQC). Tel: 03000616161.email:enquiries@cqc.org.uk.**

**Local Authority Designated Officer(LADO) Address:Room 119, Town Hall Barking IG11 7LU. Tel: 02082272265, email:** **Lado@lbbd.gcsx.gov.uk**

LA Safeguarding Unit:

**London Borough Of Barking And Dagenham Safeguarding Adult Team. Address: 90 Stour Road, Dagenham, Essex RM10 7 JD. Tel:02082272915/02082272446 Out of hours Tel:02085948356, Email:intaketeam@lbbd.gov.uk**

Related Policies

Adult Safeguarding

Meeting Needs

Mental Capacity Act 2005

Notifications

Restraint

Related Guidance

*Mental Capacity Act 2005 Codes of Practice* (DH, 2005) and the *Deprivation of Liberty Safeguards* (MoJ, 2008).  These can be freely downloaded from the Department of Health website:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/497253/Mental-capacity-act-code-of-practice.pdf

and

https://webarchive.nationalarchives.gov.uk/20130104224411/http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\_085476

Links to a range of resources on the Mental Capacity Act 2005 can be found on the Social Care Institute for Excellence website:

http://www.scie.org.uk/publications/mca/

The Law Society 2015. Identifying a deprivation of liberty: a practical guide Deprivation of liberty at home

https://www.lawsociety.org.uk/topics/private-client/deprivation-of-liberty-safeguards-a-practical-guide

The Law Society 2015 Identifying a deprivation of liberty: a practical guide Supported living

https://www.lawsociety.org.uk/topics/private-client/quick-reference-guide-to-identifying-a-deprivation-of-liberty-in-the-supported-living-setting

Reports on the work of the Court of Protection can be accessed via:

https://www.gov.uk/courts-tribunals/court-of-protection

Making decisions about Mental Capacity: A guide for people working in health and social care:

http://www.justice.gov.uk/downloads/guidance/protecting-the-vulnerable/mca/opg-603-0409.pdf

Best Interests: Guidance on determining the best interests of adults who lack the capacity to make decision(s) themselves, available online at:

https://www.39essex.com/wp-content/uploads/2017/11/Mental-Capacity-Guidance-Note-Best-Interests.pdf

Training Statement

All staff, during induction, are made aware of the organisation’s policies and procedures, all of which are used for training updates. All policies and procedures are reviewed and amended where necessary, and staff are made aware of any changes. Observations are undertaken to check skills and competencies. Various methods of training are used, including one to one, online, workbook, group meetings, and individual supervisions.

Date Reviewed: May 2023

Person responsible for updating this policy: **IFEYINWA ODOEMENAM**

Next Review Date: May 2024