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**Mental Capacity Act and DoLS Policy**

**[Date of Issue]**

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# Introduction

The Mental Capacity Act 2005 provides a statutory framework to empower and protect vulnerable clients who may not be able to make their own decisions due to illness, injury or disability. It makes it clear who is able to make decisions on behalf of others, in what situations, what the process would be, and how to plan ahead if at some stage of their life they were to lose capacity. It also assists staff to keep people, who lack capacity, at the centre of the decision-making process.

In addition, it aims to guide healthcare professionals to support clients to make their own decisions where they have the capacity to do so.

# Policy Statement

This policy underpins the use of the Mental Capacity Act 2005 adhered to by [Company Name]. It sets out the main features of the Act, identifies the duties placed on healthcare professionals working at [Company Name] and provides a procedure to determine how the various processes described are initiated.

# Scope

This policy applies to all staff members working for [Company Name] involved in the care, treatment and support of clients over the age of 16 years living in England and Wales who are unable to make all or some decisions for themselves (**[Delete as applicable]** Please note that [Company Name] only supports clients aged 18 and over). It is designed to protect and restore power to those clients who lack capacity.

All professionals have a duty to comply with [Company Name]’s Code of Practice.

The Act’s five statutory principles are the benchmark and must underpin all decisions taken in relation to this. Anyone caring for or supporting a person who may lack capacity could be involved in assessing capacity via the two-stage test as indicated below.

# 5 Key Principles of Mental Capacity Act 2005

* Staff members working at [Company Name] will not assume that a client in their care lacks capacity. Everybody is deemed to have capacity unless proven otherwise.
* All other practicable options that allow an individual to make their own decision must be exhausted before a decision is made on their behalf.
* Everybody has the right to make an unwise decision. If somebody has the mental capacity to understand the decision being made, they have the right to make a decision that might not appear, from someone else’s perspective, to be the best option.
* Any decision made by staff at [Company Name] on behalf of somebody who lacks mental capacity must be done in their best interests.
* When a decision is being made on behalf of somebody, it must be considered whether there is an option that could infringe less on the individuals’ rights or freedom of action. The route taken must be the least restrictive option.

# Capacity

Healthcare professionals should make every effort to encourage and support clients to make the decision themselves. This means ensuring:

* they have all the relevant, available information
* that information could be explained in a different way that is easier to understand (e.g., photos, videos, sign-language and/or pictures)
* the use of a particular time of day or place that enhances their understanding
* that someone else can help or support the person to understand the information or make the choice.

**When Should Capacity be Assessed?**

Assessing capacity correctly is vitally important to everyone affected by the Mental Capacity Act 2005. Someone who is assessed as lacking capacity may be denied their right to make a specific decision, particularly if others think that the decision would not be in their best interests or could cause harm. Also, if a person lacks capacity to make specific decisions, that person may make decisions they do not really understand. Again, this could cause harm or put the person at risk. It is therefore important to carry out an assessment when a person’s capacity is in doubt. It is also important that the person who does the assessment can justify their conclusions.

There are several reasons why people may question a someone’s capacity to make a specific decision:

* the person’s behaviour or circumstances cause doubt as to whether they have the capacity to make a decision
* someone else says they are concerned about the person’s capacity
* the person has previously been diagnosed with an impairment or disturbance of mind and there is evidence to show they lack capacity to make other decisions in their life.

**How Should Capacity be Assessed?**

As an initial assessment to determine capacity,staff at [Company Name] can perform the following functionality test:

* Determine whether the client has an impairment of, or disturbance in, the functioning of their mind or brain?
  + If the answer is ‘no’ then the individual does not lack capacity under the terms of the Mental Capacity Act 2005.
  + If the answer is ‘yes’ then the individual may lack capacity in certain and specific decision-making.
* Secondly, determine whether there is impairment or disturbance sufficient enough that the person lacks the capacity to make a particular decision. This will be decided through the completion of a mental capacity assessment in which all the information around the decision needing to be made is presented to the individual who needs to make the decision. For the individual to be deemed to have mental capacity around the specific decision, they must be able to do the following four things:
  + Understand the information that is given to them.
  + Retain the information long enough to be able to make the decision.
  + Weigh up the information using the pros and cons of their choices.
  + Communicate their decision (this can be verbally or non-verbally).

**Who Should Assess Capacity?**

All staff working at [Company Name] have training in the Mental Capacity Act 2005 and are aware that capacity can and does fluctuate. The person making the decision is known as the ‘decision maker’ and normally will be the person directly involved in an intervention. Alternatively, it may be a professional such as a doctor, nurse or social worker where decisions about treatment, care arrangements or accommodation need to be made.

# Best Interests and Advanced Decisions to Refuse Treatment

Any action taken, or decision made for someone lacking capacity must be made in his or her best interests. There are key factors to consider when determining what is in a client’s best interests:

* consideration of whether the client is likely to regain capacity and whether the decision can wait until then
* consideration of all the relevant circumstances relating to the decision in question
* the client’s past and present wishes and feelings
* an advanced directive if valid and relevant
* any beliefs or values (religious, cultural and/or moral) that might influence the decision
* the views of others, such as carers, close relatives or friends or anyone else interested in the persons welfare, any attorney appointed under a Lasting Power of Attorney and/or any deputy appointed by the Court of Protection to make decisions for that person.

For detailed information on Independent Mental Capacity Advocates (IMCA), decision-making and advanced decision refer to the Advocacy and Decision-Making Policy.

# Lasting Power of Attorney

The act allows a person who is aged 18 and over who has capacity to appoint an attorney to act on their behalf should they lose capacity in the future. There are two types:

* appointing someone to make health and welfare decisions on their behalf which may involve treatment and placements to assist with care
* appointing someone to make financial and property decisions.

Staff at [Company Name] should always be aware of any Lasting Power of Attorney in place for the clients they are caring for, including who the attorneys are and what decisions they are able to make. Documentation must be sought to verify attorneys and checks made at the Office of Public Guardian.

# Deprivation of Liberty Safeguards (DoLS)

DoLS is a legal framework to support individuals who are deprived of their liberty in the provision of care and support whilst residing in a hospital or care-home setting. If the client is living in another setting, such as supported living or within their own home, then a deprivation of liberty can be sought via an application to the Court of Protection.

DoLS are an amendment to the Mental Capacity Act 2005 (MCA). They were put in place to give greater protection to those individuals who may have restrictions or restraints in place on their movements, under the MCA, to an extent, that causes a deprivation in the individual’s liberty. The following could indicate that there is a deprivation of liberty happening:

* the person is subject to continuous supervision and control
* the person is not free to leave the premises
* frequent use of sedation or medication to control behaviour
* regular use of physical restraint to control behaviour
* the client concerned objects verbally or physically to the restriction and/or restraint
* objections from family and/or friends to the restriction and/or restraint
* the client is confined to a particular part of the establishment in which they are being cared for
* the placement is potentially unstable
* possible challenge to the restriction and restraint by the Court of Protection or the Ombudsman, a letter of complaint or solicitor’s letter
* the person is already subject to a deprivation of liberty authorisation that is about to expire.

Remaining in line with the Mental Capacity Act 2005, treatment should only be given in a client’s best interests and should be the least restrictive option available. Therefore, if it is felt a person is being deprived of their liberty, without authorisation, a less restrictive option should be sought. If this is not possible then an urgent authorisation should be applied for along with the standard authorisation. This is done by the completion of an (Association of Directors of Adult Social Services) ADASS form on the Department of Health Website. A DoLS assessor will then be allocated to formally assess the person.

**Court of Protection Applications**

As an additional layer of protection against unlawful, unnecessary or inappropriate DoLs as well as protection of individuals human rights, applications for DoLs outside of hospital and care home settings require Court of Protection authorisation. The purpose of the authorisation is the same as in a care home or hospital, and the same criteria apply. However, the process is slightly different as it requires the local authority to take the case to the Court of Protection, rather than authorise the Deprivation of Liberty themselves.  This must be done via the Local Authority rather than the organisation or persons carrying out the deprivation of liberty.  It is the policy of [Company Name] to immediately contact the local authority and ask them to initiate this procedure as soon as a client is suspected of being deprived of their liberty as per the criteria laid out above.

# Informing the CQC

If [Company Name] requests an authorisation of a deprivation of liberty from the Court of Protection, the CQC must be informed once the outcome is known, using this form – <https://www.cqc.org.uk/guidance-providers/notifications/application-deprive-person-their-liberty-dols-notification-form>

# Restraint

**The policy must refer to restraint. 4 potential options below. Delete as appropriate**

**[Company does not offer breakaway or restraint – Use this section] Breakaway and Restraint**

[Company Name] does not advocate or train staff in the use of restraint and does not foresee it being a likely or regular occurrence. [Company Name] does however acknowledge team members have a legal right to defend themselves from assault and protect the safety of colleagues, visitors and those around them. [Company Name] also acknowledges members of its team may in rare circumstances intervene in the best interests of its clients to prevent instances of self-harm. Any intervention should always be reasonable, proportionate and the least restrictive option. In the event of any instance of physical intervention (a team member making physical contact with a client without their prior consent) the management team of [Company Name] will review whether more formal training is needed.

or

**[Company only offers breakaway – Use this section] Breakaway**

[Company Name] seeks to demonstrate respect for the lifestyles and human rights of clients in its care.

[Company Name] recognises that some circumstances may arise when our staff might be called upon to remove themselves from a situation where they are at risk of harm. It is recognised staff have a right to defend themselves from assault and on occasion may have to use the minimal amount of force to stop harm coming to themselves and to remove themselves from danger. It is a prerequisite of completing work for [Company Name] that staff have in date breakaway training. This is to maintain staff (both directly employed and subcontracted) safety and to ensure that any physical contact between a staff member and a client meets the 5 principles of the Mental Capacity Act such as being the least restrictive option.

All staff directly employed by [Company Name] will receive breakaway training as part of their induction and updates as indicated by the training provider.

All staff contracted to work as subcontractors for [Company Name] most provide evidence of up-to-date breakaway training. **[Delete if not appropriate] [Company Name]** uses the [insert breakaway model] available at [training providers web address].

[Company Name] also acknowledges members of its team may in rare circumstances intervene in the best interests of its clients to prevent instances of self-harm.

or

**[Company offers breakaway and restraint use this section] Breakaway and Restraint**

[Company Name] seeks to demonstrate respect for the lifestyles and human rights of its patients.

[Company Name] recognises that some circumstances may arise when our staff might have to breakaway and remove themselves from a situation or restrain clients to maintain their safety and those of those around them. Staff are trained in both breakaway and restraint training based around the principles of the Mental Capacity Act.

**[Delete if not appropriate]** [Company Name] uses the [insert breakaway model] available at [training providers web address] and the [insert restraint model] available at [training providers web address]

Please see [Company Name]’s restraint policy for further details.

or

**[Company has dynamic policy depending on area/risk profile – use this section] Breakaway and Restraint**

The Senior Management Team will regularly review the need for staff to be trained in Breakaway and/or Restraint by risk assessing the current risk profiles of clients in each locality, as well as current and historic incident reporting.  Where the Senior Management Team feel the risk is sufficient or is likely to become sufficient to warrant either breakaway or restraint training then this should be sourced and implemented at the earliest opportunity.  In the instance that staff not trained in restraint or breakaway are involved in an incident that involves physical contact with a service user this should always instigate a review of whether restraint or breakaway training is necessary.  If a member of staff feels there is a need for breakaway or restraint training they should communicate this to the Senior Management Team.

# Monitoring

To ensure this policy remains both practical and current, regular auditing processes will take place. Individual incidents will be monitored via the incident reporting system and themes and trends reported to the management team.

Any adverse issues or poor client outcomes related to this policy will be investigated and immediate change implemented where required.

# Related Policies

* Advocacy and Decision-Making Policy
* Restraint Policy
* Safeguarding Policy

# Legislation and Guidance

**Relevant Legislation**

* Care Act 2014
* Health and Social Care Act 2008 (Regulated Activities) regulations 2014
* Human Rights Act 1998
* Mental Capacity Act 2005

**Guidance**

* Mental Capacity Act Code of Practice
* Social Care Institute for Excellence - <https://www.scie.org.uk/mca/dols/at-a-glance>

# Summary of Review

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| --- | --- |
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