Human Rights and Deprivation of Liberty in Domiciliary Care (England) Policy

Please note that all policies are templates and should be amended to fit your requirements.

Introduction

The purpose of this document is to explain the service's approach to people receiving care who might lack the mental capacity, as defined by the above laws, to take decisions about their care and treatment and who could have their freedom restricted to the point where they are deprived of their liberty.

The service's policy has been established to comply with the provisions of the Human Rights Act 1998, the Mental Capacity Act 2005, the Care Act 2014, and the requirements of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.

The care service recognises that safeguarding should follow when restrictions are required because the person:

- lacks the capacity to consent to the arrangements being made for their care and treatment
- has a mental disorder
- needs the care and support arrangements (resulting in loss of liberty) to prevent their coming to harm provided that these will be proportionate in relation to the likelihood and seriousness of the harm that might be caused by any failure to make those arrangements.

The service follows the definition of deprivation of liberty established by the Supreme Court in March 2014 (known as "Cheshire West"). The Supreme Court judgment stated that anyone has been deprived of their liberty if they lack the mental capacity to make decisions about their care and residence, and:

- is under the responsibility of the state in some way
- is subject to continuous supervision and control
- lacks the choice to leave their care setting.

The service also follows Law Society (2024) guidance in respect of the practices and measures it takes that could restrict the liberty of a person who lacks the mental capacity to act in their own interests.

The care service will work closely with local safeguarding partners over any situation in which there is evidence that a person might be experiencing loss of liberty while receiving care in their home.

Loss of liberty safeguarding principles

This care service recognises that people receiving its services have the same freedom and rights as anyone else. It will not accept for service provision anyone who is being deprived of his or her liberty unless it can be clearly shown that it is in his or her best interests and in line with mental capacity law.

It would always seek or recommend safeguarding people's human rights in the relevant circumstances where they apply and where there are clear grounds for thinking that the person is already being deprived of his or her liberty or is at risk of being deprived of his or her liberty because of the decisions being considered or taken.

This care service understands that there is no statutory definition of "deprivation of liberty" (other than that provided by the Supreme Court) and that each case must be assessed on its merits. As a guide, the service uses the case examples identified in The Law Society's (2024) guidance (Chapter 9 — Deprivation of Liberty at Home) that indicates the situations that might be interpreted as deprivation of liberty and therefore requiring safeguards to be put into place. (See below.)

This care service understands that the Deprivation of Liberty Safeguards (DoLS) apply to people in care homes or hospitals who come within the provisions of the Mental Capacity Act 2005 and who are under the responsibility of the state in some way who have lost or are at risk of losing their liberty because they:

- are under continuous supervision and control
- lack the choice about where they should live and whether they have the freedom to leave their place of residence.

The care services recognise that at present the DoLS do not apply to people living in their own homes, who if statutory intervention is needed because of their mental incapacity, would come under the jurisdiction of the Court of Protection. Applications to the Court of Protection might be made by a local authority, NHS body or lawful representatives of the person, when there is evidence that an individual who lacks or is thought to lack mental capacity is subject to liberty depriving measures.

Policy Statement

Deprivation of liberty issues do not arise as frequently in the work of most domiciliary care services as they might be to a care home or a hospital. However, they will be relevant to people in, for example, extra care housing and supported living accommodation, where people might be experiencing deprivation of liberty because of their intensive care and support needs and needs for continuous supervision and support, and for whom the care service might be a commissioned provider.

As a domiciliary care service provider, this care service is therefore aware that there are circumstances in which it might become involved in the care of people who are subject to or could require deprivation of liberty safeguarding. It will then exercise its duty of care to raise the matter with the relevant statutory bodies such as the local authority and/or an NHS body and express any safeguarding concerns to the local safeguarding adults' authority.

The following situations could trigger such a response from this service so that due best interests' processes are always followed.

- Where it is asked to provide services that would effectively deprive someone of his or her liberty, who does not have the mental capacity to give his or her consent, to any restrictive conditions that might apply within his or her care plan.
- Where someone in extra-care or supported living arrangements, but receiving services from this care service might lack the mental capacity to take some or all his or her own decisions about his or her activities of daily living and who might also need certain restrictions which could be interpreted as a deprivation of his or her liberty.
- Where relatives and representatives of someone receiving care services, the staff of the service, or medical staff consider that the person needs additional care or treatment in a hospital, when the person does not have the capacity to take that decision and might be deprived of his or her liberty if subject to the treatment being proposed.

The service follows the guidance produced by the Law Society (updated 2024) to identify and respond to care and treatment that in other contexts would almost certainly be recognised as liberty depriving, and which could be thought of as depriving a person of his or her liberty while still living in his or her own home.

Care staff are expected and trained to report any of the following to their manager, who will take the necessary action.

- Where the individual has been prescribed and the service is expected to administer any medication used to sedate or control the individual's behaviour, including that on a PRN basis.
- Where the service is contributing to meeting the physical support needs of the person receiving care and the support provided is to a timetable set not by the individual but by others.
- Real-time monitoring is used within the home environment (for instance by use of CCTV or other assistive technology) to monitor the person's behaviour.
- There is evidently regular use of restraint by family members or professional carers and this needs to be always be recorded in the individual's care plan.
- The door is kept locked (with no direct access for the person receiving care to keys or keypads) preventing the person from coming and going as they please.

- The person receiving care is regularly locked in their room on their own (or in an area of the house) or otherwise prevented from moving freely about the house.
- Restrictions are placed on a person by professionals as to who they can and cannot see or any other activities that they may or may not engage in.

Contingency Procedures

If we did have a situation where one of the people who uses our service who requires care, treatment or some form of intervention about which they cannot take a decision because of lack of mental capacity, but it is felt in their best interests to proceed with it, we would first try to ascertain if it would lead to the person having being deprived of their liberty.

If the answer is yes, it would or it could (and in line with the mental capacity act principles there is no less restrictive way of proceeding), we would then support any application to or through the appropriate authority and processes to the Court of Protection.

The service will always work closely with the person or persons appointed by law to represent the interests of the person who is subject to liberty depriving measures. The service will always want to make sure that the person receiving care exercises their due rights and entitlements and has access to all means of support, including independent advocates.

The service undertakes to co-operate with the care regulators in their monitoring and inspecting of the standards of practice that the service is expected to achieve. To comply with Regulation 18 (4), "Notification of Other Incidents", it will notify "without delay" the CQC of the outcomes of any applications to the Court of Protection, in which it is involved, that authorise a deprivation of an individual's liberty.

The service will ensure that staff who are involved or might be involved in mental capacity decisions are aware of the deprivation of liberty issues and the circumstances in which they apply.

Staff Training

All care staff receive training in the Mental Capacity Act 2005 and deprivation of liberty issues, and further training so that they understand the processes involved in taking best interest decisions for people lacking mental capacity, who might be deprived of their liberty.

Signed: _____

Date: _____

Policy review date: _____

Reference

The Law Society (2024), *Identifying a Deprivation of Liberty: A Practical Guide Deprivation of Liberty at Home* (Chapter 9) is available on the Law Society website.
