



Review Sheet		
Last Reviewed 06 Aug '20	Last Amended 06 Aug '20	Next Planned Review in 12 months, or sooner as required.
Business impact	<p>Minimal action required circulate information amongst relevant parties.</p> <p>LOW IMPACT</p>	
Reason for this review	Scheduled review	
Were changes made?	Yes	
Summary:	The policy has been clarified and new references provided.	
Relevant legislation:	<ul style="list-style-type: none"> • Deprivation of Liberty Safeguards Code of Practice (2008) • Care Quality Commission (Registration) Regulations 2009 • Human Rights Act 1998 • Mental Capacity Act 2005 • Mental Capacity Act Code of Practice 	
Underpinning knowledge - What have we used to ensure that the policy is current:	<ul style="list-style-type: none"> • Author: United Kingdom Supreme Court, (2014), <i>Cheshire West and Cheshire Council v P [2014] UKSC 19</i>. [Online] Available from: https://www.supremecourt.uk/cases/docs/uksc-2012-0068-judgment.pdf [Accessed: 6/8/2020] • Author: Care Quality Commission, (2020), <i>Outcome of an application to deprive a person of their liberty (DoLS) - notification form</i>. [Online] Available from: https://www.cqc.org.uk/guidance-providers/notifications/application-deprive-person-their-liberty-dols-notification-form [Accessed: 6/8/2020] • Author: HM Government, (2015), <i>Deprivation of liberty safeguards: resources</i>. [Online] Available from: https://www.gov.uk/government/publications/deprivation-of-liberty-safeguards-forms-and-guidance [Accessed: 6/8/2020] • Author: Ministry of Justice, (2008), <i>Mental Capacity Act 2005: Deprivation of Liberty Safeguards - Code of Practice to supplement the main Mental Capacity Act Code of Practice</i>. [Online] Available from: https://webarchive.nationalarchives.gov.uk/20130104224411/http://www.dh.gov.uk/en/Public [Accessed: 6/8/2020] 	
Suggested action:	<ul style="list-style-type: none"> • 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 protect the rights of Service Users aged 18 and above, living in a registered care home, who may lack capacity to consent to a Care Plan which:

- | May deprive them of their liberty, but
- | Is essential in order to give them necessary care or treatment

1.2 To comply with the Deprivation of Liberty Safeguards (DoLS) regulations in The Mental Capacity Act 2005 and to prevent breaches of the European Convention on Human Rights/Human Rights Act 1998.

1.3 To support HWCGS Care (T/A Segal Gardens) in meeting the following Key Lines of Enquiry:

Key Question	Key Lines of Enquiry
EFFECTIVE	E1: Are people's needs and choices assessed and care, treatment and support delivered in line with current legislation, standards and evidence-based guidance to achieve effective outcomes?
EFFECTIVE	E2: How does the service make sure that staff have the skills, knowledge and experience to deliver effective care and support?
EFFECTIVE	E7: Is consent to care and treatment always sought in line with legislation and guidance?

1.4 To meet the legal requirements of the regulated activities that HWCGS Care (T/A Segal Gardens) is registered to provide:

- | Deprivation of Liberty Safeguards Code of Practice (2008)
- | Care Quality Commission (Registration) Regulations 2009
- | Human Rights Act 1998
- | Mental Capacity Act 2005
- | Mental Capacity Act Code of Practice



2. Scope

2.1 The following roles may be affected by this policy:

- | Registered Manager
- | Other management
- | Administrator
- | Care staff
- | Activities

2.2 The following Service Users may be affected by this policy:

- | All Service Users aged 18 and over who may lack mental capacity to consent to a Care Plan which includes restraint/restrictions, and these are needed to give them necessary care or treatment

2.3 The following stakeholders may be affected by this policy:

- | Family
- | Advocates
- | Commissioners
- | External health professionals
- | Local Authority
- | NHS
- | Relevant Person's Representatives (RPRs) appointed under DoLS
- | Independent Mental Capacity Advocates (IMCAs)



3. Objectives

- 3.1 Before any Service User is deprived of their liberty, all practical efforts are made to avoid deprivation of liberty.
- 3.2 Service Users are not deprived of their liberty without lawful authority.
- 3.3 Authorisations to deprive Service Users of their liberty, including duration of, and any conditions relating to such deprivation, are incorporated into Care Plans, and notifications made to the Care Quality Commission.
- 3.4 If a person aged 18 or over might lack capacity to consent, all health and care interventions are carried out in accordance with the wider Mental Capacity Act, using the least restrictive options that can be found.



4. Policy

- 4.1 HWCGS Care (T/A Segal Gardens), where Service Users aged 18 and over may be deprived of their liberty and lack capacity to consent to their Care Plan:
 - ┆ Follows the Deprivation of Liberty Safeguards (DoLS) [Code of Practice](#) (Ministry of Justice)
 - ┆ Makes the reduction of unnecessary restraint or restriction of movement of Service Users a priority



5. Procedure

5.1 Staff supporting Service Users who might lack the mental capacity to consent to health or care interventions, must work within the Mental Capacity Act. This means they:

- | Provide services within the framework of the MCA statutory principles (see the MCA code of practice)
- | Refer to the **Mental Capacity Act (MCA) 2005 Policy and Procedure** for further information about assessing capacity and the relevant forms to support any decision
- | Know when and how to assess decision-specific and time-specific capacity, and who will carry out the assessment; record capacity assessments including efforts made to enable the Service User to make the decision for themselves
- | Know when and how to make best interests decisions on behalf of Service Users who lack mental capacity to make a specific decision at the time it needs to be made; record who was consulted and explain their views, in particular, the wishes and feelings of the person
- | Recognise, record and minimise the use of restraint, including restriction on freedom of movement

5.2 Action to take if deprivation of liberty is suspected:

- | Recognise, record and minimise the use of deprivation of liberty
- | If deprivation of liberty appears necessary and proportionate, apply as soon as possible to the relevant supervisory body: this will be the local authority where the person usually lives
- | Use the forms and guidance produced by the [Department of Health and Social Care](#) (DHSC)
- | Keep full records of assessments, applications, discussions with the Service User and their relatives or friends about deprivation of liberty, and actions taken to minimise its use
- | Be prepared for DoLS Assessors, or Court of Protection-Appointed Assessors, to visit HWCGS Care (T/A Segal Gardens). They will interview the Service User, view records, and may interview staff

5.3 Action to take if deprivation of liberty is authorised:

- | Ensure that the Service User and their relatives understand that the authorisation has been given, and how they can challenge it with the help of an IMCA (Independent Mental Capacity Advocate)
- | Record the end date, diarise a month earlier to consider whether a new authorisation will be needed and apply to the supervisory body in good time
- | Record who is the relevant Service User's representative (RPR) for DoLS purposes, and include them in discussions about how to maximise the Service User's decision-making ability and freedom as far as possible
- | Notify the Care Quality Commission (CQC) of the authorisation request and its outcome (granted or not granted) using the [form available](#)
- | Record any conditions and ensure that they are incorporated into the Care Plan
- | Notify the supervisory body of any changes, for example, whether the Service User has regained capacity, or if the Service User dies or permanently leaves HWCGS Care (T/A Segal Gardens)



6. Definitions

6.1 Deprivation of Liberty 'Acid Test'

- | The Supreme Court 'Acid Test' clarifies that a person aged 16 or over is deprived of their liberty if they:
 - | Lack capacity to consent to the arrangements needed to give them necessary care or treatment, and
 - | Are not free to leave (they may be allowed to go out with staff, or even alone, with permission, but may not go to live somewhere else, or without staff permission) and
 - | Are subject to continuous (or continual) supervision and control. (A way to think about this is, do staff know all the time where someone is and what they are doing; and do staff provide and control their access to other people, activities, and the community?)

6.2 DoLS or Court of Protection Authorisation Conditions

- | There are not always conditions attached to an authorisation, but where they are imposed, the intention is to lessen the deprivation of liberty in some way, for example by saying that the HWCGS Care must arrange to take the person out into the community regularly
- | Conditions included as part of any authorisation must be followed, and if a provider cannot comply with any condition, they should urgently contact the supervisory body that granted the authorisation to discuss the issues they are encountering

6.3 Restraint

- | As defined by the MCA, this is the use, or threat, of force to make someone lacking mental capacity do something they are resisting, or restricting the freedom of movement of someone lacking mental capacity, whether the person resists this or not
- | Restraint is only lawful if it is in the person's best interests: except in an emergency, best interests are worked out in accordance with the statutory checklist in MCA Section.4. (See MCA code of practice Chapter 5). But restraint, to be lawful, must also meet two extra conditions (see MCA code of practice 6.40 and following):
- | The restraint must be **necessary** to prevent harm to the person, and a **proportionate response** to the likelihood and seriousness of that harm; its intensity and duration must be as minimal as possible
- | Restraint is considered part of a deprivation of liberty but individual instances of restraint do not themselves constitute a deprivation of liberty; this is because deprivation of liberty is defined by reference to the entire Care Plan, and how it meets the 'Acid Test' (see 6.1 above)



Key Facts - Professionals

Professionals providing this service should be aware of the following:

- | Deprivation of liberty is sometimes a necessary and proportionate way to keep a person who lacks mental capacity safe
- | The risk of deprivation of liberty must be recognised and removed, or reduced as far as possible, while preventing foreseeable harm to the person lacking mental capacity
- | Deprivation of liberty is not lawful without an authorisation having been sought from the appropriate body (which, for care homes, is the local authority)
- | An authorisation is only granted if the independent DoLS assessors agree that there is no less restrictive option to keep the person safe
- | Authorisation protects the rights of the person, and also provides protection from liability for staff whose actions contribute to depriving the person of their liberty
- | The outcome of an authorisation request must be notified to the Care Quality Commission
- | Deprivation of liberty of someone lacking capacity is governed under the MCA, so all recording must show compliance with the wider MCA, including the search for the least restrictive option to deliver services



Key Facts - People affected by the service

People affected by this service should be aware of the following:

- 1 The deprivation of liberty safeguards are in place to protect you if you are deprived of your liberty, in your best interests, in order to provide you with care and treatment that you need
- 1 An authorisation provides reassurance that the care provided is in your best interests, and that no less restrictive option can be found to keep you safe
- 1 There is no stigma attached to an authorisation: it is a sign that HWCGS Care (T/A Segal Gardens) is acting to protect your human rights



Further Reading

As well as the information in the 'underpinning knowledge' section of the review sheet we recommend that you add to your understanding in this policy area by considering the following materials:

Care Quality Commission: Health and Social Care Act 2008 (Regulated Activities) Regulations 2014: Regulation 11: Need for consent -

<http://www.cqc.org.uk/guidance-providers/regulations-enforcement/regulation-11-need-consent>

Care Quality Commission: Health and Social Care Act 2008 (Regulated Activities) Regulations 2014: Regulation 13: Safeguarding service users from abuse and improper treatment -

<http://www.cqc.org.uk/guidance-providers/regulations-enforcement/regulation-13-safeguarding-service-users-abuse-improper>



Outstanding Practice

To be 'outstanding' in this policy area you could provide evidence that:

- 1 The wide understanding of the policy is enabled by proactive use of the QCS App
- 1 Deprivation of liberty authorisation is sought in a timely way and from the right authority
- 1 Relevant dates and any conditions of authorisations are properly recorded; conditions are met and new authorisations are sought in a timely fashion
- 1 People subject to authorisation and their relatives, friends or representatives are given full information about authorisation requests and all information that is prescribed in law
- 1 All Care Plans are created with the wishes and feelings of Service Users at their centre; their wishes and feelings are accommodated wherever this can be done
- 1 All Care Plans for people lacking mental capacity benefit from the knowledge and insight of the person's relatives and friends, in knowing how to meet the person's past and present wishes and feelings
- 1 Deprivation of liberty is avoided wherever possible by the use of creative and person-centred strategies



Forms

Currently there is no form attached to this policy.