

Deprivation of Liberty Safeguards Policy and Procedure

Policy reviewed and valid from: 01/01/20

Purpose

For Heritage Care at Home Ltd to comply with The Deprivation of Liberty Safeguards (DOLS) regulations, which arise from the Mental Capacity Act (MCA) 2005.

Scope

- Informed Consent to a decision or action is given where a person has come to a conclusion, free from undue influence, based on a clear appreciation of the facts, implications and consequences of the decision or action. It is always essential in safeguarding to consider whether the adult at risk is capable of giving informed consent. If they are, their consent should be sought. This may be in relation to whether they give consent to:
 - An activity that may be abusive – if consent to abuse or neglect was given under duress, as a result of exploitation, pressure, fear or intimidation, this apparent consent should be disregarded. A decision should be made on the balance of probabilities as to whether consent is freely given.
 - Certain decisions and actions taken during the Safeguarding Adults process with the person or with people who know about their abuse and its impact on the adult at risk.

Policy

- The Deprivation of Liberty Code of Practice will be followed in respect of all Customers.

Procedure

- Use the forms and procedures contained in The Deprivation of Liberty Safeguards – Forms and Record Keeping guide for Managing Authorities in England

Information Sharing

- All information regarding the safeguarding of vulnerable adults held by all agencies should be recorded, and the principles of confidentiality must be adhered to, in line with the common law of confidentiality, the Human Rights Act 1998 and the Data Protection Act 1998. There are clearly occasions within safeguarding work, where confidential information should be shared, such as when there is a vital public interest, where risk is real, and when disclosure of information is legal and proportionate to risk. Information will be shared within and between organisations in line with the principles set out below:

Adults have a right to independence, choice and self-determination. This right extends to them being able to have control over information about themselves and to determine what information is shared. Even in situations where there is no legal requirement to obtain written consent before sharing information, it is good practice to do so

The person's wishes should always be considered, however, protecting adults at risk establishes a general principle that an incident of suspected or actual abuse can be reported more widely and that in so doing, some information may need to be shared among those involved

Information given to an individual member of staff belongs to the organisation and not to the individual employee. An individual employee cannot give a personal assurance of confidentiality to an adult at risk

- An organisation should obtain the adult at risk's written consent to share information and should routinely explain what information may be shared with other people or organisations wherever possible. However, if this is not possible and other vulnerable adults are at risk, it might be necessary to override this requirement
- Difficulties in working within the principles of maintaining the confidentiality of an adult should not lead to a failure to take action to protect the adult from abuse or harm
- Confidentiality must not be confused with secrecy, that is, the need to protect the management interests of an organisation should not override the need to protect the adult
- Staff reporting concerns at work ('whistle blowing') are entitled to protection under the Public Interest Disclosure Act 1998
- Principles of confidentiality designed to safeguard and promote the interests of the vulnerable adult and should not be confused with those designed to protect the management interests of an organisation.
- The No Secrets guidance highlights the 'need to know' principle, stating that information should only be shared on a need to know basis when in the best interests of the adult at risk.

Who is covered by safeguards?

- The safeguards apply to people in England and Wales who have a mental disorder and lack capacity to consent to the arrangements made for their care or treatment, but for whom receiving care or treatment in circumstances that amount to a deprivation of liberty may be necessary to protect them from harm and appears to be in their best interests. A large number of these people will be those with significant learning disabilities, or older people who have dementia or some similar disability, but they can also include those who have certain other neurological conditions (for example as a result of a brain injury).
- In order to come within the scope of a deprivation of liberty authorisation, a person must be detained in a hospital or care home, for the purpose of being given care or treatment in circumstances that amount to a deprivation of liberty. The authorisation must relate to the person concerned and to the hospital or care home in which they are detained.

When can someone be deprived of their liberty?

Depriving someone who lacks the capacity to consent to the arrangements made for their care or treatment of their liberty is a serious matter, and the decision to do so should not be taken lightly.

The deprivation of liberty safeguards make it clear that a person may only be deprived of their liberty: in their own best interests to protect them from harm if it is a proportionate response to the likelihood and seriousness of the harm, and if there is no less restrictive alternative.

The Mental Capacity Act – Deprivation of liberty safeguards

Under no circumstances must deprivation of liberty be used as a form of punishment, or for the convenience of professionals, carers or anyone else. Deprivation of liberty should not be

extended due to delays in moving people between care or treatment settings, for example when somebody awaits discharge after completing a period of hospital treatment.