

*July 2017*

# Deprivation of Liberty Safeguards Policy

Live  Care

Date Written	17.07.2017
Author(s)	Registered manager
Version	2.0
Date Signed Off	20/07/2017
Reviewed by	

Unit 1 Chandos House,  
Hankridge Way,  
Taunton,  
Somerset  
TA1 2LR

# Review Data

## Initial Production

Name	Role/Department	RACI	Date
Registered manager	Registered Manager	RA	17.07.2017
Registered manager	Registered Manager	RA	06.12.2017

R = Responsible for document production; A = Accountable; C = Consulted; I = Informed

## Change History

Version	Date	Details of Change	Author
2.0	17.07.2017	Re-write and re-structure of original policy in line with most recent legislative updates.	Registered manager

## Emergency Contact Details

Name	Email	Mobile
Registered manager	fran@livein.care	

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## CQC Fundamental Standards

Regulation Number	Regulation Details
Regulation 11: Need for consent	Where a person lacks mental capacity to make an informed decision, or give consent, staff must act in accordance with the requirements of the Mental Capacity Act 2005 and associated code of practice.
Regulation 12: Safe care and treatment	Assessments, planning and delivery of care and treatment should be carried out in accordance with the Mental Capacity Act 2005 including, where required, application for authorisation for deprivation of liberty through the Mental Capacity Act 2005 Deprivation of Liberty Safeguards or the Court of Protection.

## Key Lines of Enquiry

KLOE	How this applies to Deprivation of Liberty Safeguards
Safe	Only depriving a person of liberty in full accordance with appropriate procedures is essential to maintaining safety.

## Related Documents

This policy should be read in conjunction with our:

- **Risk Assessment Policy**
- **Safeguarding Vulnerable Adults Policy**

## Policy Statement

### Policy Aims

Living Carers Ltd supports the following principles of the Mental Capacity Act 2005.

1. Individuals must be assumed to have capacity unless it is established that they lack capacity.
2. Individuals are not to be treated as unable to make a decision unless all practicable steps have been taken without success to help them to take the decision.
3. Individuals must not be treated as unable to make a decision just because they might or have been known to make an unwise decision.
4. When people take a decision on behalf of someone else who lacks capacity, they must act in that person's best interests.
5. If anyone takes a decision on behalf of someone lacking capacity at the time they must act in the least restrictive way possible, which is in their best interests, in order to minimise the effects on that person's rights and freedom of action.
6. No person should have their freedom restricted to the point where they may be deprived of their liberty unless it has been proved that it is the only reasonable thing to do in their best interests and keeps them safe from harm.

### What is Deprivation of Liberty?

**The Deprivation of Liberty Safeguards is the procedure prescribed in law when it is necessary to deprive a client of their liberty who lacks capacity to consent to their care and treatment in order to keep them safe from harm.**

Living Carers Ltd operates on the policy that people receiving services have the same freedom and rights as anyone living in the wider community. It will not admit anyone who is being deprived of their liberty as a result of being accommodated here unless it can be clearly shown that it is in their best interests to be here.

It will also seek authorisation to deprive someone of their liberty (and so become subject to the deprivation of liberty safeguards) only where there are clear grounds for thinking that either the person is already deprived of their liberty, which needs authorisation, or it is clearly in their best interests for the service to seek authorisation.

**DoLS are underpinned by the five key principles of the Mental Capacity Act:**

- A presumption of capacity - every adult has the right to make his or her own decisions and must be assumed to have capacity to do so unless it is proved otherwise;

- The right for individuals to be supported to make their own decisions - people must be given all appropriate help before anyone concludes that they cannot make their own decisions;
- That individuals must retain the right to make what might be seen as eccentric or unwise decisions;
- Best interests – anything done for or on behalf of people without capacity must be in their best interests; and
- Least restrictive intervention – anything done for or on behalf of people without capacity should be the least restrictive of their basic rights and freedoms

### Example of when the Safeguard may be needed

The policy sets out to show how the service meets the legal requirements to provide safeguard for people who might be deprived of their liberty whenever decisions are needed about their care and treatment, which they cannot take themselves because of lack of mental capacity. As a care service, there are several circumstances in which this policy might need to be followed, such as where:

- a. The service is asked to admit someone who might have lacked the mental capacity to decide to apply and who might be deprived of their liberty by being compulsorily admitted to the home. **(not dom care?)**
- b. 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 their liberty if subject to the treatment being proposed
- c. The home seeks to serve notice on a resident who lacks the mental capacity to decide on their future residence and who might be deprived of their liberty as a result of having to move elsewhere.
- d. Someone receiving services might lack the mental capacity to take some or all of their own decisions about their activities of daily living and who might also need certain restrictions which could be interpreted as a deprivation of their liberty.

## Procedure

If we have a situation where one of our individuals 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 first try to ascertain if it would lead to the person having been deprived of their liberty as a result.

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 **apply to the local authority**. We understand that this, in the case of a care home, is the local authority where the person's main residence has been. We then **request an assessment from the person's supervisory local authority** whether it is in their best interests to be deprived of their liberty for the purpose of receiving the required care and treatment.

**Living Carers Ltd will decide if it is in the relevant person's interests to seek an urgent or a standard assessment**, which it does by applying to the relevant supervisory authority using the forms that it provides for these purpose.

In an emergency, or in situations where there is no time to go through the assessment process, Living Carers Ltd can grant themselves an urgent DoLS authorisation in accordance with the Mental Capacity Act 2005. This is valid for seven days and Living Carers Ltd are aware the standard assessment process must be started immediately. Should the standard assessment not take place within seven days, a further seven days DoLS authority may be self-granted. Before making an application, the service will seek to identify the relevant person's supervisory authority, which it understands to be the local authority for the area in which the person ordinarily resides, e.g. the local authority that is funding their care. If the person has no other "ordinary place of residence" then the service will make the application to the local authority in which its head office is situated. The service then works with the supervisory authority in following the required assessment procedures.

The service recognises that, in order to comply with the Mental Capacity Act 2005 — Code of Practice and the Mental Capacity (Deprivation of Liberty: Standard Authorisations, Assessments and Ordinary Residence) Regulations 2008, the supervisory authority will need to carry out the following assessments before DoLS can be granted:

- a. **An age assessment to make sure the person is aged 18 or over**
- b. **A no-refusal assessment to make sure that the authorisation sought does not conflict with a valid decision such as an advance decision that has already been made**
- c. **A mental capacity assessment, which should state that the person lacks capacity to decide whether to receive the care and treatment being proposed**
- d. **A mental health assessment to see if the person is suffering from a mental disorder such as dementia**
- e. **An eligibility assessment to check that the person should not be considered for detention under the mental health act 1983**
- f. **A best interests' assessment; this determines that the proposed course of action would:**
  - i. **Amount to a deprivation of liberty**
  - ii. **Be in the person's best interests to be subject to the authorisation**
  - iii. **Be necessary to prevent the person from being harmed**
  - iv. **Be a proportionate response to the likelihood of suffering harm and the seriousness of that harm.**

**Should DoLs be granted, Living Carers Ltd., will ensure a hard copy is kept in the Client file. Should one not be provided immediately, it should be chased up weekly in writing.**

**Key Question: What happens if the authorisation is granted?**

If authorisation is granted, Living Carers Ltd will work closely with the person appointed to represent the interests of the person whose liberty had been taken away. It will also work closely with the supervisory authority to make sure all the required checks are being carried out and to review the authorisation. Living Carers Ltd will always want to make sure that the person is able to exercise their due rights and entitlements; including their right to challenge a deprivation of liberty through the court of protection.

## Independent Mental Capacity Advocate/ Representative

Throughout its work with a relevant person's independent mental capacity advocate (IMCA)/representative the service will always seek to comply with the Mental Capacity (Deprivation of Liberty: Appointment of Relevant Person's Representative (RPR) Regulations 2008.

The service understands that an IMCA will be appointed by the supervisory authority if a person does not have anyone to represent their best interests. It understands that an RPR, whose appointment is recommended by the best interests' assessor, will be in most cases a family member or friend of the person concerned. It also understands that the person appointed to represent the interests of the person whose liberty is being deprived has a responsibility to:

- **Involve the person in any decision made on their behalf**
- **Maintain regular face-to-face contact with the person deprived of their liberty**
- **See if there is a chance that the person may regain capacity and be able to make the decision**
- **Ask if the decision could be delayed to allow this**
- **Ascertain the wishes and feelings of the person, including any views they have expressed in the past and how they should be used to understand what their wishes and feelings might be in this situation (this might include things they have written down or said to other people, or examples of how they have behaved in similar circumstances in the past)**
- **Identify any beliefs or values that the person holds, which could influence the decision-making process, such as religious beliefs, cultural background or moral views.**

Living Carers Ltd undertakes to ensure that the IMCA/RPR always has access to the person whose liberty is being deprived and co-operates with any “best interests” actions that the RPR proposes.

Living Carers Ltd undertakes to co-operate with the representatives of the Care Quality Commission in their monitoring and inspecting of the standards of practice that the service seeks to achieve in following the deprivation of liberty safeguards for any person subject to them being a resident in the home. It will also ensure notifications are submitted in a timely manner detailing any conditions attached to the authorisations.

## Monitoring and Review

The Director will check this policy and they will review it at least once a year. We will make improvements to the policy wherever we can. We will also regularly check our procedures for avoiding bribery and corruption.

We are all responsible for the success of this policy and we must all disclose any suspected danger or wrongdoing.

Employees are invited to suggest any ways the policy can be improved.

This policy does not form part of any employee's contract of employment, and it may be amended at any time.

### Key Points to Take Away

Deprivation of Liberty Safeguards is the procedure prescribed in law when it is necessary to deprive a resident or Client who lacks capacity to consent to their care and treatment of their liberty in order to keep them safe from harm.

An assessment is needed to grant deprivation of liberty which then needs to be recorded in a Clients file.

Living Carers Ltd operates on the policy that people receiving services have the same freedom and rights as anyone living in the wider community.

### Policy Review

This policy will be reviewed by the Registered Manager at least annually to make any updates and amendments necessary to ensure the policy conforms to current legislation, reflects current practice and expectations.



## Authorisation and Signature

This Policy is the official and authorised version agreed by the Directors of Living Carers Ltd. All employees are expected to work in accordance with this policy and failure to comply with this policy could result in disciplinary action.

### Registered Manager

06.12.2017

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