

THE ABBEYFIELD FERRING SOCIETY LTD POLICY & PROCEDURE/GOOD PRACTICE GUIDELINES

Policy Ref:	AF020	Effective date:	April 2019
Owner:	Abbeyfield Ferring Society	Review date:	April 2020

Title:	Deprivation of Liberty Policy and Procedure
1. Background	<p>The deprivation of a resident's liberty is a very serious matter and should not happen unless it is absolutely necessary, in the resident's best interests and to protect them from harm</p> <p>This policy has been developed to ensure that Abbeyfield Ferring Society acts in accordance with the terms of the Mental Capacity Act 2005 and the Liberty Protection safeguards of July 2018.</p>
2. Objectives	<p>The aim of this policy is to ensure that:</p> <ul style="list-style-type: none"> Any decision to deprive a resident of their liberty is made following defined processes and in consultation with the required authorities. Abbeyfield Ferring Society complies with relevant legislation and regulations.
3. Scope	All established staff, agency staff and volunteers working in the care home.
4. Policy	INTRODUCTION
4.1.	The Mental Capacity Act 2005, which came into force in October 2007, provides a statutory framework for acting and making decisions on behalf of individuals who lack the mental capacity to do so for themselves. New provisions have been added to the Act which set out the legal framework for the deprivation of liberty safeguards, known as MCA DOLS.
4.2.	On 1 April 2009, the Act was amended to introduce procedures for authorising the deprivation of liberty in care homes (and hospitals) of people who lack capacity to consent to their care or treatment. Guidance on the operation of the procedures is contained in the Deprivation of Liberty Safeguards Code of Practice, which is a supplement to the main Mental Capacity Act 2005 Code of Practice. Both codes have statutory force and therefore all staff, agency staff and volunteers have a legal duty to observe the guidance detailed in the codes.
4.3.	The MCA DOLS should be used for all residents in care homes who lack capacity to make their own decisions and where personal freedoms need to be restricted in the resident's best interests, to the extent that it amounts to a deprivation of liberty. The MCA DOLS should not, however, be used if a resident meets the criteria for detention under the Mental Health Act 1983 and either is, or should be detained under the terms of that Act.
4.4.	Depriving a resident of their liberty in a care home should be a relatively rare occurrence. Residents are entitled to be cared for in the least restrictive way possible and care planning should always consider if there are other less restrictive options available to avoid unnecessary deprivation of liberty.
4.5.	However, if all alternatives have been explored and the care home manager believes it is necessary to deprive a resident of their liberty to deliver the care or treatment they need, then there is a standard procedure they must follow to ensure that the deprivation of liberty is lawful and that the resident is protected. Any such situation must always be referred to the Chief Operating Officer in the first instance.

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4.6.	This Policy and Procedure should be read in conjunction with the Mental Capacity Act Policy and Procedure.
4.7.	DEFINITIONS AND TERMINOLOGY
4.8.	Reference to a person’s “lack of capacity” in the Mental Capacity Act refers to the capacity of an individual to make a particular decision at the time it needs to be made. In the context of the deprivation of liberty safeguards, the capacity is specifically the capacity of an individual to decide whether or not to consent to care or treatment which involves being kept in a care home in circumstances that amount to a deprivation of liberty, at the time that decision needs to be made.
4.9.	For the purposes of this policy, the managing authority is the registered service manager and the supervisory body is West Sussex County Council.
4.10.	The registered local authority for Abbeyfield Ferring Society will not necessarily be the supervisory body. For example, if a person ordinarily resided in London before moving to a care home in Sussex, the relevant local authority in London will be their supervisory body. This may need to be taken into account.
4.11.	<ul style="list-style-type: none"> • A standard authorisation is issued by a supervisory body and permits the lawful deprivation of a person’s liberty. • An urgent authorisation is issued by the managing authority to itself permitting the lawful deprivation of a person’s liberty. • The person who is appointed to represent a person who is lawfully being deprived of their liberty is known as the relevant person’s representative.
4.12.	WHAT IS DEPRIVATION OF LIBERTY?
4.13.	<p>The European Court of Human Rights has ruled that the rights of people who are unable to make their own decisions, especially where they need to be deprived of liberty in their own best interests, need to be protected</p> <p>Deprivation of liberty depends on the specific circumstances of each individual case. As a result, there is no single definition or checklist that can be used. However a number of cases concerning deprivation of liberty have come before the courts and, based on various judgments, the following are listed in the MCA DOLS Code of Practice as factors which may be taken into account in deciding whether a person has been deprived of their liberty:</p> <ul style="list-style-type: none"> • Restraint is used, including sedation, to admit a person to a care home where the person is resisting admission • Sedative or antipsychotic medication is given and/or medication is given forcibly, against the person’s will • Staff exercise complete control over the care and movements of a person for a long period of time • Staff take all decisions on a person’s behalf, including choices relating to assessments, treatments, visitors and where they can live

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	<ul style="list-style-type: none"> • Care home staff take responsibility for deciding if a person could be released into the care of others or allowed to live elsewhere • When carers request that a person be discharged to their care, care home staff refuse • The person is prevented from seeing friends or family because the care home have restricted access to them • The person is unable to make choices about what they want to do and how they want to live because care home staff exercise continuous supervision and control over them.
4.14.	<p><u>Recent Supreme Court clarification</u></p> <p>In March 2014, the Supreme Court gave judgments in the cases of <i>P v Cheshire West and Chester Council and another and P and Q c Surrey County Council</i>.</p> <p>These very important judgments have provided clarification on the definition of deprivation of liberty and have reduced some of the con of the past few years.</p> <p>The Supreme Court found that there is a deprivation of liberty in the following circumstances:</p> <p>“The person is under continuous supervision and control and is not free to leave, and the person lacks capacity to consent to these arrangements”.</p> <p>The Supreme Court held that factors which are <u>not</u> relevant to determining whether there is deprivation of liberty include:</p> <ul style="list-style-type: none"> • Whether or not the person is objecting to the placement. • The purpose of the deprivation of liberty. • The extent to which it enables the person to live a relatively normal life. • The normality of the living arrangements, i.e. how closely the placement resembles a normal family living arrangement. <p>The judgments suggest the definition of a deprivation of liberty is wider than previously thought.</p> <p>fusion</p>
4.15.	<p>The Chief Operating Officer must be alerted at the earliest possible opportunity if there are any indications that a resident may need to be deprived of their liberty. Residents who are most at risk are likely to be those with a diagnosed dementia although a diagnosed dementia or mental illness will not, in itself, mean that a resident is being deprived of their liberty. The Chief Operating Officer, in consultation with relevant family</p>

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	members and health care professionals, will assist the registered care home manager to review the resident's care plan to develop the least restrictive approach to meet the resident's needs. If there is any doubt about whether someone's liberty is being deprived, an application for authorisation should be made.
4.16.	The new legal framework provides that a resident may not be deprived of their liberty in a care home unless an urgent or a standard authorisation is in force. It should be noted that an MCA DOLS authorisation will be the exception and not the rule.
4.17.	The MCA DOLS do not replace other safeguards in the MCA. Instead, any action taken under the MCA DOLS must be in line with the key principles of the MCA. It is important to understand that an MCA DOLS authorisation does not, in itself, authorise care or treatment.
4.18.	<p>URGENT AUTHORISATIONS</p> <p>Urgent authorisations can be made by the managing authority itself. This might be necessary where a standard authorisation has been applied for but not yet granted, and the need to deprive a resident of their liberty is urgent. A simultaneous application for a standard authorisation to the supervisory body must be made (if not already done).</p> <p>Any decision to issue an urgent authorisation must be taken in the best interests of the resident and must be a proportionate response to the likelihood of the resident being harmed and to the severity of the harm. Any such decision must not be taken without first referring the matter to the Chief Operating Officer.</p> <p>An urgent authorisation lasts for a maximum of 7 calendar days.</p> <p>In exceptional circumstances, an urgent authorisation can be extended by the supervisory body for an additional 7 calendar days. The managing authority must inform the supervisory body when an extension is needed and only one such extension can be granted.</p>
4.19.	<p>STANDARD AUTHORISATIONS</p> <p>The managing authority must apply to the supervisory body for authorisation of deprivation of liberty if it believes that a person who lacks capacity is:</p> <ul style="list-style-type: none"> • About to be admitted to the care home and risks being deprived of their liberty • Already in the care home and is being cared for or treated in a way which deprives them of their liberty. <p>The Chief Operating Officer must be informed before any application for a standard authorisation is made and any application must be agreed by them.</p> <p>If the supervisory body decides the application is appropriate it will commission an assessment which must be completed within 21 calendar days. The managing authority</p>

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	<p>cannot apply for a standard authorisation more than 28 days before a deprivation of liberty is due to take place.</p> <p>The supervisory body will commission six assessments in all, which need to be carried out by a minimum of two trained assessors. The six required assessments are:</p> <ul style="list-style-type: none"> • age assessment which determines the person is aged 18 or over • mental health assessment Which decides whether the person is suffering from a mental disorder • mental capacity assessment which determines if the person lacks the capacity to consent to receive care or treatment in the care home • eligibility assessment Which determines if the person is, or should be, subject to a requirement under the Mental Health Act 1983 (in which case they will not be eligible for authorisation) • no refusals assessment which determines if the person has refused treatment or made an advance directive (or decision) about the treatment they wish to receive, and also whether the authorisation conflicts with any valid decisions made on their behalf by a Lasting Power of Attorney or a Deputy appointed by the court • best interests assessment which determines whether a deprivation of liberty is actually occurring or is likely to occur. And whether, it would be in the person's best interests, necessary to keep them from harm and a reasonable response to the likelihood and seriousness of that harm. <p>Not every assessment process will result in an authorisation and a standard authorisation will be granted only if all six assessments support the authorisation.</p>
4.20.	<p>WHEN AN MCA DOLS AUTHORISATION IS GRANTED</p> <p>Once a resident has an MCA DOLS authorisation, a Relevant Person's Representative (RPR) will be appointed by the supervisory body to support the resident and look after their interests. The RPR will usually be a family member or someone known to the resident. If there is no-one suitable to take on the role of RPR, the supervisory body will appoint a representative, who can be paid as appropriate.</p> <p>The supervisory body may attach conditions to the authorisation.</p> <p>The supervisory body must give a copy of the authorisation to:</p> <ul style="list-style-type: none"> • the managing authority • the relevant person

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	<ul style="list-style-type: none"> • the RPR • any Independent Mental Capacity Advocate • any person named in the report of the best interests assessor. <p>The managing authority (together with its supervisory body) must:</p> <ul style="list-style-type: none"> • make regular checks to see if the authorisation is still necessary • remove the authorisation when it is no longer necessary • provide the resident’s RPR with information about the care and treatment of the resident who is subject to the MCA DOLS authorisation. <p>The Chief Operating Officer will review the authorisation with the registered care home manager at least once a month, and more frequently if required. The registered care home manager will keep the Business Manager informed of any issues or developments relevant to the authorisation.</p> <p>A standard authorisation will be issued by the supervisory body for the shortest possible period of time, as recommended by the best interests assessor, and for a maximum of 12 months. If at the end of 12 months, the managing authority thinks that the resident still needs to be deprived of their liberty for their own protection, they can request a new standard authorisation.</p> <p>A standard authorisation can be reviewed at any time. A review must be triggered if there is a change in the resident’s situation that requires the authorisation to be altered, temporarily suspended or terminated altogether. The supervisory body must carry out a review if requested to do so by either the resident, the RPR, or any Independent Mental Capacity Advocate (IMCA) representing the resident.</p> <p>In the event of an unresolved dispute with the managing authority or the supervisory body, a decision to deprive a resident of liberty may be challenged by the resident or the RPR by an application to the Court of Protection. The court may make an order to vary or terminate an urgent or standard authorisation.</p>
4.21.	<p>WHEN AN MCA DOLS AUTHORISATION IS REFUSED</p> <p>If an authorisation request is turned down, the managing authority must not deprive the person of their liberty and will need to take alternative steps. This will usually involve finding ways to support the resident in a less restrictive way that avoids depriving them of their liberty.</p>
4.22.	<p>RECORD KEEPING</p> <p>The need to make and keep written records comes from several sources: the Mental Capacity Act 2005 itself, regulations made under the Act, and the Code of Practice.</p>

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	<p>Detailed records are an essential part of the MCA DOLS process. Carefully and systematically recording the process is an important safeguard, and consequently an important part of the law, good practice and concern for the welfare of others. Abbeyfield Ferring Society will use the forms recommended and used by WSCC for the purpose of record keeping. The form can be found on www.westsussex.gov.uk. The form can be filled out online, should this need to be done please inform the Chief Operating Officer</p>
4.23.	<p>TRAINING AND GUIDANCE</p> <p>The registered manager and relevant care staff should be appropriately trained to implement the deprivation of liberty safeguards.</p> <p>The registered manager should ensure that care home staff have access to the Mental Capacity Act 2005 Code of Practice and the supplementary Deprivation of Liberty Safeguards Code of Practice. The registered care home manager should also identify the name and contact details of their local MCA DOLS Regional Lead.</p>
4.24.	<p>THE CARE QUALITY COMMISSION</p> <p>The Care Quality Commission will monitor MCA DOLS operations. The CQC will have the power to visit either care home and interview people involved in each case. They will also be able to access and view all relevant records to ensure that residents are being adequately protected.</p> <p>In accordance with regulation 18 of the Care Quality Commission (Registration) Regulations 2009, the registered care home manager should notify the CQC in the event that an urgent or standard authorisation is issued.</p>
5. Finance	TBC
6. Supporting Appendices	Overview
7. Linked policies	<p>Mental Capacity Act</p> <p>Consent to Treatment and Personal Care</p> <p>Advance Decisions to Refuse Treatment</p> <p>Statutory Notification of Events</p>
8. Legislation / Regulation	<p>Mental Health Act 1983</p> <p>Mental Capacity Act 2005</p> <p>The Care Act 2016</p> <p>Deprivation of Liberty Safeguards Code of Practice</p> <p>Section 20 regulations of the Health & Social Care Act 2008</p> <p>Essential Standards of Quality and Safety</p> <p>Outcome 7: Safeguarding people who use services from abuse</p>
9. Review	Every 3 years, subject to any regulatory or legislative updates.

