

BUDDIES COMMUNITY CARE LTD

DEPRIVATION OF LIBERTY SAFEGUARDS POLICY.

INTRODUCTION

Deprivation of Liberty Safeguards (DoLS) were created to help protect individuals that lack mental capacity to consent to treatment that might deprive them of their liberty, where this care or treatment is in their best interests or will protect them from harm. The Mental Capacity Act 2005 (MCA) provides a legal process for this deprivation which makes sure that it is unavoidable and, in the individual's best interests.

The MCA (2005) has recently been reviewed and updated and is now the Mental Capacity Amendment Act (2019). Legislative changes to DoLS and Liberty Protection Safeguards (LPS) will require implementation pending publication of a Code of Practice and Regulations, yet to be agreed. Until this has happened this policy and procedure will remain in place.

The distinction between a deprivation of, and restriction upon liberty, is merely one of degree or intensity and not one of nature or substance.

DoLS apply to adults over the age of 18 years.

DoLS do not apply to adults who are lawfully imprisoned or are lawfully detained under the provisions of the Mental Health Act 1983.

The Acid Test is a list of conditions identified in the Cheshire West case (Cheshire West and Chester Council v P [2014] UKSC19) which, when satisfied, will identify whether or not a person is being deprived of their liberty. A person will be deprived of their liberty when they:

- Are being deprived of their liberty for more than a few days
- Are subject to continuous supervision and control
- Are not free to leave
- In all cases the following are not relevant to the application of the Acid test:
- The individual's compliance or lack of objection to the care management
- The reason or purpose behind a particular placement
- The relative normality of the placement (whatever the comparison made). This means that the person should not be compared with anyone else in determining whether there is a Deprivation of Liberty.

A young person under the age of 18 can also require authorisation of a Deprivation of Liberty from the appropriate Court and advice should be sought from the Safeguarding Children's team within the local authority.

A deprivation of liberty can occur in a care home, hospital, or domestic setting such as supported living or an in the individual's own home.

For those deprived of their liberty in a care home or hospital a DoLS is authorised by the Local Authority.

Within domestic settings, applications are made to the Court of Protection.

This policy should be read in conjunction with the Mental Capacity Act 2005 Code of practice This can be accessed below:

[Mental Capacity Act 2005 Code of Practice](#)

PURPOSE

This policy aims to ensure that no adult without mental capacity to consent to their care and treatment is deprived of their liberty without legal authorisation to do so, and the least restrictive method is always used. This deprivation of liberty is irrespective of where the deprivation takes place.

The policy applies to all BUDDIES employees irrespective of their role within the organisation. In particular those who visit service users and their families and carers, and those who are responsible for commissioning NHS funded nursing care and NHS continuing healthcare.

BUDDIES will inform other commissioners of care or treatment services about any safeguard concerns regarding non-compliance with the MCA and DoLS where services are commissioned in coordination with BUDDIES.

Relevant Legislation, Guidance and Policies:

- The Mental Capacity Act: Code of Practice
- Mental Health Act 1983
- Deprivation of Liberty Safeguards (DoLS): Code of Practice
- The Mental Health Act 2007
- The Mental Capacity Amendment Act 2019
- The Human Rights Act 1998
- The European Convention on Human Rights
- The Care Standards Act 2003
- The Children Act 1989
- BUDDIES SAFEGUARDING POLICY

ROLES AND RESPONSIBILITIES WITHIN BUDDIES COMMUNITY CARE LTD.

The service manager (James Daniel Pay) is lead relating to safeguarding and the Mental Capacity Act within BUDDIES. This responsibility is reflected within their job description and is clearly identified within the organisation.

BUDDIES will ensure that all staff are aware of their responsibilities under the Mental Capacity Act 2005 and Deprivation of Liberty Safeguards 2007 and will ensure that they will operate at all times in accordance with MCA and DoLS and the accompanying codes of practice.

BUDDIES is statutorily responsible for ensuring that the organisations from which it commissions services provide a safe system which safeguards vulnerable children and adults, including adults who lack mental capacity.

BUDDIES will, therefore, ensure it delivers MCA and DoLS compliant care and will ensure that team members and management/ administration of care meets our statutory responsibilities to the people who are without capacity to consent to care and treatment.

In order to carry out its responsibilities with respect to the Mental Capacity Amendment Act BUDDIES will:

- Identify a named MCA lead and ensure that relevant policy, procedure, and organisational structures support their role as MCA lead.
- Ensure that all staff employed or working under the governance of BUDDIES are aware of their responsibilities with respect to the MCA and DoLS authorisations and ensure that staff operate at all times in compliance with the act and the accompanying code of practice,
- Ensure that training with regard to the MCA and DoLS and its effective implementation is available for BUDDIES staff and staff should be updated every 3 years or when there are changes to the law.
- Develop a clear line of accountability for DoLS matters, built into internal BUDDIES governance arrangements
- Engage with local Safeguarding Boards and promote best practice and awareness – ensuring it is intrinsic within the culture of the organisation.
- Work with local agencies to provide joint strategic leadership on DoLS and MCA in partnership with Local Authorities, provider clinical governance teams and safeguarding leads, CQC, and where applicable, the police.
- Ensure that provider contracts specify compliance with MCA and DoLS legislation and that commissioned services are supported, and contracts monitored for compliance with MCA.
- Ensure that learning from cases where DoLS has been an issue will be used to inform future practice.

BUDDIES TEAM MEMBER RESPONSIBILITIES IF THEY ARE CONCERNED THAT AN INDIVIDUAL IS DEPRIVED OF THEIR LIBERTY IN A HOSPITAL OR CARE HOME.

Where a BUDDIES employee, in performing their duties, feels a deprivation of liberty is occurring (See section on 'acid test' above) then they need to take account of the setting in which care is being delivered.

If the care is in a residential, hospital or care home setting, then the BUDDIES employee should ask the Managing Authority to make an application for authorisation under Deprivation of Liberty Safeguards to the appropriate Supervisory Body. They should assure themselves that this has been done in communication with the MCA lead (James Pay -Registered Manager who will lead, or delegate tasks accordingly..

Where the BUDDIES team member feels the Managing Authority are not acting on their concerns discussion should take place with the Supervisory Body, i.e., the local authority lead.

Where the team member recognises that a potential deprivation of liberty may be occurring in a setting other than a hospital or care home then the Deprivation of Liberty Checklist should be completed (see Appendix 1 below).

If it is still deemed that a Deprivation of Liberty is unavoidable then an application to the Court of Protection should be initiated – consult the ICB Clinical Lead, or most senior professional for further advice on this process, ensure this has been handed over.

BUDDIES TEAM MEMBER RESPONSIBILITIES IN MAKING AN APPLICATION FOR A DEPRIVATION OF LIBERTY SAFEGUARD, TO THE COURT OF PROTECTION, WHEN AN INDIVIDUAL IS IN A DOMESTIC SETTING.

The coordination of this is completed by the BUDDIES lead, whom will ensure the matter follows the correct procedure, escalating as required to the local authority, NHS commissioners whom will follow their local process below:

- I. An accurate list of all individuals that lack capacity to consent to their care which will deprive them of their liberty must be kept by BUDDIES.
- II. This must be reviewed monthly in order to ensure applications are completed in a timely manner
- III. Prepare a detailed care plan/best interest statement/transition plan (if required)
- IV. Arrange meetings with those involved in the individual's care and welfare to gather views and opinions. If there is no relevant person identified, consult with the Independent Mental Capacity Advocate (IMCA).
- V. Liaise with the GP and/or psychiatrist to obtain the medical evidence to support the Application

- VI. Forward all the completed paperwork to the MCA Lead for BUDDIES for review.
- VII. Once the application has been authorised by the relevant authorities BUDDIES will review mental capacity of the individual and deprivations of liberty in line with the terms of the order, or when there has been a change in condition.

POLICY REVIEW SCHEDULE AND CRITERIA

The Deprivation of Liberty Policy will be reviewed 3 yearly and in accordance with the following on an “as and when required” basis:

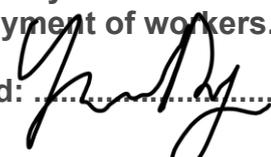
- Legislative changes
- Good practice guidance
- Case Law
- Serious Incidents
- Safeguarding Adults reviews (where applicable)
- Changes to organisational infrastructure

EDUCATION AND TRAINING

All staff are required to undertake relevant training and safeguarding supervision commensurate with their duties and responsibilities as outlined in the Intercollegiate Document ‘Adult Safeguarding: Roles and Competencies for Health Care Staff’ and the ICB document ‘A Learning Approach to Adult Safeguarding’.

Staff requiring support should speak to their line manager in the first instance. This can be done via supervisions, both routine and ad-hoc – all training will be recorded on a skills/training matrix and monitored for compliance.

The policy review date is ONGOING. On registration with CQC, and upon employment of workers.

Signed:  (Managing Director)

Date:..... 22nd MARCH 2024

END OF POLICY

Appendices

Appendix 1 Checklist

Introduction

Following the Supreme Court ruling in March 2014, it has been clarified that a person can be deprived of their liberty in a domestic setting where the State is responsible for imposing the arrangements. This would apply to patients living in their own home or in supported living, where the ICB is the Commissioner of their care package.

The following checklist has been developed to assist practitioners in determining if a patient is being deprived of their liberty and should be applied at the point a care package is commenced, adapted, or reviewed.

SECTION 1 – MENTAL CAPACITY

There are two questions that staff need to ask in order to assess mental capacity; also referred to as the two-stage capacity test.

- Stage 1 - is there an impairment of or disturbance in the person's mind or brain?
- Stage 2 - is the impairment or disturbance sufficient that the person lacks the mental capacity to make that particular decision at the time it needs to be made?

A person is deemed not to have capacity for a decision if they cannot meet any one or more of the following:

- Understand information given to them about the decision
- Retain that information long enough to help make that decision
- Use or weigh up that information as part of the decision-making process
- Communicate their decision. This may be by talking, using sign language or even simple muscle movements like blinking an eye or squeezing a hand.

Does the individual have the Mental Capacity to accept, refuse or choose amongst options related to the package of care they are being offered? (Ensure the documentation is comprehensive and complete a Mental Capacity Assessment if there is a suspicion that they do not have the mental capacity to make these decisions)

YES / NO

SECTION 2 - DOLS CHECKLIST

The purpose of this section of the assessment is to determine if a person is under continuous supervision and control AND is not free to leave.

It is irrelevant whether the person is compliant or whether there is a lack of objection. The focus is not on the person's ability to express a desire to leave, but on what those with control over their care arrangements would do if they sought to leave. The purpose of the placement is not relevant, and the person should no longer be compared only with another person who has the same level of disability. The concept of "relative normality" as expressed by the Court of Appeal in the Cheshire West case is no longer good law.

Question 1: In your opinion is the person free to leave?

This does not mean that they must be trying to leave or even expressing a view about leaving, it is more a test of what staff would do if the person tried to leave.

YES / NO

Question 2: Is the person subject to both supervision and control?

YES / NO

If the above answer is **yes** and this decision is documented then they **do not** meet the test for deprivation of liberty you do not need to proceed to Section 2.

The Supreme Court did not give guidance on what constitutes complete supervision and control.

It is no longer relevant whether the purpose of this is to enable them to have greater freedom, to move around more, go out or to take part in activities or if the high level of supervision and control is to meet a high level of care needs. It is no longer relevant whether the person would actually physically be able to get up and leave.

YES / NO

If the answer is **no** and this decision is documented then they **do** meet the test for deprivation of liberty and you must proceed to **Section 2**.

Question 3: Is the level of supervision and control continuous?

A definition of continuous may include someone knowing where they are or what they are doing, either directly or through the use of assistive technology.

YES / NO

In any case where the answers are **NO, YES, YES** (in that order) then it is a possibility that the person is being deprived of liberty. In these cases, you will need to proceed to Section 3

Section 3 - Next Steps

When it is determined that an individual may be being deprived of their liberty, it is not always appropriate to jump straight to making an application to the Court of Protection for this deprivation to be authorised.

The first step that should be taken would be to review the person's care/treatment plan to determine whether this can be provided in a less restrictive way. This must be done in partnership with the governing/funding authority – working alongside social services whom would take the lead on any further escalation and legal process.

In cases where care cannot be met in a less restrictive way and the three-stage test has established that they may be being deprived of their liberty an application will need to be made to the Court of Protection for this to be authorised.

Is it possible to meet the individual's needs in a less restrictive way?

YES / NO

If the answer is **yes** reapply the DoLS Checklist in Section 2

The team member concerned should SIGN/DATE The above form and submit to the local manager responsible for overseeing the individuals care.