



**Review Sheet**

Last Reviewed 30 Jan '24	Last Amended 30 Jan '24	Next Planned Review in 12 months, or sooner as required.
Business impact	<p>Changes are important, but urgent implementation is not required, incorporate into your existing workflow.</p> <p><b>MEDIUM IMPACT</b></p>	
Reason for this review	Scheduled review	
Were changes made?	Yes	
Summary:	This policy details how to support Service Users who may lack capacity to consent and complies with the Deprivation of Liberty Safeguards (DoLS) Regulations. It has been reviewed with minor wording changes as guidance remains static whilst its replacement of Liberty Protection Safeguards (LPS) is rolled out. This is currently subject to further delay and implementation. Underpinning Knowledge and Further Reading References have also been updated. For some customers, the reference number of this policy will have changed.	
Relevant legislation:	<ul style="list-style-type: none"> <li>• Deprivation of Liberty Safeguards Code of Practice (2008)</li> <li>• The Care Act 2014</li> <li>• Care Quality Commission (Registration) Regulations 2009</li> <li>• Human Rights Act 1998</li> <li>• Mental Capacity Act 2005</li> <li>• Mental Capacity Act Code of Practice</li> <li>• UK GDPR</li> </ul>	
Underpinning knowledge - What have we used to ensure that the policy is current:	<ul style="list-style-type: none"> <li>• Author: ADASS, (2017), <i>Quick Guide to Deprivation of Liberty Orders</i>. [Online] Available from: <a href="https://proceduresonline.com/trixcms2/media/17576/community-dol-a-quick-guide-to-community-dols.pdf">https://proceduresonline.com/trixcms2/media/17576/community-dol-a-quick-guide-to-community-dols.pdf</a> [Accessed: 10/7/2024]</li> <li>• Author: DHSC, (2021), <i>Liberty Protection Safeguards: what they are</i>. [Online] Available from: <a href="https://www.gov.uk/government/publications/liberty-protection-safeguards-factsheets/liberty-protection-safeguards-what-they-are">https://www.gov.uk/government/publications/liberty-protection-safeguards-factsheets/liberty-protection-safeguards-what-they-are</a> [Accessed: 30/1/2024]</li> <li>• Author: GOV UK, (2018), <i>Deprivation of liberty safeguards: resources</i>. [Online] Available from: <a href="https://www.gov.uk/government/publications/deprivation-of-liberty-safeguards-forms-and-guidance">https://www.gov.uk/government/publications/deprivation-of-liberty-safeguards-forms-and-guidance</a> [Accessed: 30/1/2024]</li> <li>• Author: Care Quality Commission, (2023), <i>Outcome of an application to deprive a person of their liberty (DoLS) notification form</i>. [Online] Available from: <a href="https://www.cqc.org.uk/guidance-providers/notifications/application-deprive-person-their-liberty-dols-notification-form">https://www.cqc.org.uk/guidance-providers/notifications/application-deprive-person-their-liberty-dols-notification-form</a> [Accessed: 30/1/2024]</li> <li>• Author: Supreme Court of the UK, (2014), <i>Cheshire West and Cheshire Council v P [2014] UKSC 19</i>. [Online] Available from: <a href="https://www.supremecourt.uk/cases/docs/uksc-2012-0068-judgment.pdf">https://www.supremecourt.uk/cases/docs/uksc-2012-0068-judgment.pdf</a> [Accessed: 30/1/2024]</li> <li>• Author: CQC, (2022), <i>Mental Capacity Act and Deprivation of Liberty Safeguards</i>. [Online] Available from: <a href="https://www.cqc.org.uk/guidance-providers/all-services/mental-capacity-act-deprivation-liberty-safeguards">https://www.cqc.org.uk/guidance-providers/all-services/mental-capacity-act-deprivation-liberty-safeguards</a> [Accessed: 30/1/2024]</li> </ul>	
Suggested action:	<ul style="list-style-type: none"> <li>• Encourage sharing the policy through the use of the QCS App</li> </ul>	
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 support Medcom Personnel Ltd to protect the rights of people who might lack mental capacity who are aged 18 and above, when they may be deprived of their liberty in their best interests in their home environment.

They 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 support/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 comply with the requirements of the European Convention Article/Human Rights Act 1998, 5(1)(e): '... No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law' and Article 5(4) 'Everyone who is deprived of his liberty... shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful'.

**1.4** To support Medcom Personnel Ltd in meeting the following Key Lines of Enquiry/Quality Statements (New):

Key Question	Key Lines of Enquiry	Quality Statements (New)
CARING	C2: How does the service support people to express their views and be actively involved in making decisions about their care, support and treatment as far as possible?	QSC2: Treating people as individuals
CARING	C3: How are people's privacy, dignity and independence respected and promoted?	QSC1: Kindness, compassion and dignity QSC3: Independence, choice and control
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?	QSE1: Assessing needs QSE2: Delivering evidence-based care & treatment
EFFECTIVE	E2: How does the service make sure that staff have the skills, knowledge and experience to deliver effective care and support?	QSE2: Delivering evidence-based care & treatment QSE3: How staff, teams & services work together
EFFECTIVE	E7: Is consent to care and treatment always sought in line with legislation and guidance?	QSE6: Consent to care and treatment

**1.5** To meet the legal requirements of the regulated activities that Medcom Personnel Ltd is registered to provide:

- ▮ Deprivation of Liberty Safeguards Code of Practice (2008)
- ▮ The Care Act 2014
- ▮ Care Quality Commission (Registration) Regulations 2009
- ▮ Human Rights Act 1998



- | Mental Capacity Act 2005
- | Mental Capacity Act Code of Practice
- | UK GDPR



## 2. Scope

- 2.1** The following roles may be affected by this policy:
- | All staff
  - | Registered Manager
  - | Other management
- 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, which might amount to a deprivation of liberty but which are both necessary and proportionate to give them necessary care, support or treatment
- 2.3** The following stakeholders may be affected by this policy:
- | Family
  - | Advocates
  - | Representatives
  - | Commissioners
  - | External health professionals
  - | Local Authority
  - | NHS
  - | Independent Mental Capacity Advocates (IMCAs)
  - | Relevant Person's Representatives (RPRs) appointed under DoLS



## 3. Objectives

- 3.1** Before any Service Users 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 by the Court of Protection to deprive Service Users of their liberty (including their duration and any conditions) are incorporated into Care Plans, and full information is given to the Service Users and their relatives or friends who are interested in their welfare. Appropriate notifications are made to the Care Quality Commission (CQC).
- 3.4** If a person lacks capacity to consent, all Care interventions are carried out in accordance with the wider Mental Capacity Act (MCA) and in the person's best interests using the least restrictive options possible.
- 3.5** Care Workers are trained and work within the framework of the Mental Capacity Act 2005.
- 3.6** All staff understand their responsibilities under the Mental Health Act and Code of Practice.



## 4. Policy

### 4.1 Mental Capacity Act 2005

Medcom Personnel Ltd works within the Mental Capacity Act 2005 and its Code of Practice and follows guidance about what amounts to deprivation of liberty given in the 'Cheshire West Supreme Court Judgement' CQC briefing.

This policy should be read alongside the Mental Capacity Act (MCA) 2005 Policy and Procedure and the Restrictive Practices Including Restraint and Physical Interventions Policy and Procedure of Medcom Personnel Ltd, which outline information on the Act including the 5 Principles, best interest decisions, restrictive practices, physical intervention and restraint.

### 4.2 Medcom Personnel Ltd Statement

Medcom Personnel Ltd supports a person-centred approach to Care and upholds the rights of Service Users outlined within the Human Rights Act.

Medcom Personnel Ltd will use every means available to it to maximise the mental capacity of Service Users to make their own decisions, in accordance with the Mental Capacity Act 2005 and its code of practice.

Medcom Personnel Ltd will ensure information is accessible to all stakeholders when talking about deprivation of liberties and will ensure the wishes and feelings of Service Users and their representatives are heard.

### 4.3 Authorisation to Deprive a Service Users of their Liberty in a Community Setting

Medcom Personnel Ltd understands that sometimes a legal decision is made to deprive a Service Users in a community setting of their liberties when all alternatives have been exhausted. Medcom Personnel Ltd cannot legally, and will not, deprive Service Users of their liberties without the correct authorisation from the Court of Protection.

### 4.4 Care of a New Service Users

Medcom Personnel Ltd will not take on the Care of a Service Users if it suspects the Service Users is being deprived of their liberties without the correct authorisation in place, until they are in place.

Medcom Personnel Ltd will communicate with commissioners who are responsible for seeking authorisation from the Court of Protection.

### 4.5 Wrongful Deprivation of Liberties

Where Medcom Personnel Ltd assesses a Service Users as being wrongfully deprived of their liberty without authorisation, Medcom Personnel Ltd will continue to provide a Care service to the Service Users, making sure their liberty is no longer restricted.

### 4.6 Monitoring

The Registered Manager will monitor the use of this policy and will make any updates necessary to its correct application.

Any updates to guidance and legislation will be reflected in this policy.

### 4.7 Training

All staff will be given training in the Mental Capacity Act 2005 and its Code of Practice. Training will be tailored provided that is appropriate to staff members' roles and their responsibilities to Service Users in relation to informed consent, best interest decisions, restrictive practices, physical interventions/restraint and deprivation of liberty.

### 4.8 Liberty Protection Safeguards

Medcom Personnel Ltd acknowledges the future introduction of the Liberty Protection Safeguards. At this point, this policy and procedure will be revised to reflect those changes.

The Liberty Protection Safeguards were introduced in the Mental Capacity (Amendment) Act 2019 and will replace the Deprivation of Liberty Safeguards (DoLS) system. The Liberty Protection Safeguards will deliver improved outcomes for people who are or who need to be deprived of their liberty.



## 5. Procedure

### 5.1 Roles and responsibilities

The **Registered Manager** is responsible for:

- | This policy and the dissemination of it
- | All related training and guidance
- | Liaising with commissioners regarding their responsibility to apply to the Court of Protection for authorisation for the deprivation of liberty of a Service Users
- | Making capacity assessments when they are needed
- | Coordinating best interest decisions at Medcom Personnel Ltd

**All staff** have a duty to:

- | Read this policy and procedure
- | Raise any related questions or queries with their line manager
- | Work within the parameters of this policy and procedure
- | Report any concerns of the mistreatment or wrongful detention of a Service Users to the Registered Manager

Staff can use the Raising Concerns, Freedom to Speak Up and Whistleblowing Policy and Procedure at Medcom Personnel Ltd where they wish to use its protections.

Any member of staff deliberately preventing another member of staff from reporting concerns will be subject to the Discipline Policy and Procedure.

### 5.2 Capacity

Service Users should be given the information they need in the way that they can understand, to give informed consent to all aspects of their Care. Where staff have reason to believe a Service Users lacks capacity, they should record the information and contact the Registered Manager who will decide if a capacity assessment is needed. Details of the capacity assessment can be found in the Mental Capacity Act (MCA) 2005 Policy and Procedure.

### 5.3 Deprivation of Liberty

When carrying out a capacity assessment, if the Registered Manager has carried out the assessment and deprivation of liberty appears necessary and proportionate, and unavoidable after exhausting all other possibilities, they must notify the commissioners and ask them to apply appropriately and in a timely way to the Court of Protection for authorisation.

A checklist of questions to help determine deprivation of liberty can be found in the Forms section of this policy.

### 5.4 Accessible Information

Service Users and their representatives should be communicated with in a way that is understood as far as possible, about the potential deprivation of liberty and next steps. Communication should be ongoing, and their wishes and feelings should be recorded and shared with commissioners and the Court.

### 5.5 Record

The Registered Manager will keep full records of best interest decisions, assessments, applications, discussions with the Service Users and their relatives/friends about deprivation of liberty and the actions taken to minimise its use.

### 5.6 Commissioner Information

The Registered Manager will ensure that all relevant information needed for discussion with the commissioners is ready - a list of which can be found in the Forms section of this policy.

The commissioning body is responsible for submitting the application to the Court of Protection with the supporting information from Medcom Personnel Ltd.

### 5.7 If Deprivation of Liberty is Authorised by the Court of Protection:

The Registered Manager will:

- | Ensure that the Service Users and their relatives understand what restrictions have been authorised, and how they can challenge any aspect of the authorisation with the help of an IMCA (Independent Mental Capacity Advocate)
- | Record the end date set by the Court of Protection and arrange, at least a month earlier, to convene a meeting to have discussions with commissioners or the Local Authority about whether a new



authorisation will be needed

- | Notify the CQC of the Court of Protection application and its outcome
- | Record any conditions and ensure that they are incorporated into the Care Plan making sure that all staff are aware of these conditions

#### **5.8 Court of Protection Appointed Assessors Visit**

The Registered Manager will ensure the availability of the Service Users and staff as well as the Care Plan and assessments for the Court of Protection Appointed Assessors to visit the service, who will interview the Service Users, view records, and may interview staff.

#### **5.9 Wrongful Deprivation of Liberty**

Where the Registered Manager assesses the wrongful deprivation of liberty of a Service Users, they will ensure that the restrictions are lifted, and the Care Plan is reviewed to ensure it reflects the changes to practice.

Care Workers at Medcom Personnel Ltd will be supported in their understanding and learning, where this is appropriate, through their line manager.

The Registered Manager will contact the relevant commissioning body, the Irene Mtisi and the Police where a crime is suspected.





## 6. Definitions

### 6.1 DoLS Reviews

- | Anyone can ask for the authorisation to be reviewed by the Supervisory Body (DoLS team)
- | This is usually because there is doubt about whether the person might have regained capacity, or if the arrangements are no longer in their best interests for some reason, or no longer proportionate

### 6.2 Deprivation of Liberty 'Acid Test'

- | The Supreme Court 'Acid Test' clarifies that a person is deprived of their liberty if they:
  - | Lack capacity to consent to the arrangements needed to give them necessary care, support or treatment
  - | 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?)
  - | **Note:** DoLS can only be used for people aged 18 or over, in care homes or hospitals. For people aged 16 or 17, or living in other settings, the commissioners must apply to the Court of Protection for authority to deprive them of liberty

### 6.3 Court of Protection Authorisation Conditions

- | Conditions are part of the legal authorisation so must be complied with. If a provider cannot comply with any condition, they should urgently contact the commissioners of the service to discuss the best way to proceed
- | 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 the provider must arrange taking the person out into the community regularly, or do their best to make it possible for relatives or friends to visit the person and, where possible and safe, take them out

### 6.4 Restraint

- | 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 Deprivation of Liberty 'Acid Test' definition)
- | 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 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)
- | 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

### 6.5 Independent Mental Capacity Advocate (IMCA) Role in DoLS

- | An IMCA may be appointed after an authorisation is granted to help the Relevant Person's Representative (RPR) understand the process if they wish to help the person to challenge their authorisation. They will only be appointed to help unpaid RPRs, who are usually relatives or friends, not paid RPRs who are usually paid advocates
- | The IMCA will arrange with Medcom Personnel Ltd or the hospital if they are going to visit. They have the right to see relevant notes and to meet with the person alone if they wish
- | The Supervisory Body will appoint an IMCA to represent someone who is subject to an authorisation request if they have no relatives or friends to be consulted as part of the process

### 6.6 Community Services

- | This policy refers to such services as supported living, shared lives schemes, extra-care housing and domiciliary care services, providing services to people aged 16 and over, who lack capacity to consent



to arrangements for giving them necessary care or treatment, when those arrangements may amount to a deprivation of liberty

### 6.7 Liberty Protection Safeguards (LPS) - What they are

- | More information on LPS, including the implementation date, guidance and learning resources, will be available here and on the QCS website in good time to prepare for implementation
- | Like DoLS, the purpose of the LPS is to protect the rights of people who are restricted or restrained in their best interests. However, the LPS process will be simpler than DoLS. It will ensure that the person's wishes and feelings are at the heart of all arrangements for their Care, and that any restrictions on their freedom are **necessary** to prevent harm to the person, and a **proportionate** response to how likely that harm is, and how serious it would be
- | LPS will protect the rights not only of this group of people, but of anyone aged from 16 upwards, in any setting, for example, supported living, extra-care housing, or their own family homes, who needs to be deprived of their liberty in their best interests
- | DoLS, which only protect the rights of people lacking capacity in care homes or hospitals, and only from 18 upwards, will be replaced, at a date to be confirmed, by the LPS

### 6.8 Protections Given by DoLS

- | An authorisation allows the person, or someone acting on their behalf, to challenge any part of their authorisation, to the local authority or to the Court of Protection
- | The best interests assessor (BIA) also checks that the arrangements are in the person's best interests, and both necessary to prevent harm to the person and a proportionate response to the likelihood and seriousness of such harm
- | The assessors check that the person does lack capacity to make relevant decisions, and that they do have a mental disorder
- | The DoLS assessments ensure that independent professionals examine the decision-making that has led to the person being deprived of their liberty



## Key Facts - Professionals

Professionals providing this service should be aware of the following:

- | Deprivation of liberty 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
- | 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 its use removed, or reduced as far as possible, while preventing foreseeable harm to the person lacking mental capacity
- | Its use is not lawful without an authorisation having been sought from the appropriate body which, for community services such as supported living, extra-care housing, shared lives and domiciliary care, or where the person is aged 16 or 17, is the Court of Protection
- | An authorisation is only granted if the Court agrees that there are no less-restrictive options to keep the person safe
- | Authorisation provides protection from liability for staff who are depriving the person of their liberty
- | The outcome of an Authorisation Request must be notified to the Care Quality Commission





## Key Facts - People affected by the service

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

- | An authorisation by the Court of Protection for someone to be deprived of their liberty is a way to protect the rights of people cared for in their own homes
- | An authorisation provides reassurance that the care is in the best interests of the person, and that no less restrictive options can be found to keep the person safe
- | Authorisation allows the person (or their representative) to appeal to the Court of Protection for a decision about their mental capacity to decide how to live, or whether the authorisation is in their best interests and the least restrictive option for their care
- | There is no stigma attached to an authorisation: it is a sign that the provider is acting to protect the human rights of people who are vulnerable



## 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:

**GOV.UK - Liberty Protection Safeguards factsheets:** LPS will replace DoLS and are planned to come into force at a later date. For up-to-date information and factsheets, see:

<https://www.gov.uk/government/publications/liberty-protection-safeguards-factsheets>

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

<https://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:**

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

**Community Care - UPDATED: October 2023 date for Liberty Protection Safeguards 'incorrect':**

<https://www.communitycare.co.uk/2022/10/28/liberty-protection-safeguards-due-for-implementation-in-october-2023/>



## Outstanding Practice

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

- | All Care Plans for Service Users lacking mental capacity benefit from the knowledge and insight of the Service Users's relatives and friends in knowing how to meet the Service Users's past and present wishes and feelings
- | Deprivation of liberty is avoided wherever possible by the use of creative and person-centred strategies
- | Deprivation of Liberty Authorisation is sought in a timely way from the Court of Protection, and Medcom Personnel Ltd supports the Service Users through the process
- | Relevant dates and any conditions of authorisations are properly recorded; conditions are met, and new authorisations are sought in a timely fashion
- | The wide understanding of the policy is enabled by proactive use of the QCS App
- | 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
- | 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

**Forms**

The following forms are included as part of this policy:

<b>Title of form</b>	<b>When would the form be used?</b>	<b>Created by</b>
Deprivation of Liberties Questions - CR83	To consider whether a service user who lacks Mental Capacity is being unlawfully deprived of their liberties	QCS
Checklist of Information to Commissioners/for Application to Court of Protection - CR83	When speaking to the commissioning body/making an application to the Court of Protection.	QCS

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<b>The Supreme Court has now confirmed that there are two key questions to ask when considering if a Service Users is being deprived of their liberties (marked 2 and 3).</b>	
1. Is the Service Users 16 or over and have they been assessed as lacking capacity to the Care arrangements?	<b>Yes / No</b>
2. Is the person subject to continuous supervision and control?	<b>Yes / No (Give further details)</b>
3. Is the person free to leave? (The person may seem happy to stay, but the issue is about how staff would react if the person did try to leave)	<b>Yes / No (Give further details)</b>

**If 'YES' to all 3 questions, the Service Users may be being deprived of their liberties.**

Is there a Court of Protection Authorisation to deprive the Service Users of their liberties?	<b>Yes / No</b>

If 'NO', complete the Checklist of Information to Commissioners and contact the commissioning body (Local Authority or NHS) to discuss the situation, adjust the Care Plan to stop the deprivation of liberties, OR submit an application to the Court of Protection for Authorisation of Deprivation of Liberties.

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<b>The information below should be at hand to discuss with the commissioning body.</b>	
<b>Information/Documents</b>	<b>Have to hand (tick)</b>
Any supporting medical evidence to show the Service Users lacks the capacity to consent to the Care arrangements.	
A dated copy of the Service Users's Care Plan.	
Does the Care Plan outline why it is said that the Service Users does require or may require a deprivation of liberty?	
A Statement of Best Interest.	
Any relevant Advance Decisions or any relevant decisions under a Lasting Power of Attorney.	
Any information relevant to the case.	
Wishes and feelings of the Service Users/relevant persons.	