



Yowsun Care Deprivation of Liberty Safeguards (DoLS) Policy

Introduction

This policy is a Yowsun care Deprivation of Liberty Safeguards (DoLS) Policy concerned with ensuring that people within its care, who lack mental capacity in decision making are not deprived of agreed and/or deserved liberty.

This policy is to be implemented by all Operations team members.

This policy is addressed to all employees but is especially relevant to Operations team members.

Policy Statement

The purpose of this document is to explain Yowsun Care's approach to people to whom it is providing a service, who might lack the mental capacity to take decisions about their care and treatment and who could have their freedom restricted to the point where they are deprived of their liberty as a result. Yowsun Care's policy has been established to comply with the provisions of the Mental Capacity Act 2005 Deprivation of Liberty Safeguards, which have applied since April 2009. This Deprivation of Liberty Safeguards policy should be read and used in conjunction with the organisation's broader Mental Capacity Act policy.

The policy sets out to show how the organisation meets the legal requirements to provide safeguards 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. A situation where the policy might apply is where the organisation is asked to provide services to someone who might lack the mental capacity to decide whether they need those services and, in their provision, could be conceivably deprived of their liberty. For example, the organisation might be approached for its staff to become a "carer" to a person lacking mental capacity. The "caring duties" are of such a nature that the person might be deprived of their liberty.

Aim of the Policy

Yowsun Care supports the principles of the Mental Capacity Act, i.e.:

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 to 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 so as to minimise 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.
7. Yowsun Care operates on the policy of the people to whom it provides services have the same freedoms and rights as anyone else. It will not provide a service to anyone who is being deprived of their liberty as a result of the organisation's provision unless it can be clearly shown to the organisation that it is in their best interests to do so.

Yowsun Care will not support any application for authorisation to deprive one of its service users of their liberty (and so become subject to the deprivation of liberty safeguards) unless there is 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 to seek authorisation.

The organisation understands that there is no set definition of "deprivation of liberty" and that each case has to be assessed on its merits. As a guide the organisation uses the case examples identified in various Department of Health publications on the subject to indicate the sorts of situations that might be interpreted as deprivation of liberty and therefore requiring the safeguards to be put into place. Some examples of possible situations:

- Staff are asked to give medication to a person possibly against their will, which results in the person being effectively deprived of their liberty due to the effects of the medication given
- Staff consider they are being employed to exercise complete control over the care and movements of a person for a long period of time, which effectively deprives the person of their liberty
- Staff consider they need to take all decisions on a relevant person's behalf, including choices relating to assessments, treatments, visitors and where they can live
- Staff are concerned that the actions of others involved in the care and treatment of a person lacking mental capacity is amounting to a deprivation of that person's liberty with which they cannot collude without the proper DOL safeguards being applied.

Procedures

If the organisation faces a situation where one of its service users 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, it first tries to ascertain if it would lead to the person having being deprived of their liberty as a result of being compelled to have that treatment.

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) the organisation would seek to make sure that there has been an application for the DOL safeguards to apply before it agrees to continue providing a service to that person.

Yowsun Care will work with the supervisory authority in following the required assessment procedures with which it might be concerned.

The organisation recognises that the supervisory authority will need to carry out the following assessments to comply with the Mental Capacity Act Code of Practice and the Mental Capacity (Deprivation of Liberty: Standard Authorisations, Assessments and Ordinary Residence) Regulations 2008.

- An age assessment to make sure the person is aged 18 or over.

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.

- A mental capacity assessment, which should state that the person lacks capacity to decide whether to receive the care and treatment being proposed.

- A mental health assessment to see if the person is suffering from a mental disorder such as dementia.

An eligibility assessment to check that the person should not be considered for detention under the Mental Health Act 1983.

- A best interest's assessment. This determines that the proposed course of action would: (a) amount to a deprivation of liberty, (b) be in the person's best interests to be subject to the authorisation, (c) be necessary to prevent the person from being harmed and (d) be a proportionate response to the likelihood of suffering harm and the seriousness of that harm.

If authorisation is granted the organisation 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. The organisation will always want to make sure that the person is able to exercise their due rights and entitlements; including their right of appeal.

The Role of the Relevant Person's Independent Mental Capacity Advocate (IMCA)/ Representative (RPR).

Throughout its work with a IMCA/a RPR the organisation will always seek to comply with the Mental Capacity (Deprivation of Liberty: Appointment of Relevant Person's Representative) Regulations 2008.

Yowsun Care 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 a 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 the following responsibilities:

- To involve as far as possible the person in any decision made on their behalf
- To maintain regular face to face contact with the person deprived of their liberty
- To see if there is a chance that the person may regain capacity and be able to make the decision
- To ask "could the decision be delayed to allow this?"
- To 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)
- To identify any beliefs or values that the person holds, which could influence the decision-making process eg religious beliefs, cultural background or moral views.

Yowsun Care ensures 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. Yowsun Care undertakes to co-operate with any representatives of the Care Quality Commission in their monitoring and inspecting of the standards of practice that the organisation seeks to achieve in relation to any person subject to the DOL safeguards with whom it is contracted to work.

Mental capacity to sign a tenancy agreement or Licence Agreement for Supported Accommodation

To agree to something, you need the mental capacity to understand what you are agreeing to. Where a new service user is to obtain a supported Living tenancy agreement or Licence agreement, the service user would have been assessed to understand what they are signing. Where it is not possible for a service user to sign their tenancy or licence agreement due to lack of understanding of the document, a representative will have to sign for them. The representative will be someone who has authority to sign on someone else’s behalf.

A person can only sign a tenancy agreement on behalf of the person lacking mental capacity if they have any of the following powers:

- A lasting power of attorney (LPA) for property, welfare, Health and finance.
- Enduring power of attorney (EPA) that confers such authority.
- Deputyship (property and affairs) that confers such authority.
- A Court of Protection order authorising them to sign the tenancy.

Staff Training

The organisation provides staff training on all aspects of mental capacity and the deprivation of liberty safeguards to improve their knowledge and develop skills in working with service users and their carers over their decision-making abilities.

This policy will be reviewed by the registered manager.

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