



Deprivation of Liberty Safeguards Policy

March 2013



Deprivation of Liberty Safeguards

Care service name: Wellbeing Residential Care Group

Policy Statement

The purpose of this document is to explain the service's approach to service users 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. The service'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 service's broader Mental Capacity Act policy.

The policy sets out to show how the service 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. As a care service there are several circumstances in which this policy might need to be followed.

- Where 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.
- Where 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.
- Where 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.
- Where 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.

Principles and Aims

Wellbeing Residential Group supports the following principles of the Mental Capacity Act.

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 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.

Wellbeing Residential Group 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.

Wellbeing Residential Group 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 service 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. These include:

- where a person requiring admission to the care home, or from the care home to a hospital, is resisting admission and could only be admitted against their will or by force
- where medication might have to be given forcibly, against the relevant person's will
- where staff consider they need to exercise complete control over the care and movements of a person for a long period of time
- where 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
- where staff or other professionals consider that they must take responsibility for deciding if a relevant person can be released into the care of others or allowed to live elsewhere.

Procedures

If we have a situation where one of our 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, we first try to ascertain if it would lead to the person having being 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 appropriate supervisory 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 from the person's supervisory authority an assessment whether it is in their best interests to be deprived of their liberty for the purpose of receiving the required care and treatment.

Wellbeing Residential Group 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 the purpose. In cases of needing an urgent assessment, it expects this to be carried out in line with the requirements of 7 days (or 14 if an extension is granted). It expects standard assessments, ie for long-term authorisations, to be carried out in the required 21 days.

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, eg 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 the home is situated. The service then works with the supervisory authority in following the required assessment procedures.

Wellbeing Residential Group 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:

- 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 a person should not be considered for detention under the Mental Health Act 1983
- a best interests assessment; this determines that the proposed course of action would:
 - amount to a deprivation of liberty
 - be in the person's best interests to be subject to the authorisation
 - be necessary to prevent the person from being harmed
 - be a proportionate response to the likelihood of suffering harm and the seriousness of that harm.

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

Relevant Person's Independent Mental Capacity Advocate/Representative

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

Wellbeing Residential Group 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 as far as possible 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.

Wellbeing Residential Group 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.

Wellbeing Residential Group 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.

Staff Training

Wellbeing Residential Group 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 over their decision-making abilities.

Signed: _____

Date: _____

Policy review date: _____