

Mental Capacity Act and Deprivation of Liberties Safeguards Policy

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Purpose

The purpose of the policy is to ensure that all staff in England and Wales, who are working with young people over the age of 16, understand their roles and responsibilities in relation to the Mental Capacity Act 2005 and the Deprivation of Liberty Safeguards and act to maintain the rights of individuals while keeping them safe from harm and promoting their wellbeing. The Mental Capacity Act 2005 and the Deprivation of Liberty Safeguards provide the legal framework and guidance to ensure that the rights of young people who may lack capacity to make their own decisions and may have their liberty restricted are maintained.

Whenever staff have to act in connection with the care or treatment of someone who may lack capacity, they will need to be able to evidence why they think the person lacks capacity and why they think that they are acting in their best interests. To do this they must have regard to the [Mental Capacity Act Code of Practice](#) . This policy sets out what staff must do; the Code of Practice provides guidance on how it must be done.

Scope

This policy applies to services in England and Wales that work with children and young people to whom the Mental Capacity Act and Deprivation of Liberty Safeguards apply or may apply in certain circumstances. The scope of the Mental Capacity Act is outlined below.

The Mental Capacity Act 2005 provides guidance in relation to determining the capacity of people (generally over 16) in England and Wales and to making decisions about their care, for example, life changing decisions, such as whether to have an operation or where to live, and day to day decisions such as what to eat or when to go to bed. Capacity needs to be considered whenever consent is required.

Children under 16

The Act does not generally apply to people under the age of 16 but there are two exceptions:

- The Court of Protection can make decisions about a child's property or finances if the child lacks capacity to make such decisions and is likely to still lack capacity to make financial decisions when they reach the age of 18
- Offences of ill treatment or wilful neglect of a person who lacks capacity can also apply to victims younger than 16.

Young people aged 16–17 years

Most of the Act applies to young people aged 16–17 years, who may lack capacity to make specific decisions however there are three exceptions:

- Only people aged 18 and over can make a Lasting Power of Attorney.
- Only people aged 18 and over can make an advance decision to refuse medical treatment.
- The Court of Protection may only make a statutory will for a person aged 18 and over.

Deprivation of Liberty Safeguards (DoLS)

This policy identifies the responsibilities that Barnardo's staff have when working with young people who are being deprived of their liberty or where there is a need identified to consider this. It also highlights the need for Barnardo's staff to raise a safeguarding concern with the local authority if they identify that someone is being deprived of their liberty without proper authorisation.

18+

If restraint and restrictions upon someone's liberty (those 18 years of age or over) are required in a hospital or care home setting, the Deprivation of Liberty Safeguards apply, in order to ensure appropriate safeguards are in place. The DoLS only apply in England and Wales to those over 18.

Under 18s

If a young person living in the community or under the age of 18 is being deprived of their liberty, this must be approved via the Court of Protection.

The Mental Capacity Act does not prevent action being taken to safeguard children or adults at risk of abuse or exploitation and the Corporate Safeguarding Children and Adults at Risk policies must always be followed.

Northern Ireland

The **Mental Capacity Act (Northern Ireland) 2016** came into effect in March 2016. It applies to people over the age of 16 and has provision similar to that contained in the legislation in England and Wales.

The **Mental Capacity Act (Northern Ireland) 2016** and any associated guidance must be followed by staff when providing services in Northern Ireland.

Scotland

The law of Scotland generally presumes that adults (those aged 16 or over) are legally capable of making personal decisions for themselves and managing their own affairs. That presumption can be overturned in relation to particular matters or decisions on evidence of impaired capacity. The **Adults with Incapacity (Scotland) Act 2000**, sets out the framework for regulating intervention in the affairs of adults who have (or may have) impaired capacity, in the circumstances covered by the Act. The framework is underpinned by general principles and provides more flexibility than before to tailor interventions to the needs of particular cases. In the case of medical treatment and research, it provides a statutory framework for regulating what may and may not be done by practitioners and others acting with their authority.

The **Adults with Incapacity Act (Scotland) Act 2000** and the associated guidance must be followed by staff when providing services in Scotland.

Roles and Responsibilities

Regional/National/Commercial Directors/Heads of Business (England and Wales):

- To ensure that the policy is implemented.

Assistant Directors Children's Services/Assistant Heads of Business/Head of Operations (England and Wales):

- To ensure that staff providing services to young people aged sixteen and above are implementing the policy.
- To consider all applications for authorisation for the deprivation of liberty and to approve those that meet the criteria.

Service Managers (England and Wales):

- To ensure that the Mental Capacity Act and deprivation of Liberty Safeguards Policy is implemented within services working with young people aged sixteen and above, and that staff understanding their responsibilities and receive the training and support required to undertake their role.
- To ensure that appropriate action is taken if it appears that a young person is unable to give consent due to lack of capacity.
- To raise a concern through the safeguarding process if a young person is being deprived of their liberty without authorisation.

All staff, carers and volunteers working in England and Wales with young people aged 16 and above:

- To operate within the requirements of the policy.

- To report to the line manager any serious issues, including concerns about a young person's ability to give consent due to lack of capacity or young person being deprived of their liberty without authorisation.

Definitions

Mental Capacity is the ability to make a decision. This could be a decision that affects daily life, for example, what to wear or more significant decisions, for example, whether to undergo a surgical procedure or purchase an investment. What is important is a person's ability to carry out the processes involved in making the decision and not the outcome of the decision.

Lack of Capacity Section 2(1) Mental Capacity Act 2005 states that "For the purpose of the Act, a person lacks capacity in relation to the matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of the mind or brain." This means that the individual lacks capacity if, at the time the decision needs to be made, they are (1) unable to make a decision for themselves **and** (2) they are unable to do so because of an impairment or disturbance in the functioning of the mind or brain.

Best interests Any decisions made, or anything done for a person who lacks capacity to make specific decisions, must be in the person's best interests. There are standard minimum steps to follow when working out someone's best interests.

The five statutory principles of the Mental Capacity Act, which must always be adhered to, are;

1. It must be assumed that service users aged 16 and above have capacity to make decisions or give consent unless it is established that they lack capacity.
2. All practicable steps must be taken to enable a service user to make a decision or give consent before they are treated as unable to make a decision.
3. A service user must not be treated as being unable to make a decision because they make an unwise decision.
4. An act done or decision made on behalf of a service user as under the Mental Capacity Act because they are deemed to lack capacity must be done or made in their best interests.
5. Before the act is done or decision made, regard must be had to whether the purpose for which it is needed can be achieved in a way that is less restrictive of the person's rights or feelings.

The Deprivation of Liberty Safeguards regime is part of the MCA 2005 and sets out the procedure that must to be followed if someone is to be lawfully deprived of their liberty – such as a resident or patient who lacks capacity to consent to their care and treatment and deprivation of liberty is needed in order to keep them safe from harm. The regime also applies to people who are deprived of their liberty in a care home for the purposes of receiving respite.

When is someone "deprived of their liberty"?

A person may be being deprived of their liberty under the legislation if:

They are subject to continuous supervision and control

And

They are not free to leave

And

They lack capacity to make decisions in relation to the question of whether or not they should be accommodated in the relevant hospital or care home for the purpose of being given care or treatment

Examples of how someone might be deprived of their liberty

For the purposes of the legislation, someone may be considered to be deprived of their liberty if any of the following are used where they are staying or to treat the person, such as in a residential home or school:

Restrictions and restraint must be proportionate to the harm the care giver is seeking to prevent, and can include:

- using locks or key pads which stop a person going out or into different areas of a building
- the use of some medication, for example, to calm a person
- close supervision in the home, or the use of isolation
- requiring a person to be supervised when out
- restricting contact with friends, family and acquaintances, including if they could cause the person harm physically
- stopping a person from doing something which could cause them harm
- removing items from a person which could cause them harm
- holding a person so that they can be given care, support or treatment
- bedrails, wheelchair straps, restraints in a vehicle, and splints
- the person having to stay somewhere against their wishes or the wishes of a family member
- repeatedly saying to a person they will be restrained if they persist in certain behavior.

Such restrictions or restraint can take away a person's freedom and so deprive them of their liberty.

Policy

This policy must be followed by all staff working with service users who have been assessed as lacking mental capacity or who they have reason to believe may lack capacity.

Mental Capacity Act

Knowledge and Understanding

1. All managers and practitioners in England and Wales working with service users over the age of 16 must read and understand this policy.
2. Everyone who works with people who lack mental capacity must follow the law and have regard to the [Mental Capacity Act Code of Practice](#) .
3. Managers and practitioners in services that work with service users who may lack capacity (see definitions, above) must attend appropriate training in relation to the Mental Capacity Act.
4. Managers of services that work with people over the age of 16 must assess the need of their staff for training in relation to the Mental Capacity Act.

Assessment of Mental Capacity

5. Barnardo's staff must only assess mental capacity in relation to a decision or consent applicable to the role and responsibility of the service, such as the capacity of a service user to consent to receive a service or to make a decision about their day to day care whilst under Barnardo's care. Assessments of capacity in relation to other decisions, such as medical treatment, must be referred to the appropriate professional.
6. If there are reasonable grounds to believe that a service user lacks capacity to make a specific decision or give consent to a specific action their mental capacity will usually be assessed by the worker who is directly concerned with the individual at the time that the decision needs to be made.
7. The five statutory principles of the Mental Capacity Act must always be adhered to, see definitions.
8. Remember that unwise decision making does not mean that the person concerned does not have the mental capacity to make the decision, however if an individual puts themselves at repeated risk this may indicate a lack of understanding or inability to weigh the information up and further assessment must be made of their capacity.
9. If the service user is assessed as lacking the capacity any decision made or act done on their behalf must be done or made in their best interests using the best interest's decision checklist.
10. A record must be kept of any Mental Act assessments including details of reasons for the decision/s made and the evidence considered.

Deprivation of Liberties Safeguards (DoLS)

11. Managers of services working with young people over the age of 18 who may lack mental capacity must be able to identify when a young person is being

deprived of their liberty and ensure that the Deprivation of Liberties Safeguards are being applied.

12. Managers of services working with young people over the age of 18 who may lack mental capacity must be able to identify when it may be in the young person's best interest to consider deprivation of liberty and know what to do in this circumstance.
13. Managers and staff providing residential care must not deprive young people of their liberty unless this has been authorised by the local authority.
14. Managers of residential care services developing the care plans of persons, who are unable to consent to their care, must consider whether any restrictions or restraint being proposed in the best interests of the person amount to a deprivation of liberty, and if they may do so they must request an assessment by the local authority.
15. Barnardo's staff must raise a safeguarding concern with the local authority if they identify that anyone is being deprived of their liberty without proper authorisation.

Procedures

This procedure must be followed by all staff working with service users who have been assessed as lacking mental capacity or who they have reason to believe may lack capacity.

1. Complying with the requirements of the Mental Capacity Act

1.1 Understanding the requirements of the Mental Capacity Act

Action: Managers to ADCS level or equivalent and practitioners in England and Wales

1. All managers to ADCS level or equivalent responsible for services working with people aged 16 or above and practitioners who work with service users aged 16 or above, must read this policy.
2. If there are any elements of the policy that practitioners do not understand they must raise these with their line manager.
3. Everyone who works with people who lack mental capacity must follow the law and have regard to the [Mental Capacity Act Code of Practice](#) .
4. Service managers, or equivalent, must ensure that managers in their service who work with people who lack mental capacity have access to the [Mental Capacity Act Code of Practice](#).

1.2 Training

Action: Service Managers

1. Managers of services that work with service users over the age of 16, who have impairments that could result in an inability to make decisions or give consent, must access appropriate training in the Mental Capacity Act.
2. Managers of services that work with people over the age of 16 must assess the need of their staff for training in the Mental Capacity Act, taking into the needs of the service users and any regulatory or contractual requirements, and arrange for staff to access the appropriate training.

2. Assessing Capacity

2.1 Circumstances in which there may be a requirement to assess capacity

Action: Managers and practitioners

Action: Managers and practitioners

1. When providing a service to young person over the age of sixteen, it must be assumed that they have mental capacity to make decisions and give consent unless they have an impairment or disturbance that is preventing them to do so, see section 2.4.
2. When a young person has a diagnosed condition or an existing impairment or disturbance which could affect their mental capacity identified in a referral or care plan or during their assessment, such as in the case of a young person with a learning disability, this must be considered by the service. This must be taken into consideration when deciding whether or not they have the capacity to give consent to receive a service or for information to be held about them. This must also be taken into account when assessing whether there are decisions about their care and treatment, while they are in receipt of the service, that the young person does not have the capacity to make.
3. The information provided in a referral or contained in a care plan about a young person who lacks capacity, should be used to aid the completion of the diagnostic and functional test, see section 2.4, and undertake a best interests assessment, see section 3.
4. The impairment or disturbance that is preventing the service user making a decision or give consent does not need to be a diagnosed medical condition and can include confusion, drowsiness, concussion or the effects of drugs or alcohol.
5. If the impairment or disturbance is temporary consideration should be given to deferring the decision until the service user has regained the capacity to make the decision or give consent.
6. If the decision cannot be delayed, or the impairment or disturbance continues, the diagnostic and functional test, see section 2.4 and a best interest's assessment, see section 3, must be undertaken.
7. If there are grounds to believe that a service user lacks the capacity to make decisions in relation to medication or medical or dental treatment the assessment of mental capacity must be made by the appropriate health professional.

8. If there are safeguarding concerns about someone over the age of 16 and there are grounds to believe lacks mental capacity the [Safeguarding Adults at Risk Policy](#) and the [Safeguarding Childrens Policy \(CS\)](#) must always be followed.

2.2 Mental Capacity Act Statutory Principles

Action: Managers and practitioners

1. The following Statutory Principles from the Mental Capacity Act must always be followed;
 - i. The assumption must be that service users aged 16 and above have capacity to make decisions or give consent unless it is established that they lack capacity.
 - ii. All practicable steps must be taken to enable a service user to make a decision or give consent before they are treated as unable to make a decision.
 - iii. A service user must not be treated as being unable to make a decision because they make an unwise decision.
 - iv. An act done or decision made on behalf of a service user under the Mental Capacity Act because they are deemed to lack capacity must be done or made in their best interests.
 - v. Before the act is done or decision made, regard must be had to whether the purpose for which it is needed can be achieved in a way that is less restrictive of the person's rights or feelings.

2.3 Who should assess mental capacity?

Action: Responsible Manager

1. The assessment of a service user's capacity to make decisions about day to day activities, such as what to eat, what to wear, when to go to bed, and their ability to give consent to receive a service and maintain a record, may be made by managers or delegated to practitioners with the competence to undertake these assessments.
2. The assessment of capacity to make major decisions would require the involvement of appropriate professionals, such as medical professional in relation to treatment and medication or the local authority in relation to decisions about where someone should live.
3. When assessments of capacity are being made by professionals the manager or professionals who know the service user should contribute to these assessments as appropriate, ensuring that their knowledge of the young person informs the decision making.

2.4 Diagnostic and Functional Test

Action: Practitioner/manager assessing competence

1. When an assessment of capacity is being undertaken, the diagnostic and functional test set out in this section 2.4 must be followed. The **Record of Assessment Made under Mental Capacity Act** form (see appendix 1) should be used to record and structure the process.

The test:

1.1 **Identify the impairment or disturbance** that is preventing the service user making a decision or given consent, this may be temporary or permanent. It does not need to be a diagnosed medical condition and can include confusion, drowsiness, concussion or the effects of drugs or alcohol.

1.2 **Identify whether the service user is able to understand** the decision to be made or what they are consenting to, including the nature of the decision or the consent, the purpose and the consequences.

1.3 **Identify whether the service user can retain information** about the decision to be made or the consent long enough to make a decision.

1.4 **Identify whether the service user can weigh up the information** to make a decision, including seeing various parts of the argument and understanding the possible consequences.

1.5 **Identify whether the service user is able to communicate** their decision or consent. If the service user cannot communicate verbally every effort must be made to enable them to communicate non-verbally.

1.6 **Considering the evidence from the questions above**, decide whether it shows that it is more likely that the service user lacks capacity than it is more likely that they have capacity or further assessment is needed. If more evidence is needed presume capacity while this is being pursued.

3. Best interests assessment

Action; Practitioners and managers

1. When it has been assessed that a service user lacks capacity to make a decision or give consent then the decision can be made or consent given on their behalf based on what is in their best interests.
2. Consider all relevant circumstances including any past or present wishes or statements made by the service user, their beliefs and values and any other factors they would take into account such as preferences.
3. Consult others as appropriate, taking into account the legal status of the service user and the nature of the decision to be taken, such as parents, carers, those with legal responsibility, relatives, attorneys, and deputies. Further guidance on this may be found in Chapter 5 of the [Mental Capacity Act Code of Practice](#).
4. If there is more than one option always choose the least restrictive.
5. Consider if the person is likely to have capacity sometime in the future and if so consider whether the decision can be delayed until then.
6. Involve the service user as much as possible in the decision.

7. If there are a range of options identify the benefits and risks for the individual of each option.
8. If there is a dispute about what is in the service user's best interest's follow the guidance in the [Mental Capacity Act Code of Practice](#), section 5.68.

4. Recording mental capacity and best interest assessments

Action: All staff

1. When an assessment is being taken as to a service user's mental capacity and best interest, the assessment must be recorded using the **Record of Assessment Made under Mental Capacity Act Form**, see appendix 1, and saved to the service user's case file.
2. The record must clearly show why it was considered that the person lacked capacity and if they did why the decision/s made on their behalf were in their best interests
3. The care plan must be updated to reflect decisions made in relation to the young person's care.

5. Advance decisions to refuse treatment

Action; Manager's and practitioners

1. If a service user over the age of eighteen is known to have signed an advanced statement to refuse treatment this must be highlighted in their record.
2. Any medical professionals providing care must be made aware of the advanced decision to refuse treatment.
3. An advanced decision to refuse treatment would not prevent a service user being referred to a medical professional if it is believed that they were at risk as it is the medical professional's decision whether to provide treatment.

6. On-going conditions that may affect capacity

Action: Managers

1. When conducting assessments of capacity, identify whether the service user has on-going conditions that may impact upon their capacity from time to time: see section 4.28 and 4.29 of the [Mental Capacity Act Code of Practice](#).
2. When service users have an on-going condition and the same decisions need to be taken on a regular basis, such as decisions about day to day care, a single assessment of capacity and best interest's assessment may be undertaken rather than a new assessment being required every time the decision needs to be made.
3. The assessment must be recorded and decision must be included in the care plan.
4. The assessment and decisions must be reviewed whenever the care plan is reviewed or there are changes in the service user's circumstances.

6. Service users aged 16 and above: Consent to receive a service or hold a record

Action: Managers and practitioners

1. Presume that service users over the age of 16 have the capacity to consent unless a mental capacity assessment undertaken by the service has identified that they do not have capacity.
2. If the service user is assessed by the service as not having capacity to consent, consent must be given by their parent or person with parental responsibility if they are under 18 and someone appointed by the court to act on their behalf if they are over 18.
3. If there is no-one with legal responsibility or they cannot be contacted the manager must arrange for a best interest assessment to be undertaken.
4. When consent has been given on behalf of a young person under the age of 16 this must be reviewed when they reach the age of 16. Presume that they are able to give consent at 16 unless a mental capacity assessment has identified that they do not have capacity.
5. If consent is given on behalf of a young person over 16 as they lack capacity, this decision must be reviewed at least annually.

7. Deprivation of Liberties Safeguards

7.1 Identifying whether DoLS authorisation is required

Action: Managers of services providing residential care to young people over the age of 18 who may lack mental capacity

1. If a young person is subject to continuous supervision and control and they are not free to leave consideration must be given as to whether they are being deprived of their liberty.
2. Other indicators that DoLS must be considered include;
 - frequent use of sedation/medication to control behavior
 - regular use of physical restraint to control behavior
 - the person concerned objects verbally or physically to the restriction and/or restraint
 - objections from family and/or friends to the restriction or restraint
 - the person is confined to a particular part of the establishment in which they are being cared for

- possible challenge to the restriction and restraint being proposed to the Court of Protection or the Ombudsman, or a letter of complaint or a solicitor's letter
3. The Local Authority may have authorisation to deprive the service user of their liberty. If this is believed to be the case, ask for confirmation in writing and ensure that it covers the placement with
 4. Ensure that the confirmation is included in the young person's care plan.
 5. If authority has been granted make sure the authority covers the service provided by Barnardo's.
 6. Note the date that the authorisation for DoLS is due to expire.
 7. When authorisation for DoLS has less than 28 days to run contact the local authority to ascertain whether an extension is being given.
 8. If an extension to the authorisation for DoLS is not given review the care plan so that the person can be supported in a less restrictive way.
 9. If there is no Local Authority authorisation in place, when developing the care plans of persons who are unable to consent to their care, consider must be given to whether any restrictions or restraint being proposed in the best interests of the person amount to a deprivation of liberty.
 10. Consider whether care may be provided in a less restrictive way; if it cannot, a request for an assessment by the local authority must be made straight away.

7.2 Assessment for authorisation of DoLS

Action: Managers of services providing residential care to young people over the age of 18 who may lack mental capacity

This is the process that managers must follow when they identify under section above that a young person over 18 to whom they are providing residential care may be being deprived of their liberty.

1. Discuss the need to apply for an assessment for authorisation of DoLS with the ADCS responsible for the service and if their consent is given follow the process in below. Record the discussion and its outcome in the case file.
2. Download a [DoLS Form](#) from the ADASS website requesting a standard DoLS assessment and submit it to the local authority where the person is ordinarily resident. Usually this will be the local authority where the residential home is located unless the person is funded by a different local authority.
2. Requests for assessment may be submitted up to 28 days before it is planned to deprive a young person of their liberty.
3. The supervisory body will assess if the following conditions are met
 - The person is 18 or over.
 - The person is suffering from a mental disorder.
 - The person lacks capacity to decide for themselves about the restrictions which are proposed so they can receive the necessary care and treatment.
 - The restrictions would deprive the person of their liberty.
 - The proposed restrictions would be in the person's best interests.

- Whether the person should instead be considered for detention under the Mental Health Act.
 - There is no valid advance decision to refuse treatment or support that would be overridden by any DoLS process.
5. If all conditions are met the local authority will inform the person and managing authority in writing.
 6. Deprivation of liberty can be authorised for up to one year. It cannot be extended beyond that and if the person still needs to be deprived of their liberty a new assessment must be applied for.
 7. The restrictions should stop as soon as they are no longer required.
 8. If any of the conditions are not met, deprivation of liberty cannot be authorised: review the care plan so that the person can be supported in a less restrictive way.
 9. Ensure that the young person and their family know that the local authority must appoint a relevant person's representative as soon as possible. Usually this will be a family member or friend who agrees to take this role. If there is no one willing or able to take this role on an unpaid basis, the local authority must pay someone, such as an advocate, to do this. If the young person has an unpaid relevant person's representative, both they and their representative are entitled to the support of an Independent Mental Capacity Advocate.
 10. Explain to the young person and their family that they can require the authorisation to be reviewed at any time, to see whether the criteria to deprive the person of their liberty are still met, and if so whether any conditions need to change. They may also challenge the deprivation of liberty in the Court of Protection at any time.

Action: ADCSs responsible for services providing residential care to young people over the age of 18 who may lack mental capacity

1. Consider requests from managers to apply for authorisation of DoLS.
2. Consider whether care may be provided in a less restrictive way and if it cannot is the deprivation of liberty in the service user's best interest.
3. Decide whether a request to apply for authorisation of DoLS may or may not be made to the local authority and record the reasons for your decision in the case file.

7.3 Urgent Authorisation for a Deprivation of Liberty

Action: Managers of services providing residential care to young people over the age of 18 who may lack mental capacity

1. If there is no authorisation for a deprivation of liberty in place person, and a young person needs to be deprived of their liberty before the supervisory body can respond to a request for a standard authorisation, discuss making an urgent authorisation with the responsible ADCS.
2. Discuss with the ADCS why a less restrictive intervention is not sufficient, the potential implications of not implementing the measures that restrict liberty and whether there is a reasonable belief that a standard authorisation would have been granted if this had been submitted.

3. If the ADCS agrees that an urgent authorisation may be considered consult with the family or legal guardian of the young person to identify if there are alternatives to the deprivation of liberty. If they cannot be contacted record the efforts made to consult.
4. Discuss the results of the consultation with the family or legal guardian of the young person with the ADCS and request their agreement to the authorisation.
5. If the ADCS agrees to the authorisation contact the local authority to inform them of the urgent authorisation using the form specified by the local authority.
6. The emergency authorisation may be made for up to seven days; an extension of a further seven days may be approved by the local authority.
7. A standard application to the local authority must be made at the same time as the emergency authorisation is made.

Action: ADCSs responsible for services providing residential care to young people over the age of 18 who may lack mental capacity – urgent authorisations

1. Discuss the need for an urgent authorisation for deprivation of liberty with the responsible manager, considering why a less restrictive intervention is not sufficient, the potential implications of not implementing the measures that restrict liberty and whether there is a reasonable belief that a standard authorisation would have been granted if this had been submitted.
2. Decide if there are sufficient grounds for an urgent authorisation: if there is ask the manager of the service to consult with the family of the young person or a responsible person appointed by the court.
3. Consider the feedback from the consultation with family members or responsible person appointed by the court and decide whether an emergency authorisation may be made or not.
4. Record the reasons for agreeing or refusing an emergency authorisation on the service user case file.

7.4 Recording issues in relation to DoLS

Action: All managers

1. All decisions in relation to deprivation of liberty must be recorded on the service user case file including the reasons for these.
2. The care plan must be updated to reflect decisions made in relation to the young person's care.

7.5 Informing the regulatory bodies

Action: Manager of service

1. Inform regulatory bodies if an application has been made to the local authority for authorisation for a deprivation of liberty when the outcome is known.

2. Inform the Care Quality Commission (England only) using the [CQC statutory notification: Application to deprive a person of their liberty and its outcome](#).
3. If a young person who is subject to a deprivation of liberty authorisation should die while subject to the authorisation inform the local Coroner's Office as well as the regulatory bodies.

7.6 Deprivation of liberty of young person aged 18+ receiving residential or hospital care not provided by Barnardo's

Action: Managers of services providing non-residential care to young people over the age of 18 who may lack mental capacity

1. If a young person who is receiving residential or hospital care is known to the service and it appears that they are being deprived of their liberty, check whether a DoLS authorisation is in place.
2. If there is no DoLS authorisation bring this to the attention of the manager so they either change their care or seek authorisation. If this is not done make a safeguarding referral to the local authority informing them that the young person is being deprived of their liberty without legal process.

7.7 Deprivation of liberty of young people aged 16 and 17 and those supported in community based provision

Action: All Managers

1. If there is a need to deprive a young person aged 16 or 17 or a young person over 16 accessing a supported living or community based provision of their liberty an application for this must be made to the Court of Protection. Advice must be sought via the Business Support Unit.
2. The Care Quality Commission (England only), must be informed, using the [CQC statutory notification: Application to deprive a person of their liberty and its outcome](#), if an application is made to the Court of Protection.

Associated guidance and documents

The [Mental Capacity Act Code of Practice](#) provides comprehensive information in relation to the Mental Capacity Act and it must be accessed to obtain detailed guidance for the implementation of this policy.

The [Safeguarding Childrens Policy \(CS\)](#) and [Safeguarding Adults at Risk Policy](#) must always be followed if there are safeguarding concerns about someone who lacks mental capacity.

References

[SCIE Guidance to Mental Capacity Act](#)

[Safeguarding Adults at Risk Policy](#)

[Safeguarding Childrens Policy \(CS\)](#)

Compliance

Compliance with this policy must be monitored by the Assistant Directors and Assistant Heads of Business responsible for services to which this applies.

Document History

Version	Date	Author	Status	Comment
1	16/8/16	Pat Greene	Draft	For feedback by relevant parties.
2	7/11/16	Pat Greene	Final draft	For approval by CSMT
3.	07/07/23	Michelle Cole	Review	Review and signed off for 1 year.

Appendix 1

Record of Assessment Made under Mental Capacity Act

Barnardo's Children's Services Mental Capacity Act policy must be followed when making this assessment and completing this form.

1. Name of person being assessed.	
2. Name and job title of person undertaking assessment of mental capacity.	
3. Date assessment undertaken.	
4. The decision to be made or the reason consent is required, including details of the choices available.	
5. Details of the steps taken to promote the individual's ability to decide.	
6. The nature of the impairment or disturbance of the brain is it permanent or temporary. If it is temporary is it known how long it is likely to impact on mental capacity? If it is not a diagnosed condition include evidence leading to this assessment.	
7. Evidence that the subject was unable to understand, retain or weigh up the information needed to make the decision or was unable to communicate this.	
8. Why is this an incapacitated decision as opposed to an unwise decision?	
9. What decision is made or act done as a result of this assessment.	
10. Why is the decision or act in the subject's best interest?	
11. Can the act be done or decision made in a way that is less restrictive of the person's rights or freedom of action.	
12. Date decision needs to be reviewed if required.	