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| **Title of Policy:** | **Consent to Care and Treatment** |
| **Section:** | **Operations** |

**Purpose**

Consent to care and treatment is a fundamental requirement in health and social care. This Policy outlines our obligations and the procedures we must undertake to ensure that no care is undertaken without an appropriate form of consent from the Client.

**Statement**

The Company understand its duties and obligations in respect of ensuring that care and treatment is given to its Clients with their consent and will follow the requirements of Regulation 11 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. Where Clients do not have the mental capacity to give consent, The Company will follow the procedures as laid down within the Mental Capacity Act 2005, in order that any decisions taken are in their best interests.

**Procedure and Guidance**

**Defining consent**

For consent to be valid, it must be **voluntary and informed**, and the person consenting must have the **capacity** to make the decision. These terms are explained below:

**Voluntary** – the decision to either consent or not to consent to treatment must be made by the person himself or herself and must not be influenced by pressure from medical staff, friends or family.

**Informed** – the person must be given all of the information in terms of what the treatment involves, including the benefits and risks, whether there are reasonable alternative treatments and what will happen if treatment doesn't go ahead.

**Capacity** – the person must be capable of giving consent, which means they understand the information given to them, and they can use it to make an informed decision.

If an adult has the capacity to make a voluntary and informed decision to consent to or refuse a particular treatment, their decision must be respected. This is still the case even if refusing treatment would be detrimental to their health and wellbeing.

**How will consent be obtained?**

Consent may be given verbally, in writing, or by implied action, such as following an instruction in order that a procedure may take place. Consent may be withdrawn at any time.

Every Client has a Personal Care Plan explained to them which outlines in detail the care and treatment to be provided by The Company. The Client is requested via their signature, to consent to the care and treatment outlined. Where the Client lacks capacity, then consent will be sought from another source, and after following the requirements of the Mental Capacity Act 2005. If the Client has the mental capacity to give consent, and gives consent, but lacks the physical ability to sign the form, then the circumstances will be recorded on the Personal Care Plan.

**Consent from children and young people**

On occasion The Company may be asked to look after a child, or a Young Person. People aged 16 or over are entitled to consent to their own treatment, and this can only be overruled in exceptional circumstances. Like adults, young people (aged 16 or 17) are presumed to have sufficient capacity to decide on their own treatment, unless there's significant evidence to suggest otherwise.

Children under the age of 16 can consent to their own treatment if they're believed to have enough intelligence, competence and understanding to fully appreciate what's involved in their treatment. This is known as being "Gillick competent". Fraser Guidelines should also be followed.

Otherwise, someone with "parental responsibility" can consent for them. This could be:

* the child's mother or father
* the child's legally appointed guardian
* a person with a residence order concerning the child
* a local authority designated to care for the child
* a local authority or person with an emergency protection order for the child

**Parental responsibility**

The person with parental responsibility must have the capacity to give consent. If a parent refuses to give consent to a particular treatment, this decision can be overruled by the courts if treatment is thought to be in the best interests of the child. If one person with parental responsibility gives consent and another doesn't, the healthcare professionals involved can choose to accept the consent and perform the treatment in most cases.

In an emergency, where treatment is vital and waiting to obtain parental consent would place the child at risk, treatment can proceed without consent.

**When consent can be overruled**

If a Client refuses treatment, which may lead to their death or a severe permanent injury, their decision can be overruled by the Court of Protection. This is the legal body that oversees the operation of the Mental Capacity Act (2005). The parents of a Young Person who has refused treatment may consent for them, but it's generally thought best to go through the courts in such a situation.

**The requirements of the Mental Capacity Act 2005**

The Mental Capacity Act (MCA) is designed to protect and empower individuals who may lack the mental capacity to make their own decisions about their care and treatment. It is a law that applies to individuals aged 16 and over.

Examples of people who may lack capacity include those with:

* dementia
* a severe learning disability
* a brain injury
* a mental health condition
* a stroke
* unconsciousness caused by an anaesthetic or sudden accident.

However, just because a person has one of these conditions does not necessarily mean they lack the capacity to make a specific decision. Someone can lack capacity to make some decisions (for example, to decide on complex financial issues) but still have the capacity to make other decisions (for example, to decide what items to buy at the local shop).

The MCA says:

* Everyone has the right to make his or her own decisions. Health and care professionals should always assume an individual has the capacity to make a decision themselves, unless it is proved otherwise through a capacity assessment.
* Individuals must be given help to make a decision themselves. This might include, for example, providing the person with information in a format that is easier for them to understand.
* Just because someone makes what those caring for them consider to be an "unwise" decision, they should not be treated as lacking the capacity to make that decision. Everyone has the right to make their own life choices, where they have the capacity to do so.
* Where someone is judged not to have the capacity to make a specific decision (following a capacity assessment), that decision can be taken for them, but it must be in their best interests.
* Treatment and care provided to someone who lacks capacity should be the least restrictive of their basic rights and freedoms possible, while still providing the required treatment and care.

The MCA also allows people to express their preferences for care and treatment in case they lack capacity to make these decisions. It also allows them to appoint a trusted person to make a decision on their behalf should they lack capacity in the future. People should also be provided with an independent advocate who will support them to make decisions in certain situations, such as serious treatment or where the individual might have significant restrictions placed on their freedom and rights in their best interests.

**How 'mental capacity' is determined**

The MCA sets out a two-stage test of capacity.

1. Does the individual concerned have an impairment of, or a disturbance in the functioning of, their mind?
2. Does the impairment or disturbance mean the individual is unable to make a specific decision when they need to? Individuals can lack capacity to make some decisions but have capacity to make others, so it is vital to consider whether the individual lacks capacity to make the specific decision.

Also, capacity can fluctuate with time – an individual may lack capacity at one point in time but may be able to make the same decision at a later point in time. Where appropriate, individuals should be allowed the time to make a decision themselves. In relation to the second question, the MCA says a person is unable to make a decision if they cannot:

* understand the information relevant to the decision
* retain that information
* use or weigh up that information as part of the process of making the decision

If they aren't able to do any of the above three things or communicate their decision (by talking, using sign language, or through any other means), the MCA says they will be treated as unable to make the specific decision in question.

The people who decide whether or not a person has the capacity to make a particular decision are referred to as ‘assessors’. This is not a formal legal title.

Assessors can be anyone – for example, family members, a care worker, a care service manager, a nurse, a doctor or a social worker. It is the responsibility of everyone who makes decisions on behalf of others to recognise their role and responsibilities under the MCA 2005 codes of practice.

In the context of the Company’s services, staff must only make a decision about mental capacity where necessary and appropriate. This should be someone who knows them well and in consultation with other involved parties.

Where possible it should be a manager who makes the assessment of capacity. Where this is not possible a member of staff can do so with a manager’s express permission and in accordance with the MCA 2005 codes of practice.

The Company will ensure copies of the MCA 2005 codes of practice are available to all staff.

**Mental capacity and supporting decision-making**

Before deciding an individual lacks capacity to make a particular decision, appropriate steps must be taken to enable them to make the decision themselves. For example:

* Does the individual have all the relevant information they need?
* Have they been given information on any alternatives?
* Could information be explained or presented in a way that is easier to understand (for example, by using simple language or visual aids)?
* Have different methods of communication been explored, such as non-verbal communication?
* Could anyone else help with communication, such as a family member, carer, or advocate?
* Are there particular times of day when the individual's understanding is better?
* Are there particular locations where the individual may feel more at ease?
* Could the decision be delayed until a time when the individual might be better able to make the decision?

**Making best interests decisions for someone**

If someone is found to lack the capacity to make a decision and such a decision needs to be made for them, the MCA states the decision must be made in their best interests. The MCA sets out a checklist of things to consider when deciding what's in an individual's best interests. It says you should:

* Encourage participation – do whatever is possible to permit or encourage the individual to take part;
* Identify all relevant circumstances – try to identify the things the individual lacking capacity would take into account if they were making the decision themselves.
* Find out the individual's views – including their past and present wishes and feelings, and any beliefs or values.
* Avoid discrimination – do not make assumptions on the basis of age, appearance, condition or behaviour.
* Assess whether the individual might regain capacity – if they might, could the decision be postponed?

Consulting with others is a vital part of best interest decision-making. People who should be consulted include anyone previously named by the person concerned, anyone engaged in caring for them, close relatives, friends or others who take an interest in their welfare, any attorney appointed under a Lasting Power of Attorney or Enduring Power of Attorney, and any deputy appointed by the Court of Protection to make decisions for the person.

Some decisions can never be made on someone else’s behalf, for example about marriage, civil partnership, divorce, sexual relationships, adoption, voting or consent to fertility treatment.

**Finding alternatives to making a decision on someone else's behalf**

Before somebody makes a decision or acts on behalf of a person who lacks capacity to make a decision or to consent to an act, they must always question if they can do something else that would interfere less with the person's basic rights and freedoms. This is called finding the "least restrictive alternative". It includes considering whether there is a need to act or make a decision at all.

Where there is more than one option, it is important to explore ways that would be less restrictive or allow the most freedom for a person who lacks capacity. However, the final decision must always allow the original purpose of the decision or act to be achieved. Any decision or action must still be in the best interests of the person who lacks capacity. So sometimes it may be necessary to choose an option that is not the least restrictive alternative if that option is in the person's best interests.

**Deprivation of liberty**

Although an unlikely circumstance in relation to the care services provided by The Company, it is important to understand that in certain cases, the restrictions placed upon an individual who lacks capacity to consent to the arrangements of their care may amount to "deprivation of liberty". This must be judged on a case-by-case basis.

Where it appears a deprivation of liberty might occur, the provider of care (usually a hospital or a care home) has to apply to their local authority, who will then arrange an assessment of the individual's care and treatment to decide if the deprivation of liberty is in the best interests of the individual concerned. If it is, the local authority will grant a legal authorisation. If it is not, the care and treatment package must be changed – otherwise, an unlawful deprivation of liberty will occur. This system is known as the Deprivation of Liberty Safeguards.

If the individual is resident in their own home a deprivation of Liberty would have to be organised by the local authority and authorised via the Court of Protection. This is sometimes referred to as a COP DOL (Court Of Protection Deprivation of Liberty)

A**dvance statements and decisions**

An advance statement is a written statement that sets down a person's preferences, wishes, beliefs and values regarding their future care. It is not legally binding. The aim is to provide a guide for anyone who might have to make decisions in someone's best interests if they have lost the capacity to make decisions or communicate their decision. An advance statement can cover any aspect of a person's future health or social care. This could include:

* how they want any religious or spiritual beliefs they hold to be reflected in their care.
* where they would like to be cared for – for example, at home or in a hospital, nursing home or hospice.
* how they like to do things – for example, if they prefer a shower instead of a bath, or like to sleep with the light on.
* concerns about practical issues – for example, who will look after their pet if they become ill.

An advance decision (sometimes known as an advance decision to refuse treatment, an ADRT, or a living will) is a legally binding decision that allows someone aged 18 or over, while still capable, to refuse specified medical treatment for a time in the future when they may lack capacity to consent to or refuse that treatment. An advance decision must be valid and applicable to current circumstances. If it is, it has the same effect as a decision made by a person with capacity – healthcare professionals must follow the decision.

If the advance decision refuses life-sustaining treatment, it must:

* be in writing, signed and witnessed.
* state clearly that the decision applies even if life is at risk.
* People who make an advance decision may wish to consider letting their family, friends and carers know about it.

**Lasting Powers of Attorney (LPA)**

You can grant a Lasting Power of Attorney (LPA) to another person (or people) to enable them to make decisions about your health and welfare, or decisions about your property and financial affairs. Separate legal documents are made for each of these decisions, appointing one or more attorneys for each. You must have capacity in order to grant an LPA

An Enduring Power of Attorney (EPA) under the previous law was restricted to making decisions over property and affairs, which includes financial affairs and accessing the person's information. An EPA made before the Mental Capacity Act came into force on October 1 2007 remains valid. Powers of attorney can be made at any time when the person making it has the mental capacity to do so, provided they are 18 or over. Both an EPA and LPA must be registered. An LPA can be registered at any time, but a personal welfare LPA will only be effective once the person has lost the capacity to make their own decisions.

When acting under an LPA, an attorney must:

* make sure the MCA's statutory principles are followed.
* check whether the person has the capacity to make that particular decision for themselves – if they do, a personal welfare LPA cannot be used, and the person must make the decision.

In addition, the Court of Protection will be able to appoint deputies who can also take decisions on health and welfare, as well as in financial matters, if the person concerned lacks the capacity to make a decision. They will come into action when the court needs to delegate an ongoing series of decisions rather than one decision. If the person concerned already has an LPA appointed, they won't normally need a deputy as well. The Office of the Public Guardian registers LPAs and EPAs and supervises court-appointed deputies. It provides evidence to the Court of Protection and information and guidance to the public. The Public Guardian works with a range of agencies, such as the financial sector, police and social services, to investigate concerns.

**The Court of Protection**

The Court of Protection oversees the operation of the Mental Capacity Act and deals with all issues, including financial and serious healthcare matters, concerning people who lack the mental capacity to make their own decisions. The court also tries to resolve all disputes when the person's carer, healthcare worker or social worker disagree about what's in the person's best interests, or when the views of the attorney’s conflict in relation to property and welfare. The court hears important cases, such as whether the NHS should withdraw treatment, whether a serious medical treatment decision is in a person's best interests, or whether it is in a person's best interests to be deprived of their liberty. Cases can be brought to the court by family members, as well as advocates and professionals involved in decisions.

**Professionals' duties under the Mental Capacity Act**

The Mental Capacity Act applies to all professions – doctors, nurses, social workers, occupational therapists, health care assistants, and support staff. These staff and their employers have a duty to ensure they are trained in its implementation.

All staff working in The Company will be given an understanding of the act as it relates to their own responsibilities, in line with these legal obligations.

**Staff Training and Support**

The Company will ensure that all lone workers employed are adequately trained in dealing with situations which may arise within the general context of lone working, including:

1. Dealing with Violence and Aggression
2. Challenging behaviour and the use of restraint
3. Staying safe as a Lone Worker

**Resources**

<https://safeguardinghub.co.uk/gillick-competence-and-fraser-guidelines-guide-and-resources/>

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/138296/dh_103653__1_.pdf>

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| **KLOE Reference(s) for this Policy** | **Regulation(s) directly linked to this Policy** | **Regulation(s) relevant to this Policy** |
| **Effective** | **Regulation 11: Need for consent** |  |

**Policy Reviewed on Date of Implementation by the Following Company Officer:**

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