



Mower's Ark CIC
50 Broadway, Kettering, Northamptonshire, NN15 6DD

Review Sheet		
Last Reviewed 04 Nov '19	Last Amended 05 Nov '19	Next Planned Review in 12 months, or sooner as required.
Business impact	<p>Minimal action required circulate information amongst relevant parties.</p>	
Reason for this review	Scheduled review	
Were changes made?	Yes	
Summary:	This policy focuses on the promotion of equality and human rights for Supported Individuals. Equality and human rights for staff are not addressed in this policy. Changes are minor, to clarify small areas of text and give early information about the need to prepare for the forthcoming change from the deprivation of liberty safeguards (DoLS to the liberty protection safeguards (LPS) in October 2020).	
Relevant legislation:	<ul style="list-style-type: none"> • Health and Social Care Act 2012 Section 250 (Information Standards) • The Care Act 2014 • Equality Act 2010 • Equality Act 2010: Chapter 1 (Protected Characteristics) Chapter 2 (Prohibited Conduct) and Chapter 3 (Services and Public Functions) • Human Rights Act 1998 • Mental Capacity Act 2005 • Mental Capacity Act Code of Practice • Gender Recognition Act 2004 	
Underpinning knowledge - What have we used to ensure that the policy is current:	<ul style="list-style-type: none"> • Author: Equality and Human Rights Commission, (2019), <i>Human rights in health and social care</i>. [Online] Available from: https://www.equalityhumanrights.com/en/advice-and-guidance/human-rights-health-and-social-care [Accessed: 11/4/2019 12:00:00 AM] • Author: HM Government, (2016), <i>Mental Capacity Act Code of Practice</i>. [Online] Available from: https://www.gov.uk/government/publications/mental-capacity-act-code-of-practice [Accessed: 11/4/2019 12:00:00 AM] • Author: United Nations, (2006), <i>Convention on the Rights of Persons with Disabilities</i>. [Online] Available from: http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx [Accessed: 11/4/2019 12:00:00 AM] • Author: CQC, (2019), <i>Our human rights approach for how we regulate health and social care services</i>. [Online] Available from: http://www.cqc.org.uk/sites/default/files/20190208%20Human%20Rights%20Approach%20REVISED%20summary%20v2%20FINAL.pdf [Accessed: 11/4/2019 12:00:00 AM] • Author: NHS England, (2018), <i>Accessible Information Standard</i>. [Online] Available from: https://www.england.nhs.uk/ourwork/accessibleinfo/ [Accessed: 11/4/2019 12:00:00 AM] 	
Suggested action:	<ul style="list-style-type: none"> • Encourage sharing the policy through the use of the QCS App 	



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1. Purpose

1.1 To enable Mower's Ark to meet the legal requirements to promote and protect the equality and human rights of Supported Individuals.

1.2 To promote the autonomy and independence of Supported Individuals, by respecting and enhancing their human rights.

1.3 This policy focuses on the promotion of equality and human rights for Supported Individuals. Equality and human rights for staff are not addressed in this policy.

1.4 To support Mower's Ark CIC in meeting the following Key Lines of Enquiry:

Key Question	Key Line of Enquiry (KLOE)
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?
CARING	C3: How are people's privacy, dignity and independence respected and promoted?
EFFECTIVE	E2: How does the service make sure that staff have the skills, knowledge and experience to deliver effective care and support?
EFFECTIVE	E7: Is consent to care and treatment always sought in line with legislation and guidance?
RESPONSIVE	R2: How are people's concerns and complaints listened and responded to and used to improve the quality of care?
SAFE	S1: How do systems, processes and practices keep people safe and safeguarded from abuse?
SAFE	S2: How are risks to people assessed and their safety monitored and managed so they are supported to stay safe and their freedom is respected?
WELL-LED	W1: Is there a clear vision and credible strategy to deliver high-quality care and support, and promote a positive culture that is person-centred, open, inclusive and empowering, which achieves good outcomes for people?

1.5 To meet the legal requirements of the regulated activities that Mower's Ark CIC is registered to provide:

- | Health and Social Care Act 2012 Section 250 (Information Standards)
- | The Care Act 2014
- | Equality Act 2010
- | Equality Act 2010: Chapter 1 (Protected Characteristics) Chapter 2 (Prohibited Conduct) and Chapter 3 (Services and Public Functions)
- | Human Rights Act 1998
- | Mental Capacity Act 2005
- | Mental Capacity Act Code of Practice
- | Gender Recognition Act 2004



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2. Scope

- 2.1** The following roles may be affected by this policy:
- | All staff
 - | Volunteers
- 2.2** The following Supported Individuals may be affected by this policy:
- | Supported Individuals
- 2.3** The following stakeholders may be affected by this policy:
- | Family
 - | Advocates
 - | Representatives
 - | Commissioners
 - | External health professionals
 - | Local Authority
 - | NHS



3. Objectives

- 3.1** Supported Individuals are honoured in all their uniqueness and diversity, and their rights to live as they choose are not restricted, except where strictly both necessary and proportionate, and in accordance with this policy.
- 3.2** Care Plans show ongoing commitment to respecting and promoting the human rights of Supported Individuals, through demonstrating knowledge of the person's wishes and feelings, and making these the framework for the way services are provided.
- 3.3** Staff show, by their actions, a commitment to equality and diversity, by enabling Supported Individuals to maintain or create hobbies and interests, community links, friendships and memberships of religious or community organisations.
- 3.4** The service reflects, through staff, volunteers or pro-active community involvement, the cultural, religious and social make-up of the local community, so that Supported Individuals do not feel distanced from those who share their culture or background.
- 3.5** To ensure that the 5 outcomes of the Accessible Information Standards are met and staff at Mower's Ark CIC understand and have processes in place to meet the standards.



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4. Policy

4.1 Actions and decisions that affect Supported Individuals are compliant with relevant human rights law, that is, the Human Rights Act 1998, the Equality Act 2010, and, where Supported Individuals aged 16 or over may lack mental capacity, the Mental Capacity Act 2005.

4.2 Care Plans demonstrate the importance that Mower's Ark gives to protecting the human rights of Supported Individuals, by being clearly person-centred and individual, and reflecting a real commitment to people's rights to live as they choose.

4.3 Mower's Ark is committed to challenge and removes, where possible, any 'blanket rules' governing how Supported Individuals live, demonstrating this by person-centred planning that enables, for example, specific religious or cultural practices that are important to an individual.

4.4 The management team shows its commitment to equal opportunities, diversity and human rights, by pro-actively ensuring that Supported Individuals have access to, and engagement with, their communities.

4.5 We recognise that everyone is different, and want to make sure our services practice respect, promote and celebrate these differences. We will not tolerate unlawful discrimination, victimisation, bullying or harassment based on:

- | Age
- | Disability
- | Gender reassignment
- | Marriage and civil partnership
- | Pregnancy and maternity
- | Race (this includes ethnic or national origins, colour or nationality)
- | Religion or belief (this includes lack of belief)
- | Sex (male and female)
- | Sexual orientation

4.6 Human rights, equality and diversity, and the wishes and feelings of individual Supported Individuals, are considered in all supervisions and team meetings.



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5. Procedure

5.1 Staff know which Articles of the Human Rights Act are at risk of being breached in health and social care and how this applies in practical terms when delivering care and support.

5.2 Article 2 - Everyone has the right to life. Mower's Ark CIC should take reasonable steps to protect a Supported Individual's life in nearly all circumstances and Mower's Ark CIC should have clear policies on end of life wishes, including up-to-date information on any advance decisions to refuse treatment, powers given by a Supported Individual to a trusted relative or friend through a health and welfare lasting power of attorney, to consent to or refuse life-sustaining treatment in the person's best interests, and any 'Do Not Attempt Cardio-Pulmonary Resuscitation' decisions.

5.3 The right to protection from torture and inhumane and degrading treatment (Article 3) underpins all care decisions, and staff receive training on how to deliver care that enhances Supported Individuals' dignity; formal training is reinforced in team meetings and supervision. Examples of breaches of Article 3 are:

- | Physical or mental abuse
- | Failure to address, swiftly and discreetly, the physical and emotional results of incontinence (for example, by replacing soiled linen or clothing in a non-judgmental way)
- | Leaving food without helping the Supported Individual to eat when they are too frail to feed themselves
- | Excessive force to restrain Supported Individuals
- | Carrying out care tasks, such as washing or dressing Supported Individuals, without regard to their feelings, individuality, self-esteem and dignity

5.4 The right to liberty and freedom of movement (Article 5) is recognised, and only breached when deprivation of liberty is necessary and proportionate to the risk of harm to the person; action is always taken to reduce or minimise, if possible, the risk of deprivation of liberty.

5.5 Where deprivation of liberty is in the person's best interests and no less restrictive option can be identified to keep them safe, Mower's Ark seeks authorisation swiftly to protect the Supported Individual's rights.

5.6 Supported Individuals' rights to maintain contact with their family and friends under Article 8 are not breached, except where this is unavoidable; legal advice is sought about the possible need for authorisation from the Court of Protection if a decision is made in the best interests of the Supported Individual that they should cease contact with a relative or friend.

5.7 Article 8 - Rights to a private and family life are proactively respected and enabled, for example, by providing privacy and a pleasant environment for visits and respecting the Supported Individual's right to sexual and other relationships.

5.8 Monitoring by CCTV or other surveillance techniques may breach Article 8 (rights to privacy); use of such recordings should adhere to the CQC guidance on surveillance which can be located here: <http://www.cqc.org.uk/guidance-providers/using-surveillance-information-service-providers>

5.9 Mower's Ark CIC will ensure that staff understand their responsibilities under the [Accessible Information Standard](#) and there are mechanisms in place to ensure a specific, consistent approach to identifying, recording, flagging, sharing and meeting the information and communication support needs of Supported Individuals, carers with a disability, impairment or sensory loss. Mower's Ark CIC should ensure that staff read and understand the Service Users with Communication Difficulties Policy and Procedure at Mower's Ark CIC.



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6. Definitions

6.1 Mental Capacity Act 2005 (MCA)

- | In England and Wales, the MCA defines capacity as the ability to make a specific decision at the time it needs to be made
- | Everyone is presumed to have this capacity unless there are reasons to question it, in which case the person's capacity should be assessed
- | The MCA balances the requirement to respect and enhance autonomy, the rights of people to live as they choose and make their own decisions as long as they are not harming others, against the requirement to protect people who lack mental capacity, by finding the least restrictive options to meet identified needs in the best interests of the person

6.2 'Acid Test' for Identifying Deprivation of Liberty

- | It can be lawful to deprive a person aged 16 and over of their liberty in order to give them necessary care or treatment, provided this is authorised. The 'acid test' clarifies that a person lacking capacity to consent to arrangements for this necessary care or treatment is deprived of their liberty if they are both:
 - | Not free to leave (even though they may go out accompanied, they must return)
 - | Under continuous supervision and control

6.3 Human Rights Act 1998: Article 8

- | Everyone has the right to live as they choose, and for the State not to interfere in their private life
- | This includes the right to have contact with relatives and friends and to have privacy during those contacts, whether face to face, by letter or phone
- | These rights can be breached if the breach is necessary and proportionate to prevent harm to the person. However, in health and social care settings, interference with this right should be extremely rare, and legal advice should be sought before doing so

6.4 Human Rights Protected by the Human Rights Act

- | Human rights are the basic rights and freedoms that belong to every person in the world. In the UK, human rights are protected by the Human Rights Act 1998
- | The Human Rights Act 1998 incorporates into UK law the European Convention on Human Rights, and makes it unlawful for a public body, or anyone acting on behalf of a public body, to behave in a way that is incompatible with the Convention. The rights most likely to be relevant in health and social care are Article 3, Article 5, and Article 8. All the rights protected by the Convention are listed in the following bullet points
- | **Article 2 (Article 1 is just the preamble): The right to life.** Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally, save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. Note that this makes so-called 'mercy killing' unlawful, though it is lawful and good practice sometimes to recognise when treatment should be withdrawn or not started in circumstances when it would lead to pain or distress without prolonging life. In addition, any adult can lawfully make advance decisions to refuse treatment under the Mental Capacity Act; these apply when the person has lost capacity to make their own decision to accept or refuse treatment
- | **Article 3: The complete prohibition of torture under any circumstances.** No one shall be subjected to torture or to inhuman or degrading treatment or punishment. It is a tragic fact that some so-called 'care' can include inhuman or degrading treatment or punishment; there is no place for this in care services, and any tendency, however slight, to bully, punish or degrade Supported Individuals must be rooted out
- | **Article 4: Prohibition of slavery and forced labour**
 - | No one shall be held in slavery or servitude
 - | No one shall be required to perform forced or compulsory labour

This is now strengthened by the Modern Slavery Act 2015, which forbids slavery or forced labour, and includes trafficking. Mower's Ark must ensure that it is not, even unwittingly, employing people who do not enjoy the rights available to other staff due to being trafficked or forced to pass on their pay to a trafficker



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- | **Article 5: Right to liberty and security of person.** This is not an absolute right but no one shall be deprived of his liberty except in certain circumstances, which includes Article 5(1)(e) - 'the lawful detention of persons...of unsound mind'. If someone is to be deprived of their liberty, it must be 'in accordance with a procedure laid down in 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.' This is why the deprivation of liberty safeguards (DoLS) were created, to ensure these procedural safeguards to people lacking capacity: UK law had a gap, which meant that this vulnerable group of people could be deprived of their liberty on the say-so of a doctor, for example, without any clear way of asking a court whether this was legal or not. DoLS will be replaced in October 2020 by the liberty protection safeguards (LPS), which protect the right to liberty through a different process
- | **Article 6: Right to a fair trial.** This includes being presumed innocent until there is evidence of guilt
- | **Article 7: No punishment without law.** Nobody can be found guilty of something which was not a crime at the time it was committed
- | **Article 9: Freedom of thought, conscience and religion.** This is not an absolute right but can only be limited when necessary in a democracy, 'in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.' It includes the right to decide to change one's religion
- | **Article 10: Freedom of expression.** This is not an absolute right and carries with it duties and responsibilities. It can be limited, where necessary, in a democracy, in a range of circumstances, including 'for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the reputation or rights of others'
- | **Article 11: Freedom of peaceful assembly with others.** This is the right to meet up with other people and, for example, join a trade union. This is not an absolute right, and can be limited, where necessary in a democracy, for public safety or protection or the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights of others. States have the right to restrict this right among armed forces, the police, and other areas of public administration
- | **Article 12: The right to marry.** Men and women of marriageable age can marry and found a family in accordance with national laws. Together with Article 8, this specifically protects the rights of people with learning disabilities who have the capacity to consent to marriage, to enter into a marriage and have children
- | **Article 14: Prohibition of discrimination.** This is an absolute right. 'The enjoyment of the rights and freedoms set forth in this convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.' This phrase 'other status' includes people living with certain diagnoses or lacking mental capacity to make their own decisions, and highlights that human rights are for everyone

6.5 Convention on the Rights of Persons with Disabilities (CRPD)

- | The UK is a signatory to the CRPD, and bound to work within it
- | The CRPD aims to wipe out all discrimination and barriers to inclusion that face people with disabilities. This means the UK must develop and carry out policies and laws that secure the rights recognised in the Human Rights Act 1998, and abolish laws, regulations, customs and practices that constitute discrimination (Article 4)
- | The UK is also committed to combatting stereotypes and prejudices, and promoting awareness of the capabilities of people with disabilities (Article 8)
- | The CRPD demands guarantees that people with disabilities enjoy their inherent right to life on an equal basis with others (Article 10), ensures the equal rights and advancement of women and girls with disabilities (Article 6) and protects children with disabilities (Article 7)

6.6 The Equality Act 2010

- | This Act makes it unlawful to discriminate against people, both in the workplace and in wider society
- | It combines several earlier pieces of legislation, such as the Sex Discrimination Act 1975, the Race Relations Act 1976, and the Disability Discrimination Act 1995
- | 'Protected Characteristics', that people must not be subjected to discrimination on the basis of, are laid out in Section 4. They are:



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- | Age
- | Disability
- | Gender reassignment
- | Marriage and civil partnership
- | Pregnancy and maternity
- | Race
- | Religion or belief
- | Sex
- | Sexual orientation

6.7 Deprivation of Liberty Safeguards DoLS: Human rights protection

- | The Deprivation of Liberty Safeguards (DoLS) were set up to protect the rights of people lacking mental capacity, under the Human Rights Act Article 5. DoLS will be replaced in October 2020 by the Liberty Protection Safeguards (LPS) which will fulfil the same human rights obligations, though through different processes
- | The DoLS do this by laying out a procedure defined in law, so that anyone subject to an authorisation under DoLS knows what has led to this authorisation, and also laying out how it can be challenged
- | The protections for a person include:
 - | Any conditions attached to the authorisation
 - | Independent scrutiny of their Care Plan by DoLS assessors
 - | Independent assessment of their capacity to consent to the Care Plan
 - | The appointment of a relevant person's representative (RPR) to act for them
 - | The right to ask the Local Authority who granted the authorisation to review it or any part of it
 - | Their right of access to an Independent Mental Capacity Advocate (IMCA)
 - | Their right to go to the Court of Protection, for a full hearing of their views and examination of the authorisation

An additional protection is that no authorisation can last for longer than 12 months and must then be re-assessed by independent assessors

6.8 Equality

- | The Equality and Human Rights Commission defines 'equality' as 'ensuring that every individual has an equal opportunity to make the most of their lives and talents and believing that no one should have poorer life chances because of where, what or whom they were born or because of other characteristics'



Key Facts - Professionals

Professionals providing this service should be aware of the following:

- | The Human Rights Act 1998, and, where relevant, the Mental Capacity Act 2005, provide the essential framework for decisions and actions in health and social care
- | Rights can be absolute (such as Article 3 the prohibition of inhuman or degrading treatment) or qualified (such as Article 5, the right to liberty, and Article 8, the right to a private and family life)
- | The Mental Capacity Act 2005 and its code of practice provide detailed guidance on human rights for people who lack mental capacity
- | Any breach of a person's human rights is a serious matter and all attempts must be made to avoid it or minimise its extent and effects on the person



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Key Facts - People affected by the service

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

- 1 You, or your relatives, have legal rights under the Human Rights Act 1998 or, where relevant, the Mental Capacity Act 2005
- 1 Some rights can never be taken away or lessened; these include a person's right never to be tortured or treated in a way that is degrading or inhuman. This is explained in the Human Rights Act, Article 3
- 1 Some rights can be restricted, but only if it is in your best interests (or those of your relatives or friends who receive services). These are your rights to liberty (Article 5) and your right to live as you choose, including your contacts (Article 8)
- 1 Any interference by a public authority (or anyone commissioned by it) in someone's rights must be the least restrictive option that can be found and can be challenged in court



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:

Practical guidance for health and social care staff:

<https://www.equalityhumanrights.com/en/practical-guidance-health-and-social-care-staff>



Outstanding Practice

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

- 1 Human rights values are central whenever decisions are taken about or for someone lacking capacity to make a specific decision or series of linked decisions
- 1 Staff are trained and can discuss the main human rights that are at risk of being breached in health and social care
- 1 Care Plans show that human rights are always considered in finding the least restrictive option for meeting an identified need, and this is evidenced by direct quotes from the person or those who care for them
- 1 The Supported Individual's rights are always discussed in team meetings and individual supervision and evidenced by recording evidence of creative person-centred planning
- 1 Whenever Care Plans are reviewed, records show a pro-active search for ways to enhance and promote the rights of individuals to live as they wish
- 1 The wide understanding of the policy is enabled by proactive use of the QCS App



Forms

There are currently no Forms attached to this policy.