MCA and DOLs Policy

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Introduction

The purpose of this policy is to support the organisation in understanding and in its ability to apply the principles of the Mental Capacity Act (MCA) Code of Practice, and DoLS (Deprivation of Liberty Safeguards) Code of Practice, so that Re-Pat Ltd can be assured that assessments of capacity to make decisions are carried out appropriately by our service and that decisions made on behalf of people who lack the mental capacity to make those decisions are made in their best interests.

The Mental Capacity Act provides a framework to empower and protect people who may not be able to make their own decisions due to illness, injury or disability. The MCA is clear who is able to make decisions on behalf of others, in what situations, what the process would be. It stipulates procedure regarding how to plan ahead, if at some stage of their life a person was assessed as lacking the capacity to make a certain decision for themselves.

In following the principles of the MCA Re-Pat Ltd aims to ensure that staff put the person at the centre of any decision-making processes and support service users to make their own decisions where they have the capacity to do so.

The MCA applies to all people over the age of 16 across England and Wales, with the exception of making a lasting power of attorney (LPA); making an advance decision to refuse treatment (ADRT) and being authorised under the Deprivation of Liberty Safeguards (DoLS); in these situations, the Act applies when a person is aged 18 or over, unless they are living in a community setting in which case, the Deprivation of Liberty Safeguards applies to anyone aged 16 and above.

The Act also introduces a number of bodies and regulations that staff must be aware of including:

- The Independent Mental Capacity Advocate
- The Office of the Public Guardian
- The Court of Protection
- Advance Decisions to refuse treatment
- Lasting Powers of Attorneys

The MCA provides legal protection from liability for carrying out certain actions in connection with care and treatment of people provided that:

- The principles of the MCA are observed,
- A full assessment of capacity has been made at it is reasonably believed that the person lacks capacity in relation to the matter in question,
- There is a reasonable belief the action taken is in the best interests of the person.

The Registered Manager must ensure that staff are made aware of this policy and how to access it and ensure its implementation within their line of responsibility and accountability.

Scope

This policy applies to all staff working for Re-Pat Ltd involved in the care or support of service users over the age of 16 years living in England and Wales who are assessed as unable to make specific decisions for themselves.

This policy also applies to any agency, self-employed or temporary staff or volunteers carrying out work on behalf of Come Together Community Support Ltd.

Roles and Responsibilities

Overall accountability for ensuring that there are systems and processes to effectively manage the roles and responsibilities for the organisation in respect of the Mental Capacity Act (MCA) and Deprivation of Liberty Safeguards (DoLS) lies with the **Registered Manager.**

The Registered Manager has overall responsibility for:

- Overseeing the policy
- Implementing the policy

The Registered Manager must ensure that staff are made aware of this policy and how to access it and ensure its implementation within their line of responsibility and accountability.

Staff Responsibilities of Staff (including all employees, whether full/part time, agency, bank or volunteers) are:

- Implementing the policy
- Reporting any perceived or suspected breaches of the underlying legal frameworks in line with company policy.

Procedures

The Five Principles of the Mental Capacity Act

All staff employed by Re-Pat Ltd will have a good understanding of the MCA and follow the principles laid out in the act.

The five principles listed below must underpin all decision making:

- Principle 1 A presumption of capacity: Always assume the person is able to make the decision unless it is proven otherwise.
- Principle 2 Individuals should be supported to make their own decisions: A person should be given all practicable help before anyone treats them as not being able to make the decision.

- Principle 3 Unwise decisions: Respect the person's right to make an unwise decision if they demonstrate they have the capacity to do so.
- Principle 4 Best interests: If the person is assessed as lacking capacity, anything done on their behalf must be in their best interests.
- Principle 5 Least restrictive option: Anyone acting on behalf of a person who lacks capacity must consider whether it is possible to act in a way that would interfere less with the person's rights and freedom of action.

Staff at Re-Pat Ltd will always ensure that service users are supported and encouraged to make decisions for themselves. They will do this by:

- Ensuring the service user has all the relevant information available to make an informed decision
- Giving the service user access to information in ways that they will understand ie easy read format, pictures, sign language etc
- Ensuring the information is presented to the service user at a suitable time of day for them i.e. not when they are over tired or not fully awake
- Making sure the service user has access to any support from a person either of their choosing or that is known to be able to help maximise their level of understanding

Assessing Capacity

There are a variety of situations which could lead staff to question a person's capacity to make a decision:

- the person's behaviour or circumstances cause doubt as to whether they have the capacity to make a decision
- someone else says they are concerned about the person's capacity
- the person has previously been diagnosed with an impairment or disturbance in the functioning of mind or brain and there is evidence to show they lack capacity to make other decisions in other areas.

When carrying out a capacity assessment the assessment should always be time and decision specific. The person carrying out the assessment must consider the following:

- Is the person able to make the decision (with support if required)?
- If they cannot, is there an impairment in the functioning of the mind or brain?
- Is the person's inability to make the decision because of the impairment or disturbance?
- The person is determined to be unable to make the relevant decision if they are unable to do any or all the things below:

    - Understand the information that is given to them.
    - Retain the information long enough to be able to make the decision.
    - Weigh up the information available to make the decision.
    - Communicate their decision (this can be verbally or non-verbally).

For some people, their ability to meet some or all these criteria will fluctuate over time, and it is therefore important that a person's capacity to make decisions is reviewed regularly.

An individual may be competent to make basic decisions (i.e. what to eat or wear), but at the same time may not have the capacity to make other, more complex decisions (i.e. where to live and decisions relating to care).

If a person is assessed as lacking capacity they may be denied their right to make a specific decision if that decision is deemed to be not in their best interest or likely to cause harm.

Who should assess Capacity?

All employees working at Re-Pat Ltd receive training on the Mental Capacity Act 2005. The person making the decision is known as the 'decision maker' and normally will be the person directly involved in an intervention. Alternatively, it may be a professional such as a doctor, nurse or social worker where decisions about treatment, care arrangements or accommodation need to be made.

Any person carrying out a capacity assessment must be able to justify any conclusions they come to which could affect the individual in question.

Best Interests Decisions

Any action taken, or decision made for someone assessed as lacking capacity to make that decision must be made in his or her best interests. There are key factors to consider when determining what is in a person's best interests:

- consideration of whether the service user is likely to regain capacity and whether the decision can wait until then
- consideration of all the relevant circumstances relating to the decision in question
- the individual's past and present wishes and feelings
- an advanced directive if valid and relevant
- any beliefs or values (religious, cultural and/or moral) that might influence the decision
- the views of others, such as carers, close relatives or friends or anyone else interested in the persons welfare, any attorney appointed under a Lasting Power of Attorney and/or any deputy appointed by the Court of Protection to make decisions for that person.

Examples of Best Interest decisions may include:

- Giving covert medication
- Restraint; physical or chemical
- Change of accommodation
- Changes to care and treatment

Advanced Decisions

If a person (who lacks capacity) made an advanced decision to refuse medical treatment at a time when they had capacity, then this will prevent a healthcare professional from giving them the same treatment in their best interest as long as the advanced decision is valid and applicable to present circumstances.

Advanced decision making is a process by which people can plan ahead to make decisions and express preferences about what they wish to happen with their care and treatment if they lose capacity to make decisions for themselves. They can:

- Appoint someone to make decisions for them regarding health and welfare via a Last Power of Attorney authorisation
- Refuse specific treatments in advance if they want to be making an advanced decision to refuse treatment.
- They can nominate people they would like to be consulted when decisions are being made about them.

Individuals can write down a statement containing their wishes and preferences for their future care but may also have made a verbal decision. However, assurance must always be sought to ensure such decisions (written or verbal) are valid and applicable.

For further detail around advanced decisions, please see chapter 9 Mental Capacity Act Code of Practice - GOV.UK (www.gov.uk)

Lasting Power of Attorney

The act allows a person who is aged 18 and over who has capacity to appoint an attorney to act on their behalf should they lose capacity to make decisions in the future. There are two types:

- appointing someone to make health and welfare decisions on their behalf which may involve treatment and placements to assist with care
- appointing someone to make financial and property decisions.

Employees at Re-Pat Ltd should always be aware of any Lasting Power of Attorney in place for the people they are caring for, including who the attorneys are and what decisions they are able to make. Documentation must be sought to verify attorneys and checks made at the Office of Public Guardian. This will be discussed during the initial assessment before support commences.

Deprivation of Liberty Safeguards (DoLS)

The Deprivation of Liberty Safeguards (DoLS) came into force in 2009 and form part of the Mental Capacity Act 2005. DoLS is designed to legally authorise restrictive care situations for people who lack mental capacity to consent to them. The power is only available if the person meets all the DoLS criteria, are aged 18 or over and are in a care home or hospital. Anyone under DoLS is given a series of legal rights and protection. A person can also be deprived of their liberty in another location, such as their own home or a supported living service but this requires an order from the Court or Protection.

An important piece of case law known as the Supreme Court Judgement in Cheshire West in 2014 changed the way in which a deprivation of liberty was identified. It clarified that in order for a person to be considered as deprived of their liberty, they must be;

- Not free to leave
- Under continuous supervision and control
- Lack capacity to consent to the arrangements

In all cases, the following are not relevant to the application of the test:

- The person's compliance or lack of objection;
- The relative normality of the placement (whatever the comparison made); and
- The reason or purpose behind a particular placement

A Deprivation of Liberty should only be used if it's the least restrictive way of keeping a person safe or making sure that they have the right medical treatment. The Deprivation of Liberty safeguards apply to those aged 18 years and older and only to those in care homes, nursing homes or hospital settings. If a person is living in their own home, a deprivation of liberty will still need to be authorised. The reason for the authorisation is the same as it would be in a care home or hospital, and the same criteria apply. This is known as community DoLS. However, the process is slightly different. In order to authorise a deprivation of liberty Re-Pat Ltd will inform the local authority or Integrated Care Board who will need to take the case to the Court of Protection.

If the authorisation is granted, then it can last for up to one year. It can be returned to court earlier if the arrangements change, the service user regains capacity or if someone believes that the arrangements are no longer in the service users' best interests.

Within a community or domiciliary setting, the Court of Protection can be used to lawfully deprive a service user of their liberty if:

- They are age 16 or over
- They have been assessed as lacking capacity to agree to the restrictions

The 6 assessments

A service user cannot have their liberty taken away unless all the 6 assessments are met. These are:

- An age assessment, to make sure that they are aged 18 or over (except in the case of a community DoLS)
- A mental health assessment to confirm that they have been diagnosed with a 'mental disorder' within the meaning of the Mental Health Act.
- A mental capacity assessment to assess whether they can consent to remaining in a care home or hospital for care and treatment. If they do have the capacity to make this decision, they cannot be deprived of their liberty and

- A best interest's assessment to consider if the person is deprived of their liberty, if it is a proportionate response to the likelihood of harm, if it is necessary to prevent harm, and if it is in the person's best interests.
- An eligibility assessment to confirm that they are not detained under the Mental Health Act 1983. And that they are not subject to a requirement that would conflict with the Deprivation of Liberty Safeguards. This includes being required to live somewhere else under the Mental Health Act, for example under a guardianship order.
- A 'no refusals' assessment to make sure that the deprivation of liberty doesn't conflict with any advance decisions they have made. Or conflict with the decision of an attorney under a lasting power of attorney, or a deputy appointed by the Court of Protection.

Breakaway and Restraint

Re-Pat Ltd does not advocate or train employees in the use of restraint and does not foresee it being a likely or regular occurrence. Re-Pat Ltd does however acknowledge employees have a legal right to defend themselves from assault and protect the safety of colleagues, visitors and those around them. Re-Pat Ltd also acknowledges employees may in rare circumstances intervene in the best interests of its service users to prevent instances of self-harm. Any intervention should always be reasonable, proportionate and the least restrictive option. In the event of any instance of physical intervention (an employee making physical contact with a service user without their prior consent) the Management Team of Re-Pat Ltd will review whether more formal training is needed.

Training requirements

At Re-Pat Ltd we are dedicated to the Continuous Professional Development (CPD) of our team, ensuring that they are equipped with expertise to deliver outstanding care. All staff receive training in the Mental Capacity Act and Deprivation of Liberty Safeguards to protect our service user's rights.

Monitoring

To ensure this policy remains both practical and current, regular auditing processes will take place. Individual incidents will be monitored via the incident reporting system and themes and trends reported to the Management Team.

Any adverse issues or poor service user outcomes related to this policy will be investigated and immediate change implemented where required.

Related Policies and Procedures

Advanced Care Planning Policy

Consent Policy

Incident Management Policy

Safeguarding Policies

Legislation and Guidance

Care Act 2014

Health and Social Care Act 2008 (Regulated Activities) regulations 2014

Human Rights Act 1998

Mental Capacity Act 2005

Mental Capacity Act Code of Practice

Social Care Institute for Excellence - https://www.scie.org.uk/mca/dols/at-a-glance

Mind (2024) Deprivation of liberty - Mind

Office of the Public Guardian (2020) Mental Capacity Act Code of Practice - GOV.UK (www.gov.uk)