



## **Birtenshaw College**

### Deprivation of Liberty Safeguards and Court of Protection Policy

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This Policy relates to the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. Regulation 9, 13 and Regulation 20

Fundamental Standards:

- Person Centred care
- Safeguarding service users from abuse or improper treatment
- Duty of Candour

### **1. Aim:**

Birtenshaw is committed to:

- Ensuring that the welfare of adults accessing services is paramount at all times
- Maximising people's choice, control and inclusion and protecting their human rights
- Working in partnership in order to safeguard vulnerable adults
- Ensuring safe and effective working practices are in place
- Supporting staff within the Organisation.

### **2. Introduction:**

This policy sets out the roles and responsibilities of Birtenshaw for working together with other professionals and agencies in promoting adults accessing services' whilst promoting their welfare and safeguarding them from any unnecessary/inappropriate Deprivation of their Liberty (DoLs).

*Key Principles:*

Birtenshaw believes that the welfare of adults accessing services is paramount and that they have a right to feel safe and protected from any situation or practice that results in them being harmed or at risk of harm.

Birtenshaw is committed to maximizing people's choice; their control and inclusion in all decision making; and protecting their human rights. Birtenshaw believes these are important for meeting their individual needs, legal requirements and reducing the potential for abuse.

For individuals who are assessed as requiring a Dols application who are aged 16-18 an annual Dols referral must be sought. For those 18 years and above consideration must be an annual court of protection application if restrictions are to remain in place.

### **3. Scope:**

DoLs apply to adults accessing services. The criteria are as follows:

- aged 16 years and over
- who lack capacity to consent to where their treatment and/or care is given and
- are deprived of their liberty in their own best interests.

However, they do not apply to people detained under the Mental Health Act (MHA) 1983.

### **4. Definition:**

The DoLs was introduced into the Mental Capacity Act 2005 (MCA) via the Mental Health Act 2007. The Deprivation of Liberty Safeguards provide legal protection for those vulnerable people, who are or may become, deprived of their liberty within the meaning of Article 5 of the European Convention of Human Rights in a hospital or care home, whether placed under public or private arrangements. There is no single definition of deprivation of liberty. In 2014 the Supreme Court handed down their judgment in the landmark cases of ***P v Cheshire West and Chester Council and P and Q v Surrey County Council***.

The Supreme Court clarified that there is a deprivation of liberty if the following apply:

- *The person is under continuous supervision and control and*
- *The person is not free to leave (i.e. would be prevented if they tried to leave)*  
*and*
- *The person lacks capacity to consent to these arrangements.*

## **5. Legal Framework:**

All staff must ensure that any restrictive practice should only be carried out where it is legally and ethically justified. Deprivation must be unavoidable to prevent serious harm to a person and it must be the least restrictive option. Staff must draw on a number of legislative frameworks and Birtenshaw policies to work within, including:

- The Human Rights Act 1998 & the European Convention on Human Rights (Appendix I)
- The Mental Capacity Act 2005, including the Deprivation of Liberty Safeguards
- Mental Health ACT 2007.

Staff must always judge whether restrictive interventions are acceptable and legitimate based on all presenting circumstances. Any concerns about the misuse of DoLs must be escalated to the designated person and Adult Safeguarding Team. Immediate action must be taken as per Birtenshaw Safeguarding Policy.

## **6. Roles and Responsibilities:**

All staff are to develop a positive culture; so high quality practices can flourish; and in which staff are encouraged to report any concerns about poor practice.

All staff have a responsibility to deliver safe and effective care, while working within the law and respecting the human rights of individuals. Each person is accountable for the decisions they make and the consequences of those decisions.

It is the responsibility of the manager to report any restrictions implemented to the funding local authority.

## **7. Applying for DoLs:**

When a person is about to be admitted or is already identified as lacking capacity and is being or at risk of being deprived of their liberty, Birtenshaw must apply to the

Local Authority (Supervisory Body) for authorization to assess capacity through a best interest meeting decision (MCA 2005).

A DoLs authorisation does not authorise care or treatment this still needs to be carried out under the best interests provisions of the MCA and must follow the five key principles of the MCA. In all cases where the DoLs regime is appropriate, it is vital to ask whether deprivation of liberty is in the adult's best interests and whether there is a less restrictive option. When an individual reaches the age of 18 and a DoLs is currently in place and there restrictions are to remain a Court of Protection authorisation must be sought.

Before discussing a Court of Protection referral staff need to have a reasonable expectation that the following 6 qualifying requirements for standard authorisation are likely to be met:

- *Age – the vulnerable adult is 18 years or over.*
- *Mental health – the vulnerable adult has a mental disorder within the meaning of the MHA 1983*
- *Mental capacity – the vulnerable adult lacks capacity to consent*
- *Eligibility – the vulnerable adult will be ineligible for DoLs if detained or subject to recall under MHA 1983*
- *Best interests – DoLs must be in the vulnerable adult's best interests, necessary to prevent harm to the adult and a proportionate response, taking into account the adult's diversity.*
- *No refusals – the authorisation must not conflict with a valid decision by Lasting power of Attorney or Deputy appointed by the Court of Protection nor conflict with a valid and applicable advanced decision.*

The Local Authority, as a Supervisory Body must complete a Best Interest Assessment within 7 days by applying above 6 principles to authorise Standard DoLs application.

## **8. Notification:**

If the Local Authority/Supervisory Body fails to carry out a best Interest Assessment to assess Standard Authorisation within 7 days (during the urgent authorization period), staff must:

- *Inform the service user*
- *Family members*
- *All professionals involved in care*
- *Inform the Safeguarding Team*

Adult Safeguarding Lead must communicate with the Local Authority in writing and if necessary escalate this to the Head of Safeguarding. The Safeguarding lead at Birtenshaw is Julie Barnes (Deputy Chief Executive).

CQC must also be informed of any Deprivation of Liberty or Court of Protection authorisation by the Registered Manager once the outcome is known.

Birtenshaw must notify the Local Authority (Supervisory Body) if a standard authorisation should be suspended because the eligibility requirement is no longer being met. Staff must also notify the Supervisory Body when the eligibility requirement is again met.

## **8. Least Restrictive:**

Adults accessing services should be cared for in the least restrictive way possible and planning should always consider any other less restrictive options that would prevent unnecessary deprivation of liberty. Awareness of an adult's diversity is crucial to implement most appropriate and least restrictive care.

