**Mental Capacity and Deprivation of Liberty Policy**

1. **Purpose** 
   1. The purpose of this policy is to support compliance with the Mental Capacity Act 2005 (MCA) and Deprivation of Liberty Safeguards 2009.
   2. This policy will outline how Omega Care Group implements MCA 2005 and how it is used to promote rights to freedom in line with the European Convention on Human Rights.
   3. Omega Care Group’ is committed to ensuring all young people make their own decisions unless it can be established that they cannot make that particular decision at that particular time. This procedure is designed to help and encourage all employees to understand the Mental capacity Act 2005, the implication of this act on their practice and how to best support the young person. This procedure applies to all employees.
   4. Other areas of focus will be on when and how capacity is assessed, how capacity to make decisions is maximised and how best interest decisions are made and recorded.

**2. Aim**

2.1 By implementing objective guidance will support staff’s understanding and knowledge of mental capacity and their duty when supporting vulnerable young people.

2.2 To identify where a young person may not have mental capacity at times to make an informed decision and what actions Omega Care Group and all employees have a duty to facilitate.

**3. MENTAL CAPACITY ACT (2005)**

The MCA 2005 defines lack of capacity in the following way:

“A person lacks capacity in relation to a 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”.

The Act assumes that a person has capacity until it is proven otherwise, thereis

a two-stage diagnostic test which should be used when determining if a person

may lack capacity under the definition provided by the Act:

* Does the person have an impairment of the mind or brain, or is there some sort of disturbance affecting the way their mind or brain works?
* If so, does that impairment or disturbance mean that the person is unable to make the decision in question at the time it needs to be made?

If yes, a four-stage functional test is undertaken to assess a person’s ability to

make a decision for themselves. It is more likely than not that a person will be

unable to make a decision if they cannot:

* Understand the information about the decision to be made.
* Retain that information in their mind.
* Use or weigh that information as part of the decision-making process, or
* Communicate their decision (by talking, using sign language or any other means).

Capacity is decision and time specific, in other words assessing capacity refers to assessing a person’s ability to make a decision at a particular moment in time, rather than being an overarching judgement about an individual’s ability to make decisions in general.

The Five Statutory Principles

* Principle 1

A person must be assumed to have capacity unless it is established that they lack capacity.

* Principle 2

A person is not to be treated as unable to make a decision unless all

practicable steps to help them to do so have been taken without

success.

Individuals should be given support to make their own decisions and all

practicable steps should be taken to make that possible.

Support might include:

* Different forms of communication e.g. non-verbal such as sign language. ϖ Information in
* different formats, e.g. photographs or flash cards.
* Treating a medical condition that may be affecting an individual’s capacity.
* A structured programme to improve capacity to make particular decisions, especially relevant
* for individuals with learning disabilities
* Principle 3

A person is not to be treated as unable to make a decision merely because he makes an unwise decision. People have a right to make a decision that others do not agree with. If there is concern a person is acting in a way that isn’t consistent with previous behaviour, or they are making decisions that may put them at risk of harm, then a mental capacity test should be undertaken

* Principle 4

An act done or decision made, under the Act for or on behalf of a person who lack capacity must be done, or made in, the person’s best interest.

* Principle 5

Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person’s rights and freedom of action.

Assessing Capacity and Best Interest Decision Making

Capacity Mental Capacity Act 2005

*A person lacks capacity in relation to a 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.*

* The definition makes clear that capacity is time and decision specific. The

legislation is flexible and recognises that some individuals may be able to make some decisions while lack capacity to make others and that this state may change over time.

* The Act challenges a blanket assumption that because a person may not have the mental capacity to for example, to organise their finances, that they don’t have mental capacity to decide what treatment or care they receive.
* A person may be able to make day to day decisions but lack capacity to make decisions that are more complex.

Guidance on Consent and Capacity

* Capacity should be assessed when a person’s mental capacity to consent to their treatment, care or support. Capacity may be called into question for a number of reasons including:
* An individual’s behaviour or circumstances.
* Where concern about capacity has been raised by someone.
* Where a person has been previously diagnosed with an impairment or disturbance that affects the way their mind or brain works.
* A previous mental capacity assessment has shown lack of capacity to make a decision.
* You must have reasonable belief that the individual lacks mental capacity to have legal protection under the MCA 2005 for making decisions on a young person’s behalf.
* To have reasonable belief you must take certain steps to establish that the person lacks mental capacity to make a decision or consent to an act at the time the decision or consent to act is needed.
* You must establish and be able to show that the decision or act is in the person’s best interests.
* A mental capacity assessment helps demonstrate that on a balance of probabilities it is more likely than not that the person lacks capacity.
* Not all decisions will need a formal mental capacity assessment and it is the individual who is involved in a decision who would have to assess mental capacity regarding that particular decision at that particular time.
* There also will be times when a formal mental capacity assessment should be undertaken if the decision to be made is complex or may have serious consequences, if there is disagreement about a person’s capacity, or if there are safeguarding issues. This will involve other professionals and colleagues in carrying out a mental capacity assessment and/or best interest’s decision.
* Occasionally, individuals may object to having a mental capacity assessment. Where this happens, it is good practice to explain what the mental capacity assessment is and how it will help to protect their rights.
* There should be no undue pressure for the person to have the assessment, as a person has the right to refuse.
* If it’s clear that the person lacks the mental capacity to consent to the assessment then the assessment can usually go ahead as long the assessment is in the person’s best interests.

The Supreme Court Judgement P v Cheshire West 2014 – Acid test

* The Supreme Court Ruling introduced an acid test for determining whether an individual was being deprived of their liberty.
* The acid test is based on if the individual is subject to continuous supervision and control and whether the individual is free to leave without implications or consequence.

Occurrence of deprivation of liberty:

* Supreme court has ruled it can occur in a domestic or supported living arrangement
* Incapacitated 16/17 years olds in accommodation under Section 20 of the Children Act may be deprived of their liberty according to the acid test.
* Under the ruling it is NOT relevant if:
* The individual doesn’t object or complies to the deprivation:
* The relative normality of the placement.
* The reason or purpose behind the placement.

1. **OMEGA CARE GROUP 16 PLUS MENTAL CAPACITY PROCEDURE** 
   1. Omega Care Group 16 Plus Supported Accommodation Independent Living services recognises it’s only permitted to deliver support to young people and is not legally permitted to provide care in accordance with Care Standards 2000 and Children Regulations 2015.
   2. Omega Care Group 16 Plus Supported Accommodation Independent Living services further recognises its obligation to adhere to Working Together to Safeguard Children 2018 and therefore where necessary, reasonable and proportionate apply temporary measures of care to protect a child or young person from harm.
   3. Omega Care Group 16 plus Supported Accommodation Independent Living services will take great consideration during the selection process of any referrals
   4. Omega Care Group 16 Plus Supported Accommodation Independent Living services acknowledges at times some young people may lack mental capacity due to a disturbance to of mind and cognitive processing. Examples include the consumption of drugs and alcohol or a young person’s mental health deteriorating.
   5. In such situations, Omega Care Group would expect employees to apply guidance from MCA 2005 as stated above to inform their practice and to utilise all forms of communication to support the young person to make an informed choice.
   6. Any periods of time whereby a young person mental capacity is limited will be documented within a safeguarding form and the young person’s risk management plan. All concerns will be reported to Omega Care Group Designated Safeguarding Leads, the specific house manager, the young person’s social worker and any other relevant professional.
   7. When reporting concerns in relation to a young person’s mental capacity, it would be expected that Omega Care Group safeguarding policy and procedure is followed.
   8. All safeguarding forms to be sent to [safeguarding@omegacaregroup.org](mailto:safeguarding@omegacaregroup.org) and allocated social worker for 16 plus provision
   9. If a concern of an immediate and serious nature, the employee is expected to utilise the responsible authority EDT
   10. Any concerns relating to a young person’s mental capacity is to be expressed to the house manager or on call manager (out of hours) over the telephone in a timely manner.
   11. Omega Care Groups operates Independent Living Program in which all young people have access to. All young people will be supported to complete ‘decision making’ section focussed on making informed choices.
   12. All young people will be allocated a support worker and complete developmental sessions where significant focussed can be placed on any determinants in which could be affecting an individual’s mental capacity
   13. A young person who presents with continuous periods of presentation with limited mental capacity then Omega Care Group will review its capacity to sustain the placement will be discussed.
   14. All employees within Omega Care Group will practice accessible communication and information sharing whereby many forms of expressive communication will be utilised to ensure each young person have maximum opportunity to make an informed choice.
   15. All employees will ensure all young people are given all relevant information to make an informed choice.
   16. Omega Care Group will ensure all staff complete online training on MCA 2005 and uphold relevant currency of knowledge
   17. Omega Care Group will share any concerns regarding an individuals’ mental

capacity with relevant professionals.

4.13. All information regarding an individual’s mental capacity can be detailed on Omega care Group’s safeguarding form and young person chronology

4.14. Any concerns regarding an individual’s mental capacity will be outlined within their risk management plans, in which all individuals will partake in developing.

4.15. A professional safeguarding chronology will also be maintained to evidence any concerns in relation to a young person’s mental capacity. It is of the duty of the whole staff team supporting each young person to ensure this is completed in full.

1. **Omega Care Group Mental Capacity Children Residential Procedure** 
   1. Omega Care Group Children Residential services further recognises its obligation to adhere to Working Together to Safeguard Children 2018 and therefore where necessary, reasonable and proportionate may apply temporary measures of care to protect a child or young person from harm.
   2. Omega Care Group will take great consideration during the selection process of any referrals to ensure the provision can meet the care needs of the child.
   3. Omega Care Group services acknowledges at times some young people may lack mental capacity due to a disturbance of mind and cognitive processing. Examples include the consumption of drugs and alcohol or a young person’s mental health deteriorating.
   4. In such situations, Omega Care Group would expect employees to apply guidance from MCA 2005 as stated above to inform their practice and to utilise all forms of communication to support the young person to make an informed choice.
   5. Any periods of time whereby a young person’s mental capacity is limited will be documented within a safeguarding form and the young person’s risk management plan. All concerns will be reported to Omega Care Group Designated Safeguarding Leads, the specific house manager, the young person’s social worker and any other relevant professional.
   6. When reporting concerns in relation to a young person’s mental capacity, it would be expected that Omega Care Group safeguarding policy and procedure is followed.
   7. All safeguarding forms to be sent to [safeguardingcr@omegacaregroup.org](mailto:safeguardingcr@omegacaregroup.org) and allocated social worker
   8. If a concern of an immediate and serious nature, the employee is expected to utilise the responsible authority EDT
   9. Any concerns relating to a young person’s mental capacity is to be expressed to the house manager or on call manager (out of hours) over the telephone in a timely manner.
   10. Omega Care Groups operates an Independent Living Program in which all young people have access to. All young people will be supported to complete a ‘decision making’ section focussed on making informed choices.
   11. All young people will be allocated a support worker and complete developmental sessions where significant focus can be placed on any determinants in which could be affecting an individual’s mental capacity
   12. A young person who presents with continuous periods of presentation with limited mental capacity then Omega Care Group will review its capacity to sustain the placement and will be discussed.
   13. All employees within Omega Care Group will practice accessible communication and information sharing whereby many forms of expressive communication will be utilised to ensure each young person has maximum opportunity to make an informed choice.
   14. All employees will ensure all young people are given all relevant information to make an informed choice.
   15. Omega Care Group will ensure all staff complete online training on MCA 2005 and uphold relevant currency of knowledge
   16. Omega Care Group will share any concerns regarding an individuals’ mental

capacity with relevant professionals.

* 1. All information regarding an individual’s mental capacity can be detailed in Omega care Group’s safeguarding form and young person chronology
  2. Any concerns regarding an individual’s mental capacity will be outlined within their risk management plans, in which all individuals will partake in developing.
  3. A professional safeguarding chronology will also be maintained to evidence any concerns in relation to a young person’s mental capacity. It is the duty of the whole staff team supporting each young person to ensure this is completed in full.

1. **Admission of young people subject to a Deprivation of Liberty (DOL) Order children Residential**

Omega Care Group recognises that an increasing number of young people are being made subject to Deprivation of Liberty (DOL) Orders through the High Court. It is understood that for 16 and 17 year old young people who require levels of supervision which may be considered restrictive due to their chronological age, a DOL may be sought to allow the Placing Authority to place additional restrictions on their liberty in order to support them to be kept safe.

For young people under the age of 16, a DOL order may only be necessary where the boundaries which may be set by a reasonable parent are considered insufficient to maintain the safety of the young person.

Omega Care Group will only accept referrals with DOLs where the measures are:

* That the DOL Order is subject to ongoing review whilst in place and that the review timescale is realistic to the child or young person.
* That the Placing Authority continues to dynamically review the needs and wishes of the young person and balance these against the need to support their safety.
* That the Placing Authority understands and accepts that, the home will not key lock young people in the home and staff will not use physical intervention to prevent young people from leaving, unless there is an identified serious imminent risk from them doing so.
* That a copy of the DOL Order has been shared with the Registered Manager and Responsible Individual prior to agreement to implementation taking place.

The Children Residential Workforce will hold training in DOLs completed by ‘The Training Hub’ and Face to Face. Application of DOLs must also be discussed in group supervisions to ensure the workforce has knowledge of the practice.