



POLICY

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

4.2 Care Plans demonstrate the importance that ABACUS CARE & SUPPORT LIMITED gives to protecting the human rights of Service Users, by being clearly person-centred and individual, and reflecting a real commitment to people's rights to live as they choose.

4.3 ABACUS CARE & SUPPORT LIMITED is committed to identify and remove any 'blanket rules' governing how Service Users 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 Service Users 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 or self-identification
- 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 Service Users are considered in all supervisions and team meetings.

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
- The MCA balances the rights of Service Users to live as they choose, express their wishes 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
- Everyone aged 16 or over is presumed to have this capacity unless there are reasons to question it, in which case the person's capacity should be assessed in the way described in the MCA and its code of practice

6.2 'Acid Test' for Identifying Deprivation of Liberty

- Article 5 in health and care settings
It can be lawful under human rights and mental capacity law to deprive a person aged 16 and over of their liberty in order to give them necessary care or treatment, provided that the person lacks capacity to consent to the necessary arrangements to give them such care or treatment, and that this is authorised. The 'acid test' clarifies that a person lacking capacity to consent to arrangements to give them necessary care or treatment is deprived of their liberty if they are both:
 - Not free to leave (meaning, even though they may go out accompanied, they must return) and
 - Under continuous supervision and control (meaning, that staff always know approximately where they are and what they are doing)



6.3 Human Rights Act 1998: Article 8

- These rights can be breached if the breach is necessary and proportionate to prevent harm to the person or to protect public health, for example, by preventing the spread of infection. However, in health and social care settings, interference with this right should usually be extremely rare, and where it is unavoidable, the effects on the person must be recognised and mitigated as far as possible
- 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
- Everyone has the right to live as they choose, and for the State not to interfere in their private life

6.4 Human Rights Protected by the Human Rights Act

- **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
- **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 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 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 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 7: No punishment without law.** Nobody can be found guilty of something which was not a crime at the time it was committed
- **Article 6: Right to a fair trial.** This includes being presumed innocent until there is evidence of guilt
- **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 there is a framework to protect people lacking capacity. Before DoLS, 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 can only be used in hospitals and care homes, to protect the rights of people aged 18 and over, who lack capacity to make relevant decisions.
- The Article 5 rights of people who lack capacity in community settings (such as supported living or shared lives) or in their own homes, or of young people aged 16 or 17 in any setting, who are deprived of their liberty in their best interests, can at this time only be protected by application to the Court of Protection. This is usually arranged by the commissioner or the Local Authority



- **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. ABACUS CARE & SUPPORT LIMITED 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

- **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 Service Users must be rooted out

- **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 will then apply when the person has lost capacity to make their own decision to accept or refuse treatment
- 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 with some of their implications for adult social care.
- 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

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

- 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)
- The UK is also committed to combatting stereotypes and prejudices, and promoting awareness of the capabilities of people with disabilities (Article 8)
- 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 a signatory to the CRPD, and bound to work within it



6.6 The Equality Act 2010

- 'Protected Characteristics', that people must not be subjected to discrimination on the basis of, are laid out in Section 4. They are:
 - Age
 - Disability
 - Gender reassignment
 - Marriage and civil partnership
 - Pregnancy and maternity
 - Race
 - Religion or belief
 - Sex
 - Sexual orientation
- 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
- This Act makes it unlawful to discriminate against people, both in the workplace and in wider society

6.7 Deprivation of Liberty Safeguards DoLS: Human rights protection (known also as Community DoLS or Judicial Authorisations)

- The protections for a person include:
 - Any conditions attached to the authorisation
 - Independent scrutiny of their Care Plan by a DoLS assessor
 - Independent assessment by a DoLS assessor of their capacity to consent to the Care Plan
 - The appointment of a relevant person's representative (RPR): usually a relative, this is someone 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 the independent assessors
- 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 by laying out how it can be challenged
- The Deprivation of Liberty Safeguards (DoLS) were set up as part of the Mental Capacity Act to protect the rights of people aged 18 and over in hospitals and care homes, lacking mental capacity, under the Human Rights Act Article 5

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 to whom they were born or because of other characteristics'