**Policy Statement**

St Werburghs City Farm is committed to providing person-centred services that respect people's rights and safeguard the independence of all of our service users. The Farm complies with the Mental Capacity Act 2005 by treating all of the people who use our services on the basis that they are able to take their own decisions.

**Introduction to the Mental Capacity Act**

The Mental Capacity Act 2005 (MCA 2005) provides a statutory framework for people who lack capacity to make decisions, or who have capacity and want to make preparations for a time when they may lack capacity in the future. It sets out who can take decisions, in which situations, and how they should go about it. It applies to all those involved in providing health and social care in England and Wales. The Act is supported by a Code of Practice 2007 (CoP) which gives guidance on its implementation.

The Act sets out how capacity should be assessed and procedures for making decisions on behalf of people who lack mental capacity. “The underlying philosophy of the MCA is that any decision made, or action taken, on behalf of someone who lacks the capacity to make the decision or act for themselves must be made in their best interests.” (Mental Capacity Act Code of Practice 2007)

The Act covers day to day decisions such as what to eat and wear, and also more complex or life changing decisions such as whether to undertake major surgery.

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”. (Mental Capacity Act 2005)

The Act assumes that a person has capacity until it is proven otherwise, there is a two stage diagnostic test which should be used when determining if a person may lack capacity under the definition provided by the Act.

**Diagnostic test**

* 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?( Mental Capacity Act Code of Practice 2007)

This test should be applied at the time the decision needs to be made without regard to whether the condition is permanent or temporary. In addition to this, the assessment must be with reference to objective criteria rather than on assumptions drawn from appearance or prejudicial assumptions about that condition.

If the answer to either of the above questions is yes, a four stage functional test is undertaken to assess a person’s ability to make a decision for themselves. You must have **reasonable belief** that the individual lacks mental capacity to have legal protection under the MCA 2005 for making decisions on a person’s behalf.

It is likely that a person lacks the capacity 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**, so any assessment must be ‘decision-specific’.

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

If someone cannot make a complex decision that does not mean that they cannot make simple decisions - there should be no blanket decision that someone lacks capacity to make all decisions.

A decision cannot be made that someone lacks capacity based upon their age, appearance, condition or behaviour alone.

An assessment of capacity should not be made without involving family, friends and/or carers or an Independent Mental Capacity Advocate (IMCA) if one has been appointed. This depends on the situation and the decision that has to be made.

**You must not treat the person as unable to make a decision just because they make a decision you do not agree with.**

**The Five Statutory Principles of the Mental Capacity Act**

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

Every person has the right to make their own decisions unless it can be established that they cannot make that particular decision at that particular time.

**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.
* 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

**3. A person is not to be treated as unable to make a decision merely because they make 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

**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 interests**

**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.**

**MCA Procedures for all staff**

The following procedures apply to all staff who are working with adults who may lack the capacity to consent to their care or treatment.

The Mental Capacity Act outlines the process of enabling vulnerable people to make decisions for themselves and the process of formally assessing capacity where doubt exists about the person’s ability to make a **specific decision**. Where a person is deemed to lack capacity the Act describes how we should approach the process of making a best interests decision. Whilst the process is fairly straight forward implementation of it in practice can be complex for example in situations where a person fluctuates in their ability to make decisions.

The Code of Practice states that “where assessments of capacity relate to day-to-day decisions and caring actions, no formal assessment procedures or recorded documentation will be required.”

Day to day assessments of capacity may be relatively informal. Depending on the seriousness of the decision, specialist or expert opinion may be requested where the decision is complex.

St Werburghs City Farm provides day services. Staff will support service users to make decisions about issues such as:

* What activities they would like to do
* What they would like to eat or drink
* Which staff member they would like to work with

These decisions do not require a formal MCA assessment. Staff will support service users to make their own decisions, following the guidelines laid out below and any other further guidelines in the person’s care plan from their Home Care Provider. St Werburghs City Farm will collaborate with Home Care Providers by having input into care plans where necessary.

There might be some occasions when St Werburghs City Farm staff in the course of their support work become involved or find it necessary to enter into some decision making process on behalf of someone who cannot take a decision at the time that it needs to be taken. In respect of the services provided this is most likely to be related to day to day decisions, or emergency or crisis situations.

**Support to make a decision**

The process of decision making should be based on the five principles of the act and should, first and foremost, involve the person being given all ‘practicable’ and individualised support to make a decision for themselves. The Code of Practice provides guidance as to how this could be achieved and the information below is intended to complement that.

Where possible:

* Delay the decision where the person’s capacity may improve and the decision itself is not urgent.
* Provide support at a time when the person is at their highest level of functioning.
* Provide information in an appropriate format and address communication barriers e.g. sensory impairments.
* Use memory aids where helpful.
* Hold the discussion in an environment familiar to the person.
* Give the person enough time to process the information – decision making is often a process.
* Minimise external pressure or coercion that may impact on the individual.

St Werburghs City Farm will take decisions on behalf of a service user only if there is evidence that they cannot take the decision (at the time it needs to be made) because of mental incapacity. The Farm will co-operate with relatives and others involved with the service user in decision making on behalf of a person on the same basis.

The Farm will not take or collude in taking decisions for a service user where, from its point of view, there is insufficient evidence and it does not appear to be in that person's best interests.

St Werburghs City Farm will only take a decision for one of its service users after it has exhausted every means of enabling the person to take it of their own accord. It will also show its actions in taking the decision are reasonable and in the person's best interests.

Where St Werburghs City Farm has information that suggests the person might be unable to take some decisions at some times it will carry out or contribute to an assessment of that person's mental capacity. It recognises that the assessment procedure should follow the two step assessment process recommended in the Mental Capacity Act's Code of Practice.

**Introduction to the Deprivation of Liberty Safeguards**

The Deprivation of Liberty Safeguards are an amendment to the Mental Capacity Act 2005. They apply in England and Wales only.

The Mental Capacity Act allows restraint and restrictions to be used – but only if they are in a person's best interests. Extra safeguards are needed if the restrictions and restraint used will deprive a person of their liberty. These are called the Deprivation of Liberty Safeguards.

The Deprivation of Liberty Safeguards can only be used if the person will be deprived of their liberty in a care home or hospital. In other settings the Court of Protection can authorise a deprivation of liberty. Care homes or hospitals must ask a local authority if they can deprive a person of their liberty. This is called requesting a standard authorisation.

Article 5 of the Human Rights Act states that “everyone has the right to liberty and security of person. No one shall be deprived of his or her liberty [unless] in accordance with a procedure prescribed in law”. The Deprivation of Liberty Safeguards is the procedure prescribed in law when it is necessary to deprive of their liberty a resident or patient who lacks capacity to consent to their care and treatment in order to keep them safe from harm.

[A Supreme Court judgement in March 2014](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300106/DH_Note_re_Supreme_Court_DoLS_Judgment.pdf) made reference to the 'acid test' to see whether a person is being deprived of their liberty, which consisted of two questions:

* Is the person subject to continuous supervision and control?  and
* Is the person free to leave? – with the focus being not on whether a person seems to be wanting to leave, but on how those who support them would react if they did want to leave.

If someone is subject to that level of supervision, and is not free to leave, then it is likely that they are being deprived of their liberty. But even with the 'acid test' it can be difficult to be clear when the use of restrictions and restraint in someone's support crosses the line to depriving a person of their liberty. Each case must be considered on its own merits, but in addition to the two 'acid test' questions, if the following features are present, it would make sense to consider a deprivation of liberty application:

* frequent use of sedation/medication to control behaviour
* regular use of physical restraint to control behaviour
* the person concerned objects verbally or physically to the restriction and/or restraint
* objections from family and/or friends to the restriction or restraint
* the person is confined to a particular part of the establishment in which they are being cared for
* the placement is potentially unstable
* possible challenge to the restriction and restraint being proposed to the Court of Protection or the Ombudsman, or a letter of complaint or a solicitor’s letter
* the person is already subject to a deprivation of liberty authorisation which is about to expire.

**Final decisions about what amounts to a deprivation of liberty are made by courts.**

An adult who lacks capacity, who is not subject to the Mental Health Act, can only legally be deprived of their liberty when that deprivation is:

• authorised by a decision of the Court of Protection;

• necessary to save life or prevent a serious deterioration in a patient's condition; or,

• authorised in accordance with the Deprivation of Liberty Safeguards (DoLS) .

The DoLS are only available in an NHS hospital or a registered care home setting and therefore any person managed in the community, whether in their own home, sheltered accommodation or a non-registered care home, can only be deprived of their liberty where the decision is authorised by the Court of Protection.

**Deprivation of Liberty Safeguards Procedure**

Service users who lack mental capacity, as any others, are only subject to any form of restraint at St Werburghs City Farm when by not doing so would result in injury or harm to them or to other people.

If an individual is under DoLS authorisation or domestic deprivation court order at their place of residence, then this will be discussed before the beginning of the placement. Any restrictions put in place to stop them leaving the Farm will be in line with the DoLS authorisation at their care home, and St Werburghs City Farm will ensure that they are the least restrictive possible. Any significant change in restrictions (e.g. a change to a higher staffing ratio, or regular restraint being used) used either by St Werburghs City Farm or by an external agency will be reported to the individual’s social worker or to Care Direct.

All incidents where restraint has been used will be recorded following St Werburghs City Farm’s procedures for reporting and recording.

If St Werburghs City Farm has any concerns that an individual is being unlawfully deprived of their liberty in a domestic setting, then we will raise concerns with either the person’s social worker or Care Direct.

Services are only delivered to individuals who choose to be at St Werburghs City Farm. Should a service user decide they wish to leave before the end of a normal session, they will be free to leave unless they are not able to travel independently. If the individual can travel independently, St Werburghs City Farm will contact their home care providers so that staff know when to expect the individual to return home. If the individual is not an independent traveller, St Werburghs City Farm staff will contact their home care provider and arrange for them to return home as soon as possible.

**Record Keeping**

Assessments of capacity for day to day decision making or consent to care do not need to be formally recorded, but should be recorded in the daily log. Guidelines for everyday decisions can be found in the person’s care plan.

Any incidents where restraint of any kind has been used should be recorded using the Incident and Occurrence Form.

**Staff Training**

All staff will be inducted into Mental Capacity Act policy and procedures as part of their initial induction.

They will receive further training in the Mental Capacity Act and Deprivation of Liberty Safeguards within 6 months of starting work.