PHSSL CARE LIMITED

CONTROLLED POLICY

B05 – MENTAL CAPACITY, CONSENT AND BEST-INTEREST DECISION-MAKING POLICY

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Policy Owner	PHSSL Care Limited
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Applies To	All PHSSL Care Limited staff, workers and relevant contractors
Supersedes	New policy

1. Purpose

This policy sets out how PHSSL Care Limited will support people to make their own decisions, obtain valid consent and act lawfully when a person lacks capacity to make a particular decision. It promotes autonomy, dignity, rights and the least restrictive approach.

2. Scope

This policy applies to all PHSSL Care Limited staff, workers, managers and relevant contractors involved in assessment, care planning, personal care, medicines, risk management, information sharing or other decisions affecting people receiving care and support.

3. Policy Statement

PHSSL Care Limited will presume that adults have capacity unless it is established otherwise. People will be given practical support to make their own decisions and will not be treated as lacking capacity merely because they make an unwise decision.

4. Legal and Regulatory Framework

This policy will be applied with regard to the Mental Capacity Act 2005 and its Code of Practice; the Human Rights Act 1998; the Care Act 2014; the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, particularly Regulation 11 Need for Consent and other relevant fundamental standards; UK GDPR and the Data Protection Act 2018; and current CQC guidance.

5. The Five Statutory Principles

PHSSL Care Limited will follow the five Mental Capacity Act principles: presume capacity; provide all practicable support before concluding that a person cannot decide; recognise the right to make unwise decisions; act in best interests where capacity is lacking; and choose the least restrictive effective option.

6. Decision-Specific Capacity

Capacity is specific to the particular decision and the time it needs to be made. A person may be able to make some decisions but not others, and capacity may change over time or fluctuate.

7. Supporting Decision-Making

Before assessing capacity, staff must take reasonable steps to help the person decide. This may include using simple language, pictures, interpreters, communication aids, a familiar person, a different time or place, treatment of reversible causes, or allowing additional time.

8. When a Capacity Assessment May Be Needed

A capacity assessment should be considered where there is a genuine reason to doubt the person's ability to make the specific decision. Diagnosis, age, disability, appearance, behaviour or disagreement with professionals must not by themselves be treated as proof of incapacity.

9. The Capacity Test

The assessment must consider whether there is an impairment or disturbance in the functioning of mind or brain and whether, because of that impairment or disturbance, the person is unable to make the particular decision when required.

10. Ability to Make a Decision

A person is unable to make a decision if they cannot understand information relevant to it, retain that information long enough to decide, use or weigh the information as part of the decision-making process, or communicate the decision by any means.

11. Recording Capacity Assessments

Capacity assessments must be proportionate to the decision and clearly recorded where significant care, treatment, restriction, safeguarding or financial decisions are involved. The record should show the decision, evidence considered, support provided, conclusion and assessor.

12. Consent

Consent must be voluntary and informed and given by a person with capacity for the relevant decision, or another lawful authority must apply. Consent should be sought before care and support is delivered and reviewed when circumstances, preferences or the proposed intervention change.

13. Everyday Consent

For routine care, consent may sometimes be expressed verbally or through clear behaviour, depending on the circumstances. Staff must remain attentive to refusal, hesitation, distress or changed wishes and must not assume that previous consent applies indefinitely.

14. Refusal of Care

A person with capacity has the right to refuse care, treatment or support, even where staff believe the decision is unwise. Staff should explain relevant risks, explore alternatives, document the refusal and escalate significant safety concerns appropriately.

15. Best-Interest Decisions

Where a person lacks capacity for a specific decision and a decision must be made on their behalf, it must be made in their best interests. The decision-maker must consider all relevant circumstances rather than relying on convenience, assumptions or organisational preference.

16. Best-Interest Checklist

Best-interest decision-making should consider the person's past and present wishes and feelings; beliefs and values; relevant written statements; likelihood of regaining capacity; views of appropriate family, carers, attorneys, deputies or advocates; available alternatives; and whether the decision can be delayed.

17. Involving the Person

A person who lacks capacity must still be involved as fully as possible. Staff should use appropriate communication, observe preferences and responses, and support participation rather than excluding the person from decisions.

18. Least Restrictive Option

Where an action is required for a person who lacks capacity, staff must consider whether the purpose can be achieved in a way that interferes less with the person's rights and freedom of action.

19. Lasting Powers of Attorney and Deputies

Where another person claims authority to make decisions, PHSSL Care Limited will verify the nature and scope of that authority where relevant. Attorneys and court-appointed deputies may only decide within the powers lawfully granted to them.

20. Advance Decisions and Advance Statements

Valid and applicable advance decisions to refuse specified medical treatment must be respected by those responsible for the treatment. Advance statements, wishes, preferences and values should also be considered in care planning and best-interest decisions.

21. Independent Mental Capacity Advocates

Where the statutory criteria are met, an Independent Mental Capacity Advocate should be instructed through the appropriate arrangements. Staff and managers must cooperate with the advocate and provide lawful access to relevant information.

22. Restraint and Restrictions

Any restraint or restriction must have a lawful basis, be necessary to prevent harm and be proportionate to the likelihood and seriousness of that harm. Staff must follow care plans, risk assessments and relevant legal safeguards and must not use restraint for punishment or convenience.

23. Deprivation of Liberty

Where care arrangements may amount to a deprivation of liberty, management must seek appropriate legal advice or authorisation through the applicable legal process. Staff must not assume that consent from a relative is sufficient where the person themselves lacks capacity.

24. Personal Care and Intimate Care

Consent must be sought and dignity maintained during personal and intimate care. If a person resists or withdraws consent, staff should stop where safe, explore the reason, consider capacity and risk, and seek appropriate guidance before proceeding.

25. Medicines

Consent and capacity considerations apply to medicines support. Where a person lacks capacity for a medicines decision, any best-interest plan must be lawful, recorded and reviewed. Covert administration requires a specific, properly authorised best-interest process and must never be undertaken informally.

26. Information Sharing

Capacity and consent for information sharing must be considered separately from capacity for care decisions. Information may sometimes be shared without consent where another lawful basis applies, including safeguarding or serious-risk circumstances.

27. Safeguarding

A person’s apparent consent does not prevent safeguarding action where there are concerns about coercion, undue influence, abuse, exploitation or risk to others. Capacity, wishes and proportionality must be considered within safeguarding decision-making.

28. Children and Young People

The Mental Capacity Act generally applies from age 16, subject to its provisions and interaction with other law. For younger children, competence, parental responsibility, safeguarding and best interests must be considered under the appropriate legal framework.

29. Emergencies

In an emergency, immediately necessary care or action may be taken where lawful to protect life or prevent serious deterioration. The person’s known wishes, advance decisions and any available lawful authority should be considered whenever practicable.

30. Disagreements and Complex Decisions

Where there is significant disagreement or uncertainty about capacity, best interests, restraint or legal authority, staff must escalate to management. PHSSL Care Limited may seek input from health or social-care professionals, advocates, commissioners or legal advisers as appropriate.

31. Staff Responsibilities

Staff must seek consent; presume capacity; support decision-making; recognise and report concerns about capacity or coercion; follow recorded best-interest decisions; respect lawful refusals; maintain accurate records; and complete required training.

32. Management Responsibilities

Management will ensure staff receive appropriate Mental Capacity Act training; support lawful assessments and best-interest processes; verify relevant authority; arrange advocacy where required; review restrictive practices; and seek specialist advice for complex cases.

33. Monitoring and Audit

PHSSL Care Limited will monitor consent records, capacity assessments, best-interest decisions, restrictive practices, complaints, safeguarding concerns and staff competency through audit, supervision and governance arrangements.

34. Related PHSSL Policies

- A04 Records Management, Confidentiality and Data Protection Policy
- B01 Safeguarding Adults Policy
- B02 Safeguarding Children and Young People Policy
- B04 Equality, Diversity, Inclusion and Human Rights Policy
- D01 Person-Centred Assessment, Care Planning and Review Policy
- D02 Medicines Management Policy
- D06 Dignity, Privacy, Choice and Independence Policy
- D07 Positive Risk-Taking and Risk Management Policy
- F01 Information Sharing and Communication Policy

35. Review and Document Control

This policy will be reviewed at least annually and sooner following significant legal or regulatory change, a serious incident, safeguarding concern, inspection finding, audit finding or identified weakness. The current approved electronic version is the controlled master. Printed or locally saved copies are uncontrolled unless specifically issued and recorded as controlled copies.

Approved by	Lade Awosika
Position	Director
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