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Promoting less restrictive practice: reducing restrictions tool for practitioners

This tool aims to help practitioners identify restrictions in a person's care, in order to examine whether the care is the 'least restrictive' possible, as required by the Mental Capacity Act. It can also be used as part of care planning to 'promote liberty and autonomy' in care plans.

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Introduction

This tool is to assist practitioners to identify restrictions which may not always be evident and to assist them in considering less restrictive alternatives in line with principle 5 of the Mental Capacity Act 2005.

The question is posed in this tool "Is the person as free as anyone else"? This means taking into account any legal restrictions which would apply in the specific setting, for example is the person as free as anyone else with or without a disability? In the 2-2014 Supreme Court judgment relating to the deprivation of liberty *P v Cheshire West and P&Q v Surrey County Council*, Baroness Hale said: "It is axiomatic that people with disabilities, both mental and physical, have the same

human rights as the rest of the human race...This flows inexorably from the universal character of human rights, founded on the inherent dignity of human beings”.

This means that physical liberty is the same for everyone and is disability neutral.

The question is posed in this tool “Is it lawful?” Restrictions could be unlawful for various reasons. But, in particular, if it involves doing something which requires the person’s permission, but they lack capacity to decide, then it is only lawful if it is in their best interests and (if it involves restraint) it is proportionate to the risk of harm they might otherwise suffer. Restraint means using, or threatening to use, force to do something the person is resisting, or doing anything which restricts their freedom of movement.

The restrictions described mainly in Domains 7 and 8 but potentially elsewhere may involve interference with the person’s Human Rights under Article 8 (rights to private and family life). If these restrictions are significant, they may need to be considered by The Court of Protection.

Guiding principles

The Mental Capacity Act sets out the guiding principles which underpin all work with people from the age of 16.

Principle 1

Assumption of capacity: This means that everyone from the age of 16 is assumed to have mental capacity unless it is established that they lack capacity.

Principle 2

A person must not be assessed as lacking capacity unless all practicable steps have been taken to help them make the decision, without success.

Principle 3

A person is not to be treated as unable to make a decision just because they make an unwise decision.

Principle 4

Anything which is done on behalf of someone who lacks capacity must be done in their best interests.

Principle 5

When taking action or making a decision on behalf of someone who lacks capacity thought must always be given to whether this could be achieved in a way which is less restrictive of the person's rights and freedom of action.

Questions to ask



Is it lawful?

If not, stop it or change it.



Is it necessary?

If not, stop it or change it.



Is it proportionate?

If not is there a less restrictive way of doing it?

1. Freedom of movement



Is the person as free as anyone else to come and go where they like, when they like?"

Freedom of movement: examples of direct restrictions

- The person is, or would be, prevented from leaving the premises (some or all of the time).
- The person is, or would be, prevented from entering certain parts of premises (for example kitchen, bathroom, garden) (some or all of the time).
- The person is not, or would not be, allowed to go to certain places without an escort.
- Doors are locked (or deliberately made difficult to open) to prevent the person leaving, or otherwise to restrict their movements.
- Bed rails or other equipment (for example tipping chairs) are used to keep the person in a particular place.
- A person's shoes, other items of clothing, mobility aids or such like are, or would be removed from (or refused to) them to restrict their movements in particular circumstances.
- On occasions, the person is made to be separate from others and/or stay in a confined area (for example "seclusion"/"time out").
- Sometimes the person is, or would be, taken or made to go somewhere despite their objections (for example to or from their bedroom, to the doctor).
- The person is relatively free to come and go but would not be able to discharge themselves or live elsewhere.
- Access to communal rooms and gardens is limited and controlled by staff

Freedom of movement: examples of indirect restrictions

- Although free to come and go, the person is expected to ask “permission”. The person is discouraged from going out (or other people are discouraged from taking the person out) for the convenience of staff or the provider.
- Although free to come and go, the person cannot in practice to do so without asking someone else to unlock doors etc.
- Limited availability of help from staff means the person cannot, in practice, exercise their right to come and go as they wish.
- Even though they do not object, where and when the person goes is, in practice, decided by others.
- Access to gardens or outdoor areas are restricted due to “weather”.

Freedom of movement: questions to ask

- Can changes be made to the environment which will enhance the person’s freedom of movement?
- Could a programme be put in place which will mean at some point in the future the person will be free to come and go?
- Does a risk assessment simply need reviewing?
- Does the person need to learn a new skill as a result of which they will be able to come and go more freely?
- Are some restrictions on movement historic and are no longer needed?
- Are behavioural approaches always implemented before removing or restricting people?

2. Eating and drinking



Is the person as free as anyone else to eat and drink as they wish?"

Eating and drinking: examples of direct restrictions

- Certain types of food or drink (for example alcohol, hot drinks, takeaways) would be removed from the person if they bought them, or were given them by someone else.
- Certain types of food or drink are not, or would not be, provided to the person on request (even though they could, in practice be provided and they could afford them).
- The person is, or would be, prevented from preparing their own food, or from doing so unsupervised (either generally, or at particular times).
- The person is, or would be, prevented from eating and/or drinking at certain times or in certain places, or from doing so unsupervised.
- The person is, or would be, prevented from smoking when other people would be allowed to smoke.
- The person is not being allowed to eat according to their cultural or religious beliefs

Eating and drinking: examples of possible indirect restrictions

- The person could select and/or prepare food and drink for themselves, but in practice is discouraged from doing so for the convenience of staff or the provider.
- Limited availability of help from staff means the person cannot, in practice, exercise their right to eat and drink as they wish.
- Meal times and/or menus are more restricted than they need be, for the convenience of staff or the provider.
- Even though they do not object, what and when the person eats and drinks is, in practice, decided by others.
- It is difficult in practice for the person to eat according to their religious or cultural beliefs.

Eating and drinking: questions to ask

- Can the person be taught skills to help them increase independence with cooking?
- Could a trial be put in place to provide food in a different way?
- If the person is unable to prepare a full meal, can they contribute to elements of meal preparation?
- Can the person be involved in deciding what food choices are on offer?
- Could you get advice from someone else to assist with cultural or religious food practices?

3. Washing and toileting



Is the person as free as anyone else to use the bathroom as and when they wish?"

Washing and toileting: examples of direct restrictions

- The person is, or would be, prevented from using the toilet unsupervised (some or all of the time).
- The person is, or would be, prevented from washing, bathing, showering and/or shaving unsupervised (some or all of the time).
- The person is, or would be, prevented from using the toilet/ bathroom/shower room at certain times.
- The toilet/bathroom/shower room is, or would be, locked to prevent the person using it without supervision/permission (some or all of the time).
- At times, the person is, or would be, washed, bathed and/or shaved despite their objections.
- The person is kept in incontinence pads for the convenience of staff (even though continent).
- There is a delay for incontinence pads to be changed which relates to staff levels and priorities.

Washing and toileting: examples of indirect restrictions

- The person could use the toilet and/or wash and bathe themselves, but in practice is discouraged from doing so, for the convenience of staff or the provider.

- The facilities necessary for the person to use the toilet and/or wash and bathe themselves are not provided.
- Limited availability of help from staff means the person cannot, in practice, use the toilet and/or wash or bathe as they wish.
- Even though they do not object, when and how a person uses the toilet, washes or bathes is in practice, decided by others.

Washing and toileting: questions to ask

- Could any changes be made easily to bathroom facilities to enable the person to do more for themselves?
- Can the person be provided with any aids to help them with washing or toileting?
- Would visual prompts or reminders help the person to be more independent with washing and toileting?
- Can the times for washing and toileting be agreed with the person and added to a planner or visual reminder?

4. Personal appearance



Is the person as free as anyone else to wear what they like, when they like and appear as they like?"

Personal appearance: examples of indirect restriction

- The person is, or would be, prevented from wearing certain items of clothing, jewellery or make-up (some or all of the time).
- Certain items of clothing, jewellery or make-up would be removed from the person if they bought them or were given them by someone else.
- The person is, or would be, made to wear protective clothing/ headgear (either generally or for certain activities for which other people would not).
- At times, the person is, or would be, dressed or undressed, despite their objections.
- At times, the person's hair is, or would be, cut or dressed despite their objections.
- At times, the person's clothes are, or would be, washed or cleaned despite their objections.
- The person is not dressed in their own clothing.

Personal appearance: examples of indirect restrictions

- The person could choose their own clothes, but in practice is discouraged from doing so, for the convenience of staff or the provider.
- The person is deliberately offered only a limited selection of clothing to choose from, despite other items being available.
- Limited availability of help from staff means the person cannot, in practice, wear what they want and/or look as they wish.
- The person has little choice over when and how their clothes are washed or cleaned.
- Even though they do not object, what the person wears and how they look is, in practice, decided by

others.

Personal appearance: questions to ask

- Can staff provide visual or written reminders of what is appropriate clothing?
- How can the person be more involved in the choice of clothing, for example using catalogues to select clothing?
- If the person's choice of clothing is not seen to be appropriate can some elements of it be facilitated within the final choice?
- Can the establishment change the arrangements for hair and beauty to encourage independence?

5. Living environment

“ Is the person as free as anyone else to arrange their living environment the way they want it?

Living environment: examples of indirect restriction

- There are limits on what personal property the person can have with them, or where it is kept.
- Specific items of their property (for example phones, computers, games, musical instruments) are, or would be, withheld from the person (some or all of the time).

- Certain items of property would be removed from the person if they bought them, or were given them by someone else.
- The person cannot access items of their own property at all times as they wish (for example because it is kept in storage by staff, or a “safe place” to which they do not have direct access).
- At times, items of the person’s property are, or would be, moved and/or cleaned despite their objections.
- Property which has been stored by staff is not appropriately labelled or securely stored.

Living environment: examples of indirect restrictions

- The person could exercise greater control of their living environment, but in practice is discouraged from doing so, for the convenience of staff or the provider.
- Limited availability of help from staff means the person cannot, in practice, control their living environment as much as they want.
- The person has little choice about when or how their living environment is tidied or cleaned.
- Even though they do not object, the person’s living environment is, in practice, decided by others.

Living environment: questions to ask

- Can simple changes be made so the person can have more familiar items and personal property?
- Can the person be involved in practical tasks such as cleaning and tidying their room?

- Have you involved the person in all the details of their room and immediate environment?
- Consider how the person lived when they were in their own home and what their preferences for cleaning were?

6. Freedom to set own schedule



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Is the person as free as anyone else to do what they want to do, when they want to do

Freedom to set own schedule: examples of indirect restriction

- There are specific activities (for example watching television, playing music, exercising, shopping, knitting, playing football, using a computer) that person is, or would be, prevented from doing (some or all of the time). There are specific activities that the person is, or would be, prevented from doing unless supervised (some or all of the time).
- There are set, or limited times, at which the person is, or would be, permitted to do particular things (and they would be prevented from doing them at other times).

Freedom to set own schedule: examples of indirect restrictions

- The person is discouraged from doing things they might otherwise do, for the convenience of staff or the provider.

- Limited availability of help from staff means the person cannot, in practice, do what they would like to do.
- The person is offered only a limited range of potential activities, for the convenience of staff or the provider.
- In practice, the activities available to the person insufficiently reflect the person's own wishes and preferences.
- In practice, the way the service is organised requires the person to fit their life around the routine of the service rather than the other way around.
- Even though they do not object, what the person does and when, is, in practice, decided by others.

Freedom to set own schedule: questions to ask

- Can you set activity times with the full involvement of the person?
- Can you find local community groups or activities which the person can be involved with?
- Are people and their family/friends asked about their interests and hobbies so that appropriate activities can be provided?
- Does the person (or other residents) have skills they can share with others to provide an activity?

7. Family and social life

“ Is the person as free as anyone else to see – or not to see – whom they like, when they like and to live a fulfilling family and social life?”

Family and social life: examples of indirect restriction

- The person is, or would be, prevented from contacting particular people, or that contact is, or would be, restricted (for example face to face contact not permitted, limits on the amount of contact, contact must be supervised).
- Another person is, or would be, prevented from seeing or contacting the person, or that contact is, or would be, restricted.
- Another person is or would be, permitted to see or contact the person, despite the person's objections.
- The person is, or would be, prevented from forming, or continuing, a sexual relationship.
- Visitors are restricted to specific rooms, and are not allowed general access.
- Electronic methods of communication are restricted or banned (such as email, social networking, mobile phones).

Family and social life: examples of indirect restrictions

- The person could exercise greater control of their contacts and social life, but in practice is

discouraged from doing so, for the convenience of staff or the provider.

- Other people are discouraged from seeing or maintaining contact with the person.
- The person's contact with others is limited in practice, for example because visiting is only allowed at certain times or access to computers is limited to certain times.
- Limited availability of help from staff means the person cannot, in practice, control their contacts and social life as much as they want.
- Even though they do not object, the person's contacts and social life are, in practice, decided by others.

Family and social life: questions to ask

- If contact is restricted is the person involved in this decision and a formal plan for restriction or supervised visits agreed?
- If contact is restricted can the decision be reviewed regularly with a plan to remove this altogether?
- Can you find other places for contact to take place which works better for the person and their visitors? Have you explored all methods of keeping in touch including electronic and social media?

8. Privacy



Is the person as free as anyone else to spend time alone, and to keep their own business private?"

Privacy: examples of indirect restriction

- The person is not, or would not, be allowed to spend time on their own/out of sight (some or all of the time).
- The person is not permitted to lock the door to their own private space (either when they are in it, or when they are elsewhere).
- The person's whereabouts or activities are remotely monitored (for example by electronic tags, CCTV, door alarms) and they do not have capacity to make this decision themselves.
- The person's post is, or would be, intercepted by staff.
- Their telephone calls are, or would be, listened in to by staff.

Privacy: examples of indirect restrictions

- The person is discouraged from being on their own/out of sight, or locking their door, when they want, for the convenience of staff or the provider.
- The way the service is provided, or the provider's premises, makes it difficult for the person to

maintain their privacy when they want.

- Staff do not knock, or seek permission, before entering the person's private space.
- Staff do not properly respect the person's confidentiality when talking to other people.

Privacy: questions to ask

- Is there a restriction in place which is historic and has not been updated, can this be reviewed?
- Can negotiation take place with the person about times to be alone and for this to be respected by all staff?
- Are monitoring devices necessary? Ask what would happen if they were not used. How great is the risk, how likely and is the use of such a device proportionate?

9. Health and healthcare



Is the person as free as anyone else to control their own health and healthcare?"

Health and healthcare: examples of indirect restriction

- Medication is, or would be, used specifically to control the person's behaviour without the person having the opportunity to understand or be involved in the decision.

- The person does not always have their glasses, hearing aids or false teeth at times they need them.
- The person is not, or would not be, permitted to keep and control their own medication if they wish (for example because it is kept elsewhere by staff).
- The person is not permitted to register (or stay) with a GP surgery of their own choosing, or to decide which hospital to attend, despite those choices being available.
- Drips, or similar equipment, are fixed in such a way that the person cannot remove them (and they lack capacity in relation to this decision).
- At times, the person is, or would be, given medication – or other treatment – despite their objections.
- The person is put under considerable pressure to consent/ agree to medication.
- The purpose, risks, side effects, benefits, nature, likelihood of success and alternatives of specific treatments have not been explained to the person prior to them starting care, support or treatment.

Health and healthcare: examples of indirect restrictions

- The person could exercise greater control of their healthcare, but in practice is discouraged from doing so, for the convenience of staff or the provider.
- Limits on the availability of assistance from staff means the person cannot, in practice, control their health or healthcare as much as they want.
- Even though they do not object, the person's healthcare is, in practice, decided by others.

- The person's glasses or hearing aids are not removed but they are not actively promoted.

Health and healthcare: questions to ask

- Can the person gradually increase control over their own health related decisions?
- With a short programme of input from health professionals could the person make some issue specific decisions?
- Can you involve other professionals to explain aspects of medication or treatment to enable the person to develop understanding?
- Are there publications, DVDs or books which would assist the person to make their own decisions?

10. General

General: examples of indirect restriction

- Staff are not trained and encouraged to see themselves as enablers and supporters, rather than as exercising control.
- The person is at risk, through boredom, isolation or under stimulation, of losing skills, or missing opportunities to gain them, because they are not being enabled to interact with other people, keep fit and alert, and/or challenge themselves.
- The person is at risk of not having their wishes and feelings understood properly, or being reluctant to engage, because there is a lack of continuity in who is supporting them and/or because they aren't involved in choosing who supports them.

General: examples of indirect restrictions

- Activities and external stimulation are offered but, restricted for the convenience of staff or the provider.
- The person is not involved in producing the profiles of themselves and/or their needs that are shared between staff.

General: questions to ask

- Ensure all staff have attended Mental Capacity Act training and can demonstrate that they understand and can apply the principles of the Act.

This resource was originally produced in 2016 by Lorraine Currie on behalf of the Association of Directors of Adult Social Services (ADASS) and the Local Government Association (LGA) and was updated in 2024.