



Department of Health and Social Care
Falkland Islands Government

Deprivation of Liberty, Use of Restraint and Restrictive Practice Policy

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Issue Date: April 2024

Version No: V1

Status: Active

Review Date: April 2028

Amendment History

Version	Status	Summary of Changes	Date of Issue
V1	Active	Approved by ExCo April 2024. Added to Q-Pulse May 2024	May 2024

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Safeguarding Adults in the Falkland Islands – Policy

Safeguarding Adults in the Falkland Islands – Guidance for Professionals

Mental Capacity Policy

Positive Behaviour Support Policy

INTRODUCTION

1 PURPOSE

The Falkland Islands Constitution Order 2008 establishes a right to Personal Liberty (S5) and Freedom of Movement (S8). Any interference with those rights must be lawful.

The purpose of the policy is to provide Falkland Islands Government (FIG) employees with accurate information to consider when the use of deprivation of liberty, restraint or restrictive practice is occurring and to understand what additional safeguards are required to ensure individuals rights are protected.

The policy does not apply to those detained under the Mental Health Ordinance 2010.

It is necessary for all professionals employed by the Falkland Islands Government¹ in the care and support of adults familiarise themselves with this policy.

2 BACKGROUND

The Islands Plan 2022-2026 seeks to 'modernise national equalities policies and practices, and champion social equity values' to 'grow an environment where discrimination is challenged, people feel they are treated fairly and are protected from discriminatory practices and behaviours.'

This policy provides additional safeguards for adults in need of care and support throughout the community and aims to ensure that best practice is followed in terms of any proposed restrictions, providing guidance that is specific to the Falkland Islands.

The policy follows principles of best practice and is line with professional codes of conduct and standards.

3 SCOPE

The Deprivation of Liberty, Use of Restraint and Restrictive Practice policy will apply to anyone;

- Aged 18 and over,
and
- who suffers from an impairment or a disturbance in the functioning of their mind or brain,
and

¹ Falkland Islands Government employees includes those employed on a permanent basis by the government and those employed indirectly by the Falkland Islands Government such as on a contract or agency basis.

- who lacks the capacity to give informed consent to the arrangements for their care and/or treatment,
and
- for whom deprivation of liberty, restraint or use of restrictive practice is considered to be necessary in their best interests to protect them from harm.

It is relevant to all care and support settings including;

- Hospital
- Residential Facilities
- Sheltered Housing
- Supported Living
- Day Care Provision

There may be individual cases where a person is deprived of their liberty in their own home, in such cases separate guidance should be sought from Social Services Department.

This policy should be read and understood by all employees involved in the care and support of adults in the Falkland Islands on behalf of the Falkland Islands Government.

When all other less restrictive alternatives have been attempted the use of deprivation of liberty, restraint or restrictive practice should only ever be used as a last resort and then only for the shortest possible time.

The policy and associated guidance should be read in conjunction with The Falkland Islands Mental Capacity Policy and also the Positive Behaviour Support policy.

All practical and reasonable steps should be taken to avoid deprivation of liberty, use of restraint or restrictive practice but where such practice is occurring that is not itself a statement on the standards of care. Deprivation of liberty, restraint and use of restrictive practice will exist in care and support environments of the highest standard.

3.1 DEPRIVATION OF LIBERTY

There are some circumstances in which depriving a person, who lacks capacity to consent to the arrangements made for their care or treatment, of their liberty is necessary to protect them from harm, and is in their best interests. If a person is being deprived of their liberty it is necessary to follow the referral procedure outlined within this policy.

At the current time the Falkland Islands does not have legislation in place in relation to deprivation of liberty. For the purpose of this policy the definition of deprivation of liberty is as follows;

A Deprivation of Liberty occurs when a person is deprived of their liberty which can be summarised through what is called the “acid test”²:

- (i) A person is subject to continuous supervision and control *and*
- (ii) That person is not free to leave the place where they are.

A decision made about how a person is treated and/or cared for on any one occasion is unlikely to mean they are being deprived of their liberty. For example, periodically restraining someone in order to give them vital care or treatment does not alone amount to them being deprived of their liberty.

The decision that someone meets the ‘acid test’ may flow from the following factors;

- planned restraint is used, including sedation, to admit a person to a care setting where that person resists admission
- the Falkland Islands Government exercises complete and effective control over the care and movement of a person for a significant period
- the Falkland Islands Government exercises control over assessments, treatment, contacts and residence
- a request by family members or other informal carers for a person to be discharged, contrary to the person’s care and support plan is declined
- the person is unable to maintain social contacts because of restrictions placed on their access to other people
- the person loses autonomy because they are under continuous supervision and control

Deprivation of Liberty must only occur if it is necessary and proportionate, in the person’s best interests and be the least restrictive option available to ensure their safety and well-being. Where a person does not have mental capacity to agree to such measures it is necessary to implement additional safeguards to ensure the individuals rights are upheld.

3.2 RESTRAINT AND RESTRICTIVE PRACTICE

The Falkland Islands Mental Capacity Policy permits some restraint and restrictions to be used – but only if;

- It is a proportionate response to the likelihood and seriousness of the harm, and
- All other less restrictive means of achieving this have been tried and therefore they are in a person's best interests.

² Cheshire West and Chester Council v P [2014] UKSC 19

Restrictive interventions are defined as ‘deliberate acts on the part of other person(s) that restrict an individual’s movement, liberty and/ or freedom to act independently in order to:

- Take immediate control of a situation only where there is a real possibility of harm to the person or others if no action is undertaken;
and
- End or reduce significantly the risk of harm to the person or others;
and
- Contain or limit the person’s freedom.

3.3 WHEN MIGHT RESTRAINT OR RESTRICTIVE PRACTICE BECOME A DEPRIVATION OF LIBERTY?

There is no simple definition of deprivation of liberty. The difference between restraint or restrictive practice and deprivation of liberty is one of degree or intensity. It may be helpful to envisage a scale which moves from restraint and restrictive practice to deprivation of liberty (Appendix One). Where an individual is on the scale will depend on the circumstances of the individual and may change over time.

Appropriate use of restraint for a short time, in accordance with the Falkland Islands Mental Capacity Act is not unlawful and is not a deprivation of liberty. If you use restraint frequently and you have made other decisions that significantly restrict a person’s liberty, you should consider whether the person’s liberty is being deprived. You should always make these decisions in consultation with professionals, members of the person’s family, and/or relevant representatives and advocates. When considering whether the use of restraint or restrictive practice constitutes a deprivation of liberty the ‘acid test’ (para 3.1) must be considered.

Guidance on when might restraint become a deprivation of liberty can be seen in Appendix Two.

DETAILS SECTION

4 MENTAL CAPACITY

The Falkland Islands Mental Capacity Policy has been developed to protect people’s rights to make decisions, and where it is established the person lacks capacity, their right to have decisions made in their best interests. Everybody working with adults who may lack mental capacity is required to comply with the Falkland Islands Mental Capacity Policy.

There are five statutory principles which underpin the values and principles of the Falkland Islands Mental Capacity Policy. The Falkland Islands Government is informed by and uses these five principles to guide all its interactions, and to deliver care and support.

The five principles are:

1. A person must be assumed to have capacity unless it is established that they lack capacity
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
3. A person is not to be treated as unable to make a decision merely because they make an unwise decision
4. An act done, or decision made, under this policy, for or on behalf of a person who lacks capacity, must be done, or made, in their best interests
5. Before the act is done, or the decision is made, regard must be had as 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.

A mental capacity assessment can be triggered in one of many ways following the establishment of a need for the person to make a specific decision e.g. the person's behaviour circumstances or previous issues suggests they may lack capacity or someone else has raised concerns.

Assessment of capacity can usually be made by any professional, however where the decision relates to deprivation of liberty, restraint or restrictive practice it is recommended the initial mental capacity assessment be completed by a registered professional e.g. nurse, occupational therapist, doctor or social worker. The mental capacity assessment should be undertaken using guidance contained within the Falkland Islands Mental Capacity Policy (s2.4). Wherever possible, and always in cases involving deprivation of liberty the Two Stage Test must be completed as detailed within the Falkland Islands Mental Capacity Policy.

If the Best Interest Decision is to deprive the person of their liberty it will be necessary to complete the Falkland Islands Best Interest Decision documentation as detailed within the Falkland Islands Mental Capacity Policy.

If the Best Interest Decision is for the use of restraint or restrictive practice, and it is anticipated that this need will continue, then it is likely this will go beyond 'mere' restraint to a deprivation of liberty. In this case the Falkland Islands Best Interest Decision documentation should always be completed. As defined within the Falkland Islands Government Mental Capacity Policy, the Best Interest Decision should take into account the view of relevant professionals involved in the care and support of the individual at that time.

5 BEST INTEREST DECISIONS

In reaching a best interest decision you must;

- Involve the person who lacks capacity as much as practically possible
- Consider the person's past and present beliefs, values, wishes and feelings
- Take into account the views of carers, relatives, friends and advocates
- Consult others who are involved in the person's care and well-being (with either a formal meeting or via telephone if relatives/carers cannot attend in person or time is of the essence)
- Consider whether the patient will regain capacity sometime in the future in relation to the decision required
- Do not base the decision solely on age, appearance, behaviour or condition.

When reaching a Best Interest Decision regarding deprivation of liberty, restraint or restrictive practice the decision maker must be able to balance the individual's right to liberty with their right to safety detailing how the course of action proposed is the least restrictive option, proportionate to the likelihood and severity of harm and agreed to be in the person's best interests. All best interest decisions must be documented in the person's patient or care and support records (Falkland Islands Mental Capacity Policy, s4.1).

6 USE OF RESTRAINT AND RESTRICTIVE PRACTICE

The Falkland Islands Mental Capacity Policy allows for restraint or restrictive practice to be used on a person who (a) lacks capacity, where (b) it is reasonably believed to be necessary and proportionate to protect them from harm.

Restraint and restrictive practice must be used as the last possible option and in the least restrictive way and for the shortest amount of time. Anybody considering using restraint or restrictive practice must have objective reasons to justify that restraint is necessary. They must be able to show that the person being cared for is likely to suffer harm unless proportionate restraint is used.

Where restraint or restrictive practice of any kind has been used this must be escalated to the manager of the service, recorded within the care and support notes, including date, time, duration, type of restraint, staff members involved, and why this course of action was considered necessary to prevent harm to the person, , and that this action was a proportionate response to the likelihood and seriousness of the risk of harm.

Professionals must not use restraint just so that they can do something more easily. The action must be completed only by appropriately trained staff.

Intervention or the threat of intervention should **NEVER** be used as a form of punishment.

The Falkland Islands Positive Behaviour Policy provides guidance to staff On Managing Behaviours that challenge in a holistic way which aims to increase quality of life and reduce the need for restrictive intervention. The Falkland Islands Positive Behaviour Policy should be read in conjunction with this policy.

Restraint can include;

- Physical restraint: any direct physical contact where the intention of the person intervening is to prevent, restrict, or subdue movement of the body, or part of the body of another person.
- Prone restraint: (a type of physical restraint) holding a person chest down, whether the patient placed themselves in this position or not, is resistive or not and whether the person is face down or has their face to the side. It includes being placed on a mattress face down while in holds; administration of depot medication while in prone holds, and being placed prone onto any surface.
- Chemical restraint: the use of medication which is prescribed and administered for the purpose of controlling or subduing disturbed/violent behaviour, and where it is not prescribed for the treatment of a formally identified existing physical or mental illness.
- Mechanical restraint: the use of a device (e.g. belt or cuff) to prevent, restrict or subdue movement of a person's body, or part of the body, for the primary purpose of behavioural control.

Restrictive Practice can include a range of interventions that has the effect of restricting the rights or freedom. It is used for a number of reasons including to manage behaviours that challenge, to keep people safe and also to help people live a more positive life. Examples of restrictive practice include;

Environmental

- 24-hour support/observations/1:1 supervision
- Key pad access
- Access to space
- Locked doors/drawers/medication cabinets
- Segregation
- Assistive technology
- Non inclusive environments (access)

Mechanical

where the use of mechanical restriction is implemented for the purpose of controlling or subduing disturbed/violent behaviour

- Bed rails
- Lap straps
- Arm cuffs/splints to reduce self-injury
- Grab belts
- Harnesses in vehicles
- Use of mittens

Chemical restraint; the use of medication

where the use of medication which is prescribed and administered for the purpose of controlling or subduing disturbed/violent behaviour, and where it is not prescribed for the treatment of a formally identified existing physical or mental illness.

- Regular sedative medication
- As required sedative medication
- Rapid tranquilisation
- Covert medication (medication given without the persons' knowledge)

(Any form of pharmaceutical restriction must be agreed on a multi-disciplinary basis involving the recommendation of the medical professional responsible for prescribing medication.)

Physical

- Proactive working practices i.e. manual guidance/assistance and ensuring staff are prepared for potential situations.
- Keeping safe techniques i.e. breakaway techniques.
- Person specific interventions i.e. hair pull release.
- Restrictive person specific i.e. anything that would restrict the individual's freedom of movement, such as 2 person escorts.

7 DEPRIVATION OF LIBERTY REFERRAL PROCEDURE

The Mental Capacity Policy allows for the use of some restraint and restrictive practice for adults who lack capacity – but only if they are in a person's best interests and necessary and proportionate; it **does not** provide authority for deprivation of liberty to be used.

If it is established that the use of restraint and restrictive practice will deprive a person of their liberty then additional safeguards are needed in order to ensure the deprivation of liberty is carried out in a lawful way.

In order to ensure the rights of adults without capacity who are deprived of their liberty are upheld the following process has been adopted by the Falkland Islands Government.

7.1 Step One - Establishing deprivation of liberty

In establishing whether someone is deprived of their liberty there are two key questions to ask – 'the acid test':

(1) Is the person subject to continuous supervision and control?

and

(2) Is the person free to leave?

If someone is subject to a high level of supervision, and is not free to leave the premises permanently, then it is almost certain that they are being deprived 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, you must make a deprivation of liberty referral;

- The frequency and intensity of monitoring level meets the 'acid test'
- Person not being free to leave
- Regular use of physical restraint to control behaviour
- Frequent or prolonged use of sedation/ medication to control behaviour
- The person is confined to a particular part of the establishment in which they are being cared for
- The Falkland Islands Government taking decisions on a person's behalf regarding treatments
- The Falkland Islands Government determine contact with visitors, above generic visiting restriction in place within the care and support setting
- Duration of the restrictions

- The person concerned objects verbally or physically to the restriction and/or restraint
- The person is already subject to a Supreme Court deprivation of liberty authorisation which is about to expire
- The level of care and support provided taken as a whole

A determination will need to be made if the restrictions implemented reach the degree and intensity which constitute a deprivation of liberty. If it remains unclear whether a person is being deprived of their liberty, then action should be taken as if a deprivation of liberty is occurring.

7.2 Step Two - Making a Deprivation of Liberty Referral.

If a person is being or suspected of being deprived of their liberty a deprivation of liberty referral must be made. The person; must;

- Be at least 18 years of age
- lack mental capacity to consent to care and treatment plan including the proposed deprivation of liberty
- not be detained under the Mental Health Ordinance 2010

If you have identified the person is deprived of their liberty;
and

You believe they lack capacity to consent to their care and support arrangements.

YOU NEED TO:

- 1) Complete the Falkland Islands Mental Capacity Assessment documentation IN FULL, in relation to the decision to consent to care and support arrangements including proposed deprivation of liberty (see Falkland Islands Government Mental Capacity Policy, s5.)
- 2) Inform family/ representative or advocate that you will be following the deprivation of liberty process.
- 3) Consider if there are less restrictive measures
- 4) If the patient lacks mental capacity to consent to the care and support arrangements including proposed deprivation of liberty then you will need to complete the Best Interests Decision Form (see Falkland Islands Government Mental Capacity Policy, s6.)
- 5) The completed deprivation of liberty referral form (Appendix five), mental capacity assessment and best interests decision documentation should be submitted to Social Services via Referrals.social@kemh.gov.fk or 27296
- 6) The Social Services Department will screen and action the referral in accordance with the Social Services Deprivation of Liberty process.

The deprivation of liberty referral form must be completed in full.

A copy of the deprivation of liberty referral should be saved to the person's care and support record.

You should inform family members that a deprivation of liberty referral has been submitted to Social Services in line with the Deprivation of Liberty, Restraint and Use of Restrictive Practice policy unless it is impractical or impossible to do so, or undesirable in terms of the person's best interests. Reasons for not informing family members should always be recorded.

A deprivation of liberty referral must be made where it appears likely that, at some time during the next 28 days, someone will be accommodated in hospital, residential care or other care setting in circumstances that amount to a deprivation of liberty within the meaning of this policy.

Whenever possible, a referral should be submitted in advance. Where this is not possible, and you believe it is necessary to deprive someone of their liberty in their best interests a deprivation of liberty referral must be submitted within 24 hours of the commencement of the deprivation of liberty.

7.3 When should an Advocate be requested?

The Assessment and Safeguarding of Adults Ordinance 2020 states that where an individual lacks mental capacity the government must be satisfied that there is a person -

(a) who would be an appropriate person to represent and support the individual for the purpose of facilitating the individual's involvement;

and

(b) who is not engaged in providing care or treatment for the individual in a professional capacity or for remuneration.

In cases where it is identified there is not an appropriate person to support the involvement of the individual the Government must;

'arrange for a person who is independent of the Government (an "independent advocate") to be available to represent and support the individual for the purpose of facilitating the individual's involvement.'

When making a deprivation of liberty referral it is important to identify and document within the referral a family member or alternative representative who can support the involvement of the individual. In the absence of an appropriate family member or alternative representative this should be highlighted on the referral form. It is then Social Services responsibility to identify an independent advocate to support the involvement of the individual within the deprivation of liberty process.

There may be cases when family members or alternative representatives have contradictory views and where these cannot be immediately resolved this should be highlighted on the referral form.

7.4 Receipt of a deprivation of liberty referral

Social Services should aim to review all new referrals for deprivation of liberty within 2 working days, and undertake initial checks to ensure that the referral is likely to meet the referral criteria, for example by ascertaining:

- whether the service user lacks mental capacity to consent to care and treatment;
- whether the service user is subject to 24-hour supervision and control by staff;
- whether staff would need to take steps to stop the service user from leaving the care home or hospital if they attempted to.

Where vital information has not been provided in order to make a decision regarding the referral for deprivation of liberty, Social Services will request that the department making the deprivation of liberty referral provides any information required within the initial two working days.

When a referral for deprivation of liberty is received, Social Services must, as soon as practical and possible:

- consider whether the referral is appropriate and should be progressed
- seek any further information that is required from the department making the referral to help with the decision
- Appoint an advocate where it has been confirmed the person does not have a family member or appropriate representative to support their involvement in the deprivation of liberty process.

Social Services must decide within 10 working days whether the person is being deprived of their liberty. If it is determined that the individual is being deprived of their liberty it is the responsibility of Social Services to seek legal advice from the Attorney Generals Chambers.

Social Services must keep a record of the deprivation of liberty referral.

7.5 Documentation

In order to process the deprivation of liberty referral process it will be necessary for Social Services to have access to and take copies of information relevant to the individual.

Social Services may at all reasonable times examine and take copies of;

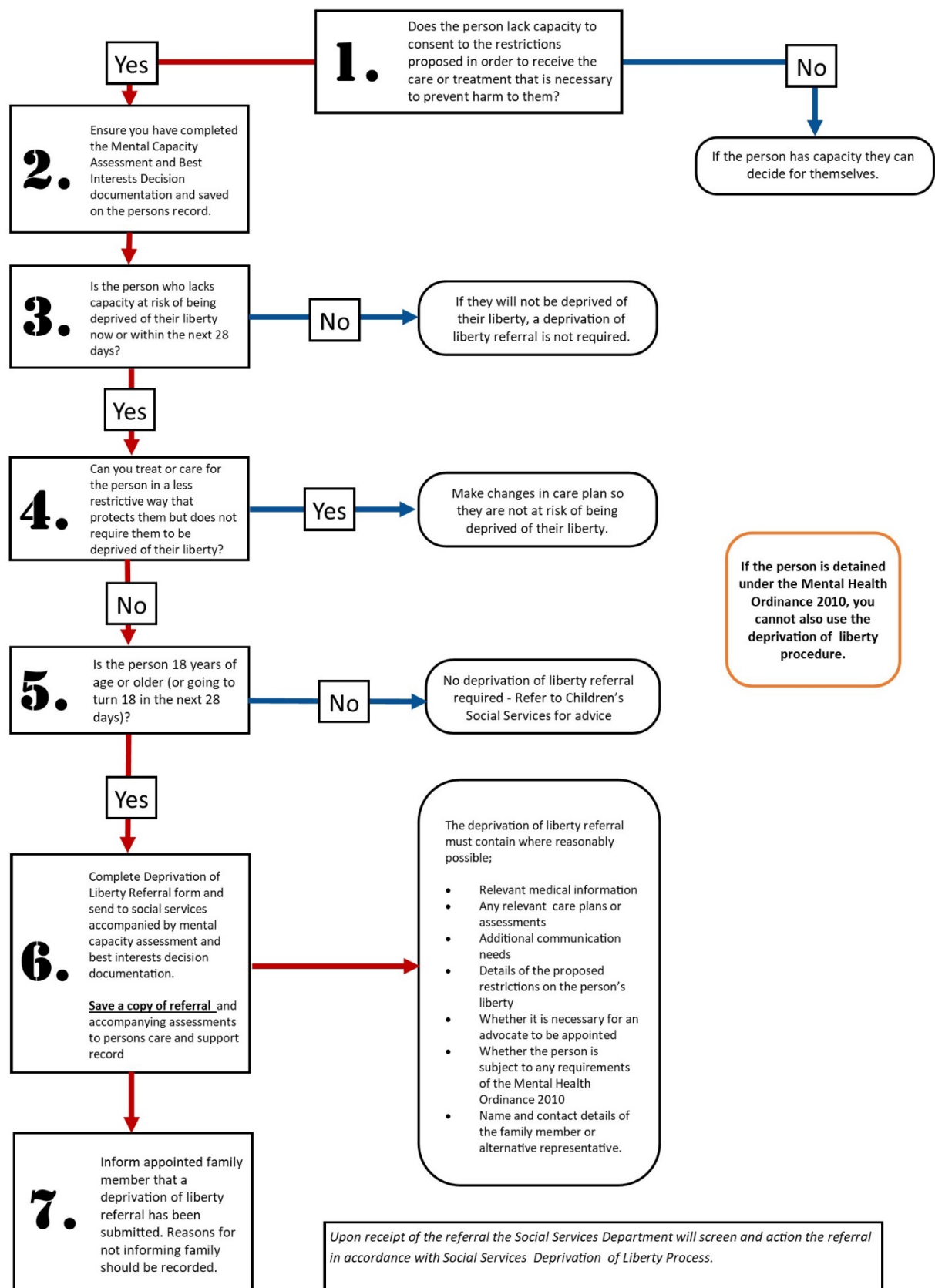
- health information relating to the deprivation of liberty
- any care and support record relating to the individual
- relevant risk assessments
- any record considered by Social Services as relevant to the deprivation of liberty

If it is the advice of the Attorney General's Chamber that the deprivation of liberty should be authorised by the Supreme Court, all documentation will be shared with the court for consideration. It is therefore essential that all recording is of a high standard and clearly outlines the current care and support arrangements, why the proposed deprivation of liberty is considered to be in the person's best interests and the least restrictive option available.

8 Safeguarding of Adults

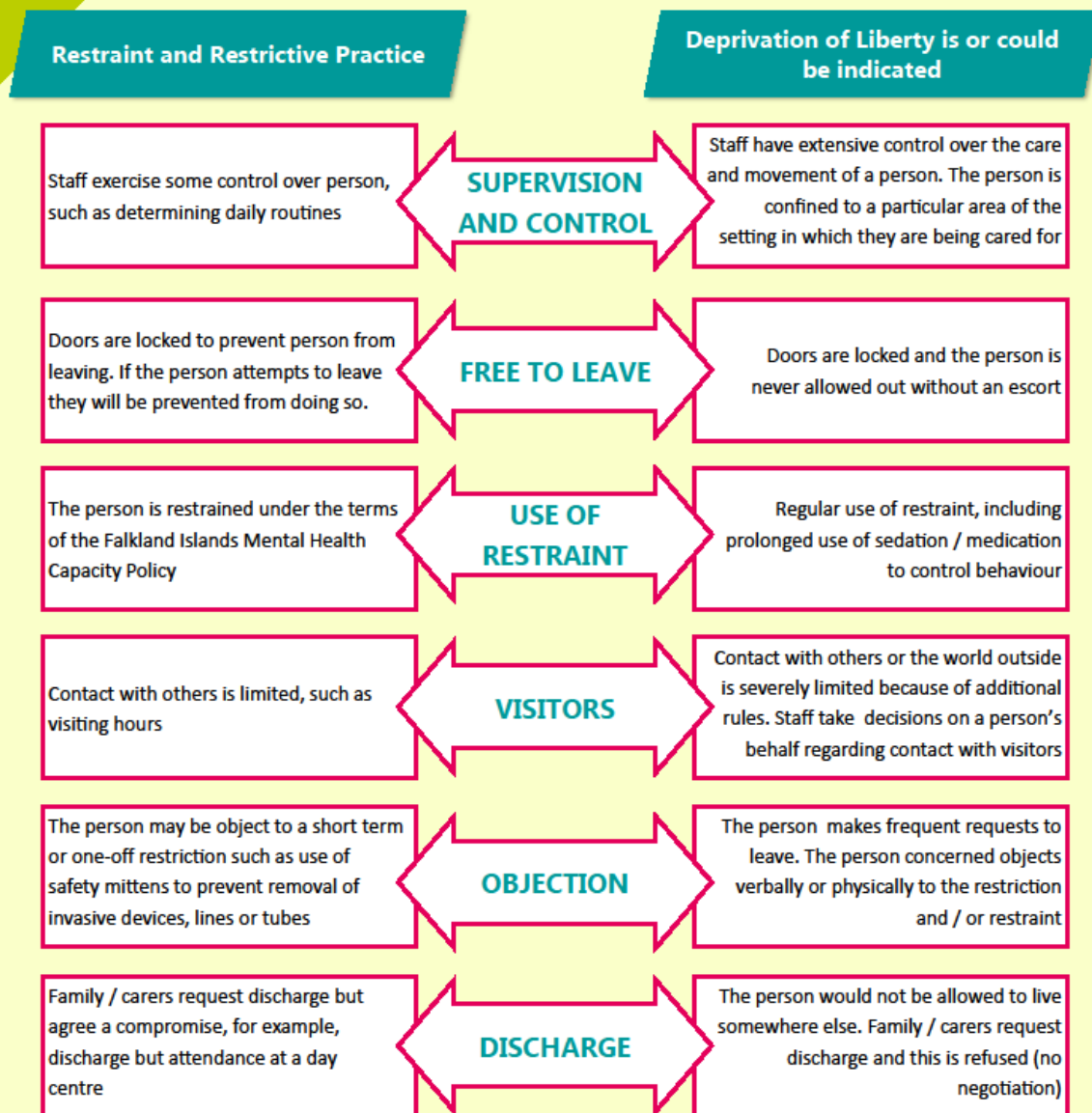
It is the responsibility of all FIG employees to understand when a deprivation of liberty is occurring or is likely to occur and to observe the steps contained within this policy. In cases of deprivation of liberty where the principles of this policy are not fulfilled a safeguarding adult referral must be considered in accordance with the Safeguarding of Adults in the Falkland Islands policy and Safeguarding of Adults in the Falkland Islands – Guidance for Professionals.

Deprivation of Liberty Referral Process



Deprivation of Liberty, Restraint and Restrictive Practice

When does restraint and restrictive practice become a Deprivation of Liberty?



When deciding if someone is deprived of their liberty, you must consider the **DEGREE** and **INTENSITY** of the above restrictions.

1. Is the person subject to continuous supervision and control?
- AND**
2. Is the person free to leave?

If in doubt, always submit a deprivation of liberty referral.

Safeguarding Adults

 **Social Services
Department**

Appendix Three – Mental Capacity Assessment Form

Mental Capacity Assessment

The Mental Capacity Act 2005 states that **anyone** can assess another person's mental capacity especially in relation to day-to-day decisions and simple decisions. The Falkland Islands does not currently have specific legislation in regard to mental capacity therefore this policy is based on good practice recognised within the Mental Capacity Act 2005 (MCA).

Assessors must abide by the following **five statutory principles** which are as follows:

1. A person must be **assumed** to have capacity unless it is established that he/she lacks capacity (by undertaking capacity assessment).
2. A person is not to be treated as unable to make a decision unless all practicable steps to **help** him/her to do so have been taken without success.
3. A person is not to be treated as unable to make a decision merely because he/she makes an **unwise** decision.
4. An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done or made in his/her **best interests**.
5. Before the act is done, or 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.

Person's Details	
Name	
Address	
Date of Birth	
Date of Assessment	

Do you need anyone else to provide information or give their opinion?	Yes	No
Do you need to involve anyone to help you to communicate with the person?	Yes	No
Please give the name and status of anyone who assisted with this assessment (Please include Representative details if one is involved)		
Name	Status	Contact Details

Decision Requiring Assessment of Mental Capacity (provide details)

NB: Before deciding that someone lacks capacity to make a particular decision, it is important to take all practical and appropriate steps to enable them to make that decision themselves.

What is the Decision?

STAGE 1 – Determining an impairment of disturbance to the mind or brain

NB - If a person does not have an impairment or disturbance of the mind or brain, they will not lack capacity under the Mental Capacity in the Falkland Islands Policy			
Does the individual have an impairment or a disturbance in the functioning of their mind or brain?	Yes		No
What are the individuals presenting condition?			
Unconsciousness			
Autism Spectrum Disorder			
Mental Health Issues			
Other cognitive impairment e.g., Stroke			
Dementia			
Learning difficulties / disabilities			
Acquired brain injury			
Other (please specify)			

If you have answered Yes to Stage 1, PROCEED TO STAGE 2
If you have answered NO to Stage 1, there is no such impairment or disturbance and thus <u>THE PERSON DOES NOT LACK CAPACITY</u> within the meaning of the Mental Capacity in the Falkland Islands Policy
Sign/date form, record the outcome within the person's case records
DO NOT PROCEED ANY FURTHER

Having determined an impairment or disturbance in the functioning of the person's mind or brain? (Stage 1), you now need to complete your assessment and form your opinion as to whether the impairment or disturbance means that the person is unable to make the decision at the time the decision needs to be made?

Every effort must be made to provide the relevant information in a way that is most appropriate to help the person understand it. For example, easy read leaflets, large print, enabled the

person to be at ease, consider the location and timing; relevance of information communicated; the communication method used; and the involvement of others.

Describe the practical actions and steps you have taken to assist the person to make this specific decision.

1. Is the person able to understand the information relevant to the decision to be made?			Evidence
<i>Do they understand the nature of the decision? The reason why the decision is needed? The likely effects of deciding one way or another, or making no decision at all?</i>	Yes		
	No		
2. Is the person able to retain the information for long enough to make an effective decision?	Yes		
<i>People who can only retain information for a short while must not be automatically assumed to lack the capacity to decide – it depends on what is necessary for the decision in question. Different methods may be needed to help someone retain information e.g. written information</i>	No		
3. Is the person able to use or weigh up the information as part of the decision-making process?	Yes		
<i>Sometimes people can understand information however they should be able to understand the advantages and disadvantages of the decision to be made.</i>	No		
4. Is the person able to communicate their decision?	Yes		
<i>All steps must be taken to aid communication.</i>	No		

Communication does not need to be verbal.			
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Stage 2 – Assessment

NB: If a person cannot do one or more of these four things, they are unable to make the decision.

Outcome of Mental Capacity Assessment

On the balance of probabilities, there is a reasonable belief that:

The person <u>has</u> capacity to make this decision currently	
The person <u>does not have</u> capacity to make this decision currently	

If the person is considered, on the balance of probability, to HAVE the mental capacity to make this decision now. Sign/date this form and record the outcome within the person's case records. **Do not proceed to the best interests decision.**

If you have answered NO to any of the questions, proceed to the **Best Interests Decision**

Details of Assessor:

Assessor		Signature	
Designation		Date	
Date of next review		Time	

Best Interest Decision

1. To be completed when an assessment of capacity has identified that the person does **NOT** have the capacity to decide on a specific issue
2. ALL questions must be answered fully and evidence given to support the response.
3. Reference must be made to Mental Capacity in the Falkland Islands policy.

Best Interest Decision						
Describe the decision to be made						
1. Has the person made an Advance Decision that may be valid and applicable to some or all of the treatment?	Yes*		No		Not known	
*If Yes, is it valid and applicable to this decision?	Yes		No		If you are unsure, please seek advice	
2. Does the person have appointed an attorney under an Enduring Power of Attorney for Property and finances decisions?	Yes		No		Not known	
Is there a court appointed Receiver?	Yes*		No		Not known	
* If yes you will need to consult with the EPA/Receiver as they may be the decision maker and take a copy for your records.						
3. Does the person have someone who is willing and able to support them? *If yes, please state	Yes*		No			
a) Name						
b) Relationship						
4. What practical steps have been made to ensure that the person is helped to participate as fully as possible in the decision making? For example, easy read leaflets, large print, enabled the person to be at ease, consider the location and timing; relevance of information communicated; the communication method used; and the involvement of others?)						
5. What is the person's past and present wishes in relation to this decision?						
6. What are the person's beliefs and values that would be likely to influence this decision?						

7. What other factors would they consider?	
8. What are the views of significant others? <i>(State who was consulted and their relationship to the person)</i>	
Best Interest Decision Summary	
1. What is the decision that has been made in the person's best interest (e.g. evidence using a balance sheet approach to consider and evidence the benefits and risks of each available option)?	
2. Record the reasons why this decision is in the person's best interests	
3. Document how this is the least restrictive option?	

I have reached the “Best Interest Decision” in accordance with the principles and requirements of the Mental Capacity in the Falkland Islands Policy

Signature			
Print Name			
Date		Time	
Job title/Status			
Contact			

Appendix Five – Deprivation of Liberty Referral Form



**Social Services
Department**

Social Services Team, 20 Scoresby Close, Stanley, Falkland Islands

Telephone: (500) 27296

Email: admin.social@kemh.gov.fk

Deprivation of Liberty Referral Form

Subject of Referral

Full name of person being deprived of liberty		Date of Birth (or estimated age if unknown)	
Preferred Language		Language support required?	
Communication requirements/ Sensory Loss		Azeus/ EPR record	
Location of where person is being deprived of their liberty			
Usual address of the person, (if different to above)			
Relevant Medical History (including diagnosis of mental disorder if known)			
Is the person subject to any requirements of the Mental Health Ordinance 2010?	Yes <i>If the person is subject to requirements of the MHO 2010 then you should not submit a deprivation of liberty referral.</i>	No	
Have you completed a Mental Capacity Assessment regarding 'consent to current care and support arrangements including proposed deprivation of liberty?'	Yes <i>Please ensure this is documented using the Mental Capacity Assessment contained within the Falkland Islands Mental Capacity Policy.</i>	No <i>Please complete and document mental capacity assessment using the Mental Capacity Assessment contained within the Falkland Islands Mental Capacity Policy.</i>	
Has the person been assessed as LACKING capacity to 'consent to current care and support arrangements including proposed deprivation of liberty?'	Yes <i>Please submit completed mental capacity assessment with this referral form.</i>	No <i>If the person has been assessed as HAVING capacity you should not submit a deprivation of liberty referral.</i>	
Have you completed and documented a Best Interests Decision regarding 'consent to current care and support arrangements including proposed	Yes <i>Please ensure this is documented using the Best Interests Decision form contained within the Falkland Islands Mental Capacity Policy. Please submit completed best interest's decision form with this referral form.</i>	No <i>Please complete and document best interest decision using the Best Interests Decision form contained within the Falkland Islands Mental Capacity Policy.</i>	

deprivation of liberty?’		
Care and Support Arrangements		
• <i>Please describe the care and / or treatment this person is receiving or will receive day-to-day and attach a relevant care plan.</i> • <i>Please give as much detail as possible about the type of care the person needs, including personal care, mobility, medication, support with behavioural issues, types of choice the person has and any medical treatment they receive.</i>		
Deprivation of Liberty		
• <i>Explain why the person is or will not be free to leave and why they are under continuous or complete supervision and control.</i> • <i>Describe the proposed restrictions or the restrictions you have put in place which are necessary to ensure the person receives care and treatment. (It will be helpful if you can describe why less restrictive options are not possible including risks of harm to the person.)</i> • <i>Indicate the frequency of the restrictions you have put in place.</i>		
Other relevant information including adult safeguarding issues		

Advocacy - Please tick one box			
Apart from professionals and other people who are paid to provide care or treatment, this person has no-one whom it is appropriate to consult about what is in their best interests.			
There is someone whom it is appropriate to consult about what is in the person's best interests who is neither a professional nor is being paid to provide care or treatment.			
Information about family members, representatives or other people to consult			
Family member of alternative representative	Name		
	Contact details		
Anyone named by the person as someone to be consulted about their welfare	Name		
	Contact details		
Anyone engaged in caring for the person or interested in their welfare	Name		
	Contact details		
Referrer details			
Name			
Job title			
Department			
Telephone			
Email			
Ward (if appropriate)			
Please now sign and date this form			
Signature		Print Name	
Date		Time	
I have informed any family members or representatives of the deprivation of liberty referral (please sign to confirm)			

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