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Name of Policy:	Human Rights and Restrictive Practices Policy
Policy Lead:	Operations Director
Next Review Date:	31.10.24

Change Record

Issue Date	Nature of Change	Ratified by	Date ratified
07.11.14	First issue	SLT Board	12.06.14 23.09.14
04.01.18	Guidance added in relation to reporting of physical interventions to RQIA, SP and HSC Trusts; clarifies that reviews for Restrictive Practice Agreements must be completed on a minimum 6 monthly basis (previous version of Policy noted the need for 'regular' reviews whereas the previous version of the Procedure indicated quarterly reviews); information added regarding seclusion; guidance added in relation to Capacity Assessment; Capacity Checklist added; removal of reference to Human Rights Committee.	Directors	17.10.17
25.06.21	References to MD replaced with ED; no other changes	Directors	23.06.21
16.09.24	No changes	ED	09.09.24

Human Rights and Restrictive Practices Policy

Aim

To provide clear guidance to staff and volunteers about human rights and the use of restrictive practices with the people we support and to ensure that any restrictive practices employed:

- Are consistent with the needs of the people we support
- Are the least restrictive they can be
- Comply with human rights law, regional guidance and our regulators' requirements
- Safeguard the individual and those they interact with, including our staff and volunteers (including Shared Lives Carers).

Context

Positive Futures is committed to ensuring that the rights of the people we support are protected and promoted. In addition, we recognise the need to have a transparent system in place which ensures that due process has been followed whenever individual rights are restricted, which includes the consideration of the potential for any restriction to impact upon the rights of other people.

Policy Statement

We want to support people to have as much control over their lives as possible while, at the same time, seeking to ensure that they are not a risk to themselves or to others. In order to promote people's independence, we may, at times, need to restrict the choices / options available to them, for example, having free access to some of their own money but not all of it. Similarly, some of the behaviours staff have to manage, in particular circumstances, may require some kind of physical intervention or unwanted physical holding (which can be described as "restraint") in order to ensure people's health and wellbeing.

The use of "restrictive practices" must be the least restrictive possible and can only be done within the context of human rights law (see Appendix 1), our regulators' requirements, regional guidance, best practice and must at all times, reflect our Mission and Values. Any restrictive practices associated with

managing an individual's behaviour must be part of a risk assessment and behaviour support strategy agreed with all relevant parties.

In Positive Futures, the use of any restrictive practice that is not specifically referred to in Policy must be signed off by the Executive Director or designated other. Any restrictive practice that is specified in Policy, for example, the keeping of personal monies in a locked tin must be signed off by the Service Manager. Restrictive practices must be regularly reviewed with all key parties, with the aim of reducing or removing the restriction. Staff and volunteers will receive appropriate training regarding the use of restrictive practices and physical interventions.

What is a restrictive practice?

The term "restrictive practice" is typically used to refer to restrictive physical interventions and the use of "restraint" but includes **any** intervention that impacts on the human rights of a person we support.

A restrictive practice is, however, **any** intervention that impacts on the human rights of a person we support and his/her ability to fully exercise these human rights.

The following principles must apply in relation to the use of restrictive practices:

- Restrictive practices must be the least restrictive option possible.

- Restrictive practices associated with managing an individual's behaviour must be part of a risk assessment and behaviour support strategy agreed with all relevant parties.

- Any restrictive practice that is specified in Policy must be signed off by the Service Manager.

- The use of any restrictive practice that is not specifically referred to in any Positive Futures' Policy must be signed off by the Executive Director or designated other.

- Restrictive practices must be reviewed at a minimum every 6 months with the aim of reducing or removing the restriction. This review should be clearly evidenced within documentation.

- Staff and volunteers will receive appropriate training.

- Restrictive practices can **only** be put in place when an individual agrees (consents) to them taking place (unless there is a legal basis for doing so). Where an individual does not have capacity to give consent, a restrictive practice may be put in place if it is deemed to be in the individual's best interest.

- HSC Trust staff have the lead responsibility for assessing an individual's capacity and for best interest decisions and Positive Futures' staff should be involved in this process.

- Records must be kept on all issues relating to restrictive practices.

- Appropriate reporting to external bodies in respect of the use of restraint must occur (see table below).

Restrictive physical interventions and "restraint"

"Restrictive physical interventions involve the use of force to control a person's behaviour and can be employed using bodily contact, mechanical devices or changes to the person's environment." *(DHSSPS Guidance on Restraint and Seclusion in Health and Personal Social Services (2005)).*

Examples of the DHSSPS consideration of restrictive physical interventions which constitute restraint are given below:

Intervention	**DHSSPS classification**	**Reporting and recording**
The use of any part of one's body to prevent, restrict or subdue movement of any part of another person's body.	Physical restraint	All RQIA registered services: a record should be made and retained in the service. This record should be available to RQIA on request.

Intervention	**DHSSPS classification**	**Reporting and recording**
The use of any mechanical method to prevent, restrict or subdue movement of any part of another person's body. Seclusion: the supervised confinement of a person alone in a room, the key element being the involuntary isolation of the individual. The person may be confined alone in a room, the door of which cannot be opened from the inside and from which there is no other means of exit available to person.		Short Break Service: all instances, whether planned or not, must be reported to RQIA and the relevant HSC Trust within 1 working day. Supported Living Service / Shared Lives: any unplanned use of physical restraint must be reported to the relevant HSC Trust (and if the person supported is funded through Supporting People, to SP) within 1 working day.

- **Physical restraint** is the act of stopping an individual's movement by the use of equipment that is not specifically designed for that purpose. This could be through the use of bed and bed clothes, rails, tables or chairs etc.

- **Physical intervention** is direct action by one or more people holding or moving the person, or blocking their movement to stop them going where they wish. This should not be confused with interventions such as guiding and prompting that are intended to support the person.

- **Mechanical restraint** is the use of belts, arm cuffs, splints or helmets etc to limit movement to prevent self-injurious behaviour (SIB) or harm to others. It should be noted that while some forms of mechanical restraint that provide restriction of movement (arm cuffs, splints and belts) are considered by DHSSPS to constitute physical restraint, others such as use of helmets are not considered as constituting physical restraint.

Further examples of restraint are outlined in our Positive Behaviour Management Policy.

Other examples of restrictive practices

A number of examples of other restrictive practices are given below:

- **Deprivation / restriction of liberty:** a person being unable to freely leave their home or areas within their home; or unable to use key pad codes to enter or exit their home or part of their home; use of door locks or padlocks on gates. This also applies to individuals who lack capacity and for whom professionals assume full control over their liberty and treatment based solely upon their assessment unless the person is detained under the Mental Health (NI) Order 1986.

- **Isolation / seclusion:** The supervised confinement and isolation of a person, away from their peers, in an area that they are prevented from leaving. We do not use seclusion in the management of behaviours that challenge.

- **Restricted access to property / belongings / personal space:** individuals being unable to access their bedrooms, belongings or certain areas of their own home e.g. medication or money locked away.

- **Monitoring devices:** using listening devices, exit alarms, cameras or assistive technology such as pressure pads to monitor or restrict the whereabouts or movements of individuals in their own homes.

Examples of how some restrictive practices relate to human rights law are shown in Appendix 2.

It is important to distinguish between interventions which are:

1. **Planned**, in which staff or volunteers employ, where necessary, pre-arranged strategies and methods which are based upon the individual's risk assessment and recorded in his/her Person Centred Portfolio as part of his/her behaviour support strategy.

2. **Emergency or unplanned**, which occur in response to unforeseen events.

   If restraint or other physical intervention is necessary for the safety of the person or others, it may be justified as long as it is the **absolute minimum necessary for the minimum time possible**. This means that "the scale and

nature of any physical intervention must be **proportionate to both the behaviour of the individual to be controlled, and the nature of the harm likely to be caused**." *(DHSSPS Guidance on Restraint and Seclusion in Personal Social Services (2005)*

Detailed guidance on the issues of consent and capacity can be found in DHSSPS Reference Guide to Consent for Examination, Treatment or Care, 2003, and DHSSPS Seeking Consent: Working with people with learning disabilities 2003.

Consent

"Consent" is a person's agreement for a member of staff or volunteer to provide care or support or initiate a particular practice in relation to themselves or their belongings. For a young person under the age of 18, this is generally someone with parental responsibility.

People may indicate their consent non-verbally, orally, or in writing, however, for the consent to be valid, the person must:

- Be able (competent) to make the particular decision
- Have received sufficient information in order to give consent
- Not be acting under pressure or threat from someone else.

For some of the people we support, there may be doubts about whether or not they are able to meet all of the conditions above in order to give valid consent. In order to determine if an individual can give consent, a decision needs to be made on whether the person is able (has the capacity) to do so.

The issue of whether an individual can give valid consent to the supports and/or interventions proposed must be considered as part of the initial referral process.

Capacity

In supporting individuals, we assume that they have the capacity to make decisions unless it is "deemed" that they do not. Capacity is "decision specific"; an individual may lack capacity to make a particular complex decision but be quite able to make more straightforward decisions or parts of decisions.

An individual will be deemed to lack the capacity to consent to a course of action if he/she is:

- Unable to understand and retain information relevant to the decision, especially the consequences of progressing or not progressing with the course of action.
- Unable to use and weigh this information in the decision making process.

See the Human Rights and Restrictive Practices Procedure for details of capacity assessment.

"Best interests" decision-making

No one (not even the person's parents, or others close to them) can give consent on behalf of an adult who is deemed not capable of giving consent, however, those close to the person should be involved in decision-making as appropriate. HSC Trust staff have lead responsibility for deciding whether or not a particular intervention is in that person's "best interests" but these decisions should ideally reflect an agreement between the professional involved, including Positive Futures' staff, and the individual's family and friends.

Decisions regarding "best interests" relate to supporting the person in all aspects of their life and the likelihood of their willingness to cooperate should also be taken into account.

The individual's "best interests" are the only interests that should be taken into account when deciding if a particular approach or intervention is appropriate. The individual's "best interests" may be interlinked with those of other people but they must not be balanced against the interests of family, professionals, or other people living with the individual.

Staff and volunteers should be mindful of how the people we support can be perceived by others who may assume that particular "treatment or care" is inappropriate just because the person has a learning disability, acquired brain injury or autistic spectrum condition. An example of this could be the denial of a particular medical treatment. This is discriminatory and unlawful.

Some "best interest" decisions which have a significant impact on an individual's life may need to be referred to a court to decide.

Record keeping and reporting of restrictive practices

The legal and regulatory requirements associated with restrictive practices mean that good record keeping is essential and that the necessary reporting arrangements must be in place.

All occasions when any form of physical intervention is used must be recorded and reported.

The use of restrictive practices is monitored on behalf of the Registered Person in line with the Quality Management Framework.

Related Documents

Procedures
• Human Rights and Restrictive Practices Procedure

Guidance

Forms/Templates
• Restrictive Practice Agreement (RPA) • Capacity Checklist

How has this policy been informed by staff, volunteers and the people we support?

Positive Futures' Behaviour Support Co-ordinators were consulted in the 2017 review to build upon the learning from direct work (e.g. training, mentoring and coaching and completion of behaviour observations, analysis and plans) with people we support, staff and volunteers.

Appendix 1

The European Convention for the Protection of Human Rights and Fundamental Freedoms into the UK Domestic Law

The Human Rights Act 1998

Main Convention Rights:

Article 2 - Right to life
Article 3 - Prohibition of torture
Article 4 - Prohibition of slavery and forced labour
Article 5 - Right to liberty and security of person
Article 6 - Right to a fair trial
Article 7 - No punishment without law
Article 8 - Right to respect for private and family life
Article 9 - Freedom of thought, conscience and religion
Article 10 - Freedom of expression
Article 11 - Freedom of assembly and association
Article 12 - Right to marry
Article 14 - Prohibition of discrimination
Article 16 - Restrictions on political activity of aliens
Article 17 - Prohibition of abuse of rights
Article 18 - Limitation on use of restriction on rights

Appendix 2

Examples of how restrictive practices relate to human rights law

Article		Restrictive Practice
Article 2	Right to life	
Article 3	Prohibition of torture	
Article 4	Prohibition of slavery and forced labour	
Article 5	Right to liberty and security of person	• Exit doors locked • Internal doors locked • People we support locked into and out of areas of their home • Use of physical interventions to restrict movement • Use of gates to restrict liberty • Security of person compromised if other people we support are aggressive • Security of property and access to property compromised
Article 6	Right to a fair trial	
Article 7	No punishment without law	• Use of restrictive practices to manage challenging behaviours • Withholding access to belongings / areas
Article 8	Right to private and family life	• Interventions by staff which are restrictive in nature and if consent is not given, interferes with private, family life and home • Use of listening devices / assistive technology in the care of individuals
Article 9	Freedom of thought, conscience and religion	
Article 10	Freedom of expression	• Complaints not responded to or no one to complain on an individual's behalf if he/she is unable to communicate verbally
Article 11	Freedom of assembly and association	
Article 12	Right to marry	
Articles 14, 16, 17, 18	Prohibition of discrimination, abuse of rights	