**Equality Impact Risk Assessment: Mental Capacity Act 2005 and Deprivation of liberty Policy**

**Date of analysis: 30/05/2023**

**Analysis rating:** (see completion notes) [ ]  Red

(Please tick by clicking in the box) [ ]  Red/amber

 [x]  Amber

 [ ]  Green

**Type of analysis performed:** [x]  Systematic policy analysis

(Please tick by clicking in the box) [ ]  Consultation

 [ ]  Meeting

 [ ]  Service proposal

 [ ]  Other

**Please list any other policies that are**

**related to or referred to as part of**

**this analysis:** Mental Capacity Act 2005 and Deprivation of Liberty Policy

**Who does the policy, project, function**

**or service affect?** [x]  Employees

(Please tick by clicking in the box) [x]  Service users

 [x]  Applicants

 [x]  Members of the public

 [x] Other (please list)

 Staff employed by provider organisations commissioned by the Humber and North Yorkshire Integrated Care Board at Place (ICB)/ NELC

**What are the aims or intended effects**

**of this policy, project or function?** To secure a lawful and consistent approach to application of the Mental Capacity Act 2005 (MCA), and to deprivations of liberty, for the benefit of all those for whom the ICB and North East Lincolnshire Council (NELC) are responsible.

**Is any equality data available** [x]  Yes

**relating to the use or implementation** [ ]  No

**of this policy, project or function?**

(See completion notes) General population data is available via the North East Lincolnshire Data Observatory <http://www.nelincsdata.net/>

**List any consultation eg with**

**Employers, service users, unions,**

**members of the public that has taken**

**place in the development or**

**implementation of this policy, project**

**or function?** Managers and team leaders within the CCG, Care Plus Group, Focus Independent Adult Social Work, Navigo and Northern Lincolnshire and Goole Hospital Trust contributed to creation of this policy. It has been regularly reviewed and revised in conjunction with the cross- partner MCA Group.

**Financial analysis: (Costs £m\*)**

If applicable, state any relevant cost

Implications (eg expenses, returns,

or savings) as a direct result of the

implementation of this policy, project

or function

**Equality Impact Risk Assessment Test**

What impact will the implementation of this policy, project or function have on employees, service users or other people who share characteristics protected by the **Equality Act 2010**?

| **Protected characteristic** | **Neutral impact** | **Positive impact** | **Negative impact** | **Evidence of impact and if applicable, justification where a** genuine determining reason **exists** |
| --- | --- | --- | --- | --- |
| Gender (men and women) | X |  |  | More older people are in receipt of health and care services than younger people. Women form the largest part of the ageing population, and therefore are more likely than men to be in receipt of health and care services. Interaction with health and care services is more likely to engage considerations of the MCA and deprivation of liberty. As a result, more women than men are likely to be subject to the application of this policy. However, the purpose of the policy is to secure a lawful and consistent approach to application of the MCA, and to deprivations of liberty – regardless of gender. In seeking to deliver such an approach, the policy is gender neutral.  |
| Race (all racial groups) |  |  | X | Whilst the policy itself is unlikely to have an impact on grounds of race, it is recognised that some nationalities may have difficulties understanding the policy due to limited English Language skills. |
| Disability (mental and physical) |  |  | X | More disabled people are in receipt of health and care services than non-disabled people. Interaction with health and care services is more likely to engage considerations of the MCA and deprivation of liberty. As a result, more disabled people are likely to be subject to the application of this policy. However, the purpose of the policy is to secure a lawful and consistent approach to application of the MCA, and to deprivations of liberty – regardless of disability. In seeking to deliver such an approach, the policy would be disability neutral BUT it is recognised that those with sensory impairments or with specific communication needs may have difficulties accessing the policy.  |
| Religion or belief | X |  |  | There is no known impact on grounds of religion or belief.   |
| Sexual orientation (heterosexual, homosexual and bisexual) | X |  |  | There is no known impact on grounds of sexual orientation.  |
| Pregnancy and maternity | X |  |  | There is no known impact on grounds of pregnancy and maternity.  |
| Transgender | X |  |  | There is no known impact on grounds of transgender.  |
| Marital status | X |  |  | There is no known impact on grounds of marital status.  |
| Age | X |  |  | More older people are in receipt of health and care services than younger people. Interaction with health and care services is more likely to engage considerations of the MCA and deprivation of liberty. As a result, more older people are likely to be subject to the application of this policy. However, the purpose of the policy is to secure a lawful and consistent approach to application of the MCA, and to deprivations of liberty – regardless of age. In seeking to deliver such an approach, the policy is age neutral. It is noted that the additional safeguards offered by the MCA are limited by statute to those aged 16 years and over (and in some cases to those aged 18 and over). Any negative impact for young people in being excluded from some aspects of the MCA arises unavoidably from statute rather than from implementation of this policy; in some areas in which young people are excluded under the MCA, alternative provisions exist within other legislation.  |
| Unpaid Carers[[1]](#endnote-1) | X |  |  | There is no known impact in relation to carers, specifically arising from this policy. However, as people stay alive for longer with increasingly complex conditions which could result in a loss of mental capacity in one or more areas, the challenges for unpaid carers in supporting those people is likely to increase. Carers may be more likely to be called upon to act as attorneys, deputies, or representatives for their incapacitous cared-for person. Carers may consider this additional responsibility to be negative; however, many may experience it as positive, because securing a legally recognised role can help carers to enjoy proper inclusion in care/ treatment arrangements for their cared-for person. The policy aims to offer additional clarity around such roles where required, but doesn’t itself offer additional positive benefits to carers.  |
| Deprivation[[2]](#endnote-2) | X |  |  | Those in receipt of health and care services are likely to be amongst the most deprived. Interaction with health and care services is more likely to engage considerations of the MCA and deprivation of liberty. As a result, more of those who may be considered to be socially deprived are likely to be subject to the application of this policy. However, the purpose of the policy is to secure a lawful and consistent approach to application of the MCA, and to deprivations of liberty – regardless of social deprivation. In seeking to deliver such an approach, the policy has no impact on social deprivation.  |

This equality impact assessment was completed by: Emma Overton, Care and Independence Team, ICB.

Date: updated May 2023.

**Action Planning**

As a result of performing this analysis, what actions are proposed to remove or reduce any risk of adverse outcomes identified on employees, service users or other people who share characteristics protected by the **Equality Act 2010?**

| **Identified risk** | **Recommended actions** | **Responsible Lead** | **Completion date** | **Review date** |
| --- | --- | --- | --- | --- |
| Race: some nationalities may have difficulties understanding the policy due to limited English Language skills.  | The policy would be made available in alternative languages where requested  | **Bruce Bradshaw**  | Mechanisms are already in place | To coincide with policy review date |
| Disability: those with sensory impairments or with specific communication needs may have difficulties accessing the policy. | The policy would be made available in alternative formats where requested | **Bruce Bradshaw**  | Mechanisms are already in place | To coincide with policy review date |

**COMPLETION NOTES**

**Analysis ratings**

After completing this document, rate the overall analysis as follows:

**Red:** As a result of performing the analysis, it is evident that a risk of discrimination exists (direct, indirect, unintentional or otherwise) to one or more of the nine groups of people who share *Protected Characteristics.* It is recommended that the use of the policy be suspended until further work or analysis is performed.

**Red Amber:** As a result of performing the analysis, it is evident that a risk of discrimination exists (direct, indirect, unintentional or otherwise) to one or more of the nine groups of people who share *Protected Characteristics.* However, a genuine determining reason may exist that could legitimise or justify the use of this policy and further professional advice should be taken.

**Amber:** As a result of performing the analysis, it is evident that a risk of discrimination (as described above) exists and this risk may be removed or reduced by implementing the actions detailed within the *Action Planning s*ection of this document.

**Green:** As a result of performing the analysis, the policy, project or function does not appear to have any adverse effects on people who share *Protected Characteristics* and no further actions are recommended at this stage.

**Equality data**

Equality data is internal or external information that may indicate how the activity being analysed can affect different groups of people who share the nine **Protected Characteristics** – referred to hereafter as **‘Equality Groups’***.*

Examples of **equality data** include: (this list is not definitive)

1. Application success rates **Equality Groups**
2. Complaints by **Equality Groups**
3. Service usage and withdrawal of services by **Equality Groups**
4. Grievances or decisions upheld and dismissed by **Equality Groups**

**Legal status**

This document is designed to assist organisations in “**Identifying and eliminating unlawful Discrimination, Harassment and Victimisation**” as required by **The Equality Act Public Sector Duty 2011***.* An Equality Impact Analysis is not, in itself, legally binding and should not be used as a substitute for legal or other professional advice.

**Genuine determining reason**

Certain discrimination may be capable of being justified on the grounds that:

1. A genuine determining reason exists
2. The action is proportionate to the legitimate aims of the organisation

Where this is identified, it is recommended that professional and legal advice is sought prior to completing an Equality Impact Analysis.

1. Unpaid carers are also considered in NEL equality impact [↑](#endnote-ref-1)
2. Social deprivation is also considered in NEL equality impact [↑](#endnote-ref-2)