

## Stage 1 Equality Impact Assessment – Initial Screening

Assessor(s) Name(s):	Stephen Ward
Directorate:	Community Wellbeing and Social Care Directorate
Date of Completion:	17 <sup>th</sup> June 2015

### Name of Policy/Strategy/Service/Function Proposal

#### Deprivation of Liberty Safeguard (DoLS) Policy

This policy outlines the Isle of Wight Council's arrangements for the operation of the Mental Capacity Act (MCA) Deprivation of Liberty Safeguards (DoLS). DoLS were an amendment to the MCA 2005 which came into effect in April 2009. The Policy is also Care Act 2014 compliant.

### The Aims, Objectives and Expected Outcomes:

DoLS provides a framework to:

- 1) The deprivation of liberty safeguards provide legal protection for those vulnerable people who are, or may become, deprived of their liberty within the meaning of Article 5 of the European Court of Human Rights (ECHR) in a hospital or care home;
- 2) To help to identify when a person who lacks mental capacity to consent to it, is deprived of their liberty to ensure that any deprivation of liberty is lawful and provide an Appeals Process.

The Policy is directly linked to the Care Act 2014 and has been written to reflect the Act.

Please delete as appropriate:

- This is a new policy.  
(An equality impact assessment has not previously been carried out as this is a new policy)

### Key Questions to Consider in Assessing Potential Impact

Will the policy, strategy, service or council function proposal have a negative impact on any of the protected characteristics or other reasons that are relevant issues for the local community and/or staff?	No
Has previous consultation identified this issue as important or highlighted negative impact and/or we have created a "legitimate expectation" for consultation to take place? A legitimate expectation may be created when we have consulted on similar issues in the past or if we have ever given an indication that we would consult in such situations	No
Do different groups of people within the local community have different needs or experiences in the area this issue relates to?	Yes
Could the aims of these proposals be in conflict with the council's general duty to pay due regard to the need to eliminate discrimination, advance equality of opportunity and to foster good relations between people who share a protected characteristic and people who do not?	No
Will the proposal have a significant effect on how services or a council function/s is/are delivered?	No
Will the proposal have a significant effect on how other organisations operate?	No
Does the proposal involve a significant commitment of resources?	Yes
Does the proposal relate to an area where there are known inequalities?	Yes
<p>If you answer <b>Yes</b> to any of these questions, it will be necessary for you to proceed to a full Equality Impact Assessment after you have completed the rest of this initial screening form.</p> <p>If you answer <b>No</b> to all of these questions, please provide appropriate evidence using the table below and complete the evidence considerations box and obtain sign off from your Head of Service.</p>	

Protected Characteristics	Positive	Negative	No impact	Reasons
Age			✓	The process will be applied equitably to ensure that we meet the needs of the diverse range of people who meet the criteria for this Policy regardless of their age.
Disability			✓	The process will be applied equitably to ensure that we meet the needs of the diverse range of people who meet the criteria for this policy regardless of their disability.
Gender Reassignment			✓	The policy will ensure that procedures followed and decision made are carried out in a consistent and transparent manner and applied with equity irrespective of a person's status with regard to gender reassignment.
Marriage & Civil Partnership			✓	The policy will ensure that the procedures followed and decision made are carried out in a consistent and transparent manner and applied with equity irrespective of a person's marriage or civil partnership status.
Pregnancy & Maternity			✓	The policy will ensure that the procedures followed and decision made are carried out in a consistent and transparent manner and applied with equity irrespective of a person's pregnancy or maternity status.
Race			✓	The policy will ensure that the procedures followed and decision made are carried out in a consistent and transparent manner and applied with equity irrespective of a person's race or ethnic background.
Religion / Belief			✓	The policy will ensure that the procedures followed and decision made are carried out in a consistent and transparent manner and applied with equity irrespective of a person's religion or belief.
Sex (male / female)			✓	The policy will ensure that the procedures followed and decision made are carried out in a consistent and transparent manner and applied with equity irrespective of a person's gender.
Sexual Orientation			✓	The policy will ensure that procedures followed and decision made are carried out in a consistent and transparent manner and applied with equity irrespective of a person's sexual orientation.

<b>Are there aspects of the proposal that contribute to or improve the opportunity for equality?</b>	<b>Yes</b>
<p><i>If answered Yes, describe what these are and how they may be promoted or enhanced</i></p> <p>The safeguards provide legal protection for people who lack capacity who are or may be deprived of their liberty. They ensure that their Human Rights under Article 5 of the Human Rights Act are not breached.</p>	

**Evidence Considered During Screening**

DoLS is a provision of the Mental Capacity Act 2005 and only applies to people who have a mental disorder and have been assessed as lacking mental capacity to decide where they should live and may be deprived of their liberty in their accommodation (hospital/care home).

There is a presumption of capacity when it comes to decision making and giving/withholding consent, however, if there is a reason to suspect that a person may lack capacity to make a specific decision then an assessment of their mental capacity to make that specific decision should be undertaken.

If the person is found to lack capacity to make a decision or to give/withhold their consent, then any decisions made should be made in their best interests, in line with section 4 of the MCA 2005.

This may involve the use of restraint to protect the person from harm and where the level of restraint involves deprivation of liberty, this policy will apply.

People have different needs and experiences in all impact area groups. The DoLS policy does not differentiate and enhances that there is no discrimination.

Those who may fall into the DoLS category could argue to be more disadvantaged than other disabled people. The law and this policy seek to redress that disadvantage. The Council are being fair to all.

An Officer Decision Record (ODR) has been completed during the formation of this policy.

Also statutory guidance and current legislation.

Head of Service Sign off:	Martin Elliott
Advice sought from Legal Services (Name)	Helen Miles
Date	17 <sup>th</sup> June 2015

## Stage 2 Full Equality Impact Assessment

Assessor(s)Name(s):	Stephen Ward
Directorate:	Community Wellbeing and Social Care Directorate
Date of Completion:	17 <sup>th</sup> June 2015

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### The Aims, Objectives and Expected Outcomes:

*Using the information provided in your initial screening, write a brief description of your policy, strategy, service or council function under assessment. It is important to focus on the reasons for a new or changed approach and what it intends to achieve. Include who the main beneficiaries or users are and the main groups of people with protected characteristics who are affected. State how this proposal fits with the council's corporate priorities.*

DoLS provides a framework to:

- 1) The deprivation of liberty safeguards provide legal protection for those vulnerable people who are, or may become, deprived of their liberty within the meaning of Article 5 of the European Court of Human Rights (ECHR) in a hospital or care home;
- 2) To help to identify when a person who lacks mental capacity to consent to it, is deprived of their liberty to ensure that any deprivation of liberty is lawful and provide an Appeals Process.

The Policy is directly linked to the Care Act 2014 and has been written to comply with the Act.

Please delete as appropriate:

- This is a new policy  
(An equality impact assessment has not previously been carried out as this is a new policy)

## Scope of the Equality Impact Assessment

### ISLE OF WIGHT DoLS CASES - 1 APRIL 2011 TO 31 MARCH 2014

Total DoLS cases = 76

Age:	18 - 64	21%
	65 - 74	11%
	75 - 84	42%
	85+	26%
Gender:	Male: 51%	Female: 49%
Ethnic Origin:	White British: 99%	White Irish: 1%
Religion:	Christian	51%
	Jehovah's Witness	3%
	Not Known	38%
	None	7%
Sexual Orientation:	Heterosexual	76%
	Not Known	24%
Disability:	Dementia	79%
	Learning Disabilities	8%
	Mental Health	11%
	Physical Disabilities	3%

## Analysis and assessment

*Given the available information, what is the actual or likely impact on minority, disadvantaged, vulnerable and socially excluded groups? Is this impact positive or negative or a mixture of both? In particular set out how the council as a public body has met its duty to pay regard to eliminate unlawful discrimination, harassment and victimisation and advance the equality of opportunity and to foster good relations between people who share a protected characteristic and people who do not.*

*Detail what concerns were identified during any consultation exercises together with any positive impact that has been identified and how this can be promoted or enhanced. Are there any concerns from consultation and data gathering that have not been taken on board, if so, please justify and explain the reason for this.*

*Does the proposal have the potential to cause unlawful discrimination (for example is it possible that the proposal may exclude certain groups of people from obtaining services or limit their participation in any aspect of public life?)*

*Set out in light of the consultation and data gathering what changes, if any you will make to the proposal*

*What can be done to reduce the effects of any negative impacts? Where negative impact cannot be completely diminished, can this be justified and is it lawful?*

The DoLS Policy has been created to support staff in Adult Social Care to adhere to the provisions of the Mental Capacity Act, Deprivation of Liberty Safeguards, Care Act and Human Rights Act and provides a comprehensive and safe framework to protect the rights of disabled service users who may be subject to significant restraint to protect them from harm.

### **Recommendations**

*Please summarise the main recommendations arising from the assessment. If it is not possible to diminish negative impacts to an acceptable or even a lawful level the recommendation should be that the proposal or the relevant part of it should not proceed.*

- Collect data on DoLS activity for the Health & Social Care Information Centre annual return.
- Prepare quarterly reports on DoLS activity for each month for ASC management.

**Action/Improvement Plan**


The table below should be completed using the information from your equality impact assessment to produce an action plan for the implementation of the proposals to:

1. Remove or lower the negative impact, and/or
2. Ensure that the negative impact is legal under anti-discriminatory law, and/or
3. Provide an opportunity to promote equality, equal opportunity and improve relations within equality target groups, i.e. increase the positive impact

Area of impact	Is there evidence of negative positive or no impact?	Could this lead to adverse impact and if so why?	Can this adverse impact be justified on the grounds of promoting equality of opportunity for one group or any other reason?	Please detail what measures or changes you will put in place to remedy any identified impact (NB: please make sure that you include actions to improve all areas of impact whether negative, neutral or positive)
Age	No impact		SUPPORTING	<p>1. Training for all Adult Social Care and senior Hospital staff to ensure that the underlying provisions of the MCA are properly applied.</p> <p>2. Business case for extra staffing to create dedicated DoLS Assessor capacity has been submitted (£200k).</p> <p>3. Additional assessor staff to be trained (funded by CCG)</p> <p>These steps will ensure that any Deprivation of Liberty is carried out lawfully and with regard to this policy and the legislation, taking into account any equality issues.</p>



Area of impact	Is there evidence of negative positive or no impact?	Could this lead to adverse impact and if so why?	Can this adverse impact be justified on the grounds of promoting equality of opportunity for one group or any other reason?	Please detail what measures or changes you will put in place to remedy any identified impact (NB: please make sure that you include actions to improve all areas of impact whether negative, neutral or positive)
Disability	No impact			
Gender Reassignment	No impact			
Marriage & Civil Partnership	No impact			
Pregnancy & Maternity	No impact			
Race	No impact			
Religion / Belief	No impact			
Sex (male or female)	No impact			
Sexual Orientation	No impact			
HR & workforce issues	No impact			
Human Rights implications if relevant	No impact			
Please remember - actions should have SMART targets and be reported to the Diversity Board (this should be done via your Directorate representative) and incorporated into your service/team Plans and /or objectives of key staff				

Summary	
<b>Date of Assessment:</b>	
<b>Signed off by Head of Service/Director</b>	Martin Elliott 
<b>Review date</b>	April 2016
<b>Date published</b>	17 <sup>th</sup> June 2015

The Deprivation of Liberty Safeguard (DoLS) Policy can be located on the Adult Social Care Intranet site and/or can be accessed under the documents tab, under 'D' and named Deprivation of Liberty Safeguard (DoLS) Policy.

An Officer Decision Record (ODR) has also been completed and is filed within Adult Social Care's ICT system.