

Appendix 'B'

Section 4

Equality

Analysis Toolkit

Deprivation of Liberty – Prioritisation of
applications to the Court of Protection
For Decision Making Items

What is the Purpose of the Equality Decision-Making Analysis?

The Analysis is designed to be used where a decision is being made at Cabinet Member or Overview and Scrutiny level or if a decision is being made primarily for budget reasons. The Analysis should be referred to on the decision making template (e.g. E6 form).

When fully followed this process will assist in ensuring that the decision-makers meet the requirement of section 149 of the Equality Act 2010 to have due regard to the need: to eliminate discrimination, harassment, victimisation or other unlawful conduct under the Act; to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and to foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Having due regard means analysing, at each step of formulating, deciding upon and implementing policy, what the effect of that policy is or may be upon groups who share these protected characteristics defined by the Equality Act. The protected characteristics are: age, disability, gender reassignment, race, sex, religion or belief, sexual orientation or pregnancy and maternity – and in some circumstances marriage and civil partnership status.

It is important to bear in mind that "due regard" means the level of scrutiny and evaluation that is reasonable and proportionate in the particular context. That means that different proposals, and different stages of policy development, may require more or less intense analysis. Discretion and common sense are required in the use of this tool.

It is also important to remember that what the law requires is that the duty is fulfilled in substance – not that a particular form is completed in a particular way. It is important to use common sense and to pay attention to the context in using and adapting these tools.

This process should be completed with reference to the most recent, updated version of the Equality Analysis Step by Step Guidance (to be distributed) or EHRC guidance at

<http://www.equalityhumanrights.com/private-and-public-sector-guidance/public-sector-providers/public-sector-equality-duty>

This toolkit is designed to ensure that the section 149 analysis is properly carried out, and that there is a clear record to this effect. The Analysis should be completed in a timely, thorough way and should inform the whole of the decision-making process. It must be considered by the person making the final decision and must be made available with other documents relating to the decision.

The documents should also be retained following any decision as they may be requested as part of enquiries from the Equality and Human Rights Commission or Freedom of Information requests.

Support and training on the Equality Duty and its implications is available from the County Equality and Cohesion Team by contacting

AskEquality@lancashire.gov.uk

Specific advice on completing the Equality Analysis is available from your Service contact in the Equality and Cohesion Team or from Jeanette Binns

Jeanette.binns@lancashire.gov.uk

Name/Nature of the Decision

Deprivation of Liberty – Prioritisation of applications to the Court of Protection

What in summary is the proposal being considered?

Deprivation of liberty for those over the age of 16 years in a community settings can only be authorised via an application to the Court of Protection (COP). The Supreme Court ruling of March 2014 (known as the Cheshire West ruling) dramatically increased the number of people who come within the remit of Deprivation of Liberty legislation, and the potential risks of not complying fully with the law.

The proposal is to adopt a pragmatic approach to ensure that the most pressing cases are identified and progressed through to the Court as priority. This will ensure that citizens who most need the protective legal framework are dealt with first. Although this means applications for those of lower priority will be delayed, it is considered that it is reasonable to believe that their care has been arranged by social care staff with the best intentions to keep them safe and well.

The recommendation is that the Local Authority adopts the Court of Protection Prioritisation Tool. This will enable Adult Social Care Services to prioritise those citizens whose case needs to be put before the Court most urgently.

Is the decision likely to affect people across the county in a similar way or are specific areas likely to be affected – e.g. are a set number of branches/sites to be affected? If so you will need to consider whether there are equality related issues associated with the locations selected – e.g. greater percentage of BME residents in a particular area where a closure is proposed as opposed to an area where a facility is remaining open.

The decision affects all areas of the county equally

Could the decision have a particular impact on any group of individuals sharing protected characteristics under the Equality Act 2010, namely:

- Age
- Disability including Deaf people
- Gender reassignment
- Pregnancy and maternity
- Race/ethnicity/nationality
- Religion or belief
- Sex/gender
- Sexual orientation
- Marriage or Civil Partnership Status

In considering this question you should identify and record any particular impact on people in a sub-group of any of the above – e.g. people with a particular disability or from a particular religious or ethnic group.

It is particularly important to consider whether any decision is likely to impact adversely on any group of people sharing protected characteristics to a disproportionate extent. Any such disproportionate impact will need to be objectively justified.

- The citizens most affected are people with a disability or health condition which significantly impacts on their cognitive functioning.

If you have answered "Yes" to this question in relation to any of the above characteristics, – please go to Question 1.

Yes

If you have answered "No" in relation to all the protected characteristics, please briefly document your reasons below and attach this to the

decision-making papers. (It goes without saying that if the lack of impact is obvious, it need only be very briefly noted.)

Question 1 – Background Evidence

What information do you have about the different groups of people who may be affected by this decision – e.g. employees or service users (you could use monitoring data, survey data, etc to compile this). As indicated above, the relevant protected characteristics are:

- Age
- Disability including Deaf people
- Gender reassignment/gender identity
- Pregnancy and maternity
- Race/Ethnicity/Nationality
- Religion or belief
- Sex/gender
- Sexual orientation
- Marriage or Civil Partnership status (in respect of which the s. 149 requires only that due regard be paid to the need to eliminate discrimination, harassment or victimisation or other conduct which is prohibited by the Act).

In considering this question you should again consider whether the decision under consideration could impact upon specific sub-groups e.g. people of a specific religion or people with a particular disability. You should also consider how the decision is likely to affect those who share two or more of the protected characteristics – for example, older women, disabled, elderly people, and so on.

The decision impacts most on people with a learning disability and/or autism, older people with dementia and people with mental health problems who lack capacity to make decisions about their care and accommodation arrangements, and may be deprived of liberty to protect them from harm.

Question 2 – Engagement/Consultation

How have you tried to involve people/groups that are potentially affected by your decision? Please describe what engagement has taken place, with whom and when.

(Please ensure that you retain evidence of the consultation in case of any further enquiries. This includes the results of consultation or data gathering at any stage of the process)

Consultation has been carried out with following organisations and professionals who work with or represent the people/groups who are potentially affected by the decision.

- LCC Adult Social Care Senior Managers and Team Managers
- LCC Mental Capacity Act Coordinator
- Social Workers working with people with a Learning Disability &/ or Autism, Mental Health issues and Older People
- Shared Lives Service Managers
- Learning Disability Supported Living Providers
- Advocacy Focus (independent statutory advocacy provider) - managers and IMCAs (Independent Mental Capacity Advocates)
- Mental Capacity Act lead for Merseycare NHS Trust
- Mental Capacity Act leads for NHS Clinical Commissioning Groups

Question 3 – Analysing Impact

Could your proposal potentially disadvantage particular groups sharing any of the protected characteristics and if so which groups and in what way?

It is particularly important in considering this question to get to grips with the actual practical impact on those affected. The decision-makers need to know in clear and specific terms what the impact may be and how serious, or perhaps minor, it may be – will people need to walk a few metres further to catch a bus, or to attend school? Will they be cut off altogether from vital services? The answers to such questions must be fully and frankly documented, for better or for worse, so that they can be properly evaluated when the decision is made.

Could your proposal potentially impact on individuals sharing the protected characteristics in any of the following ways:

- Could it discriminate unlawfully against individuals sharing any of the protected characteristics, whether directly or indirectly; if so, it must be amended. Bear in mind that this may involve taking steps to meet the specific needs of disabled people arising from their disabilities
- Could it advance equality of opportunity for those who share a particular protected characteristic? If not could it be developed or modified in order to do so?
- Does it encourage persons who share a relevant protected characteristic to participate in public life or in any activity in which participation by such persons is disproportionately low? If not could it be developed or modified in order to do so?
- Will the proposal contribute to fostering good relations between those who share a relevant protected characteristic and those who do not, for example by tackling prejudice and promoting understanding? If not could it be developed or modified in order to do so? Please identify any findings and how they might be addressed.

The proposal does not discriminate in general against particular groups as the citizens affected are potentially all those who come within the scope of the Mental Capacity Act, which the local authority has a statutory duty to apply. The proposal aims to proactively identify those citizens within that cohort who are most at risk of having their Human Rights under Article 5 (The Right to Liberty and Security of Person) and Article 8 (The Right to Private and Family Life) breached, and to ensure that their cases are prioritised for legal oversight and authorisation by the Court of Protection. This promotes equality of opportunity in that it aims to prioritise the human rights of those people living in the most restrictive care regimes and who are least able to exercise these rights for themselves.

Question 4 –Combined/Cumulative Effect

Could the effects of your decision combine with other factors or decisions taken at local or national level to exacerbate the impact on any groups?

For example - if the proposal is to impose charges for adult social care, its impact on disabled people might be increased by other decisions within the County Council (e.g. increases in the fares charged for Community Transport and reductions in respite care) and national proposals (e.g. the availability of some benefits) . Whilst LCC cannot control some of these decisions, they could increase the adverse effect of the proposal. The LCC has a legal duty to consider this aspect, and to evaluate the decision, including mitigation, accordingly.

If Yes – please identify these.

Not aware of any other factors

Question 5 – Identifying Initial Results of Your Analysis

As a result of your analysis have you changed/amended your original proposal?

Please identify how –

For example:

Adjusted the original proposal – briefly outline the adjustments

Continuing with the Original Proposal – briefly explain why

Stopped the Proposal and Revised it - briefly explain

As a result of this analysis the decision is to continue with the original proposal. Feedback from the wide -ranging consultation with partners who have significant expertise in this area of work has shown that the proposal to utilise a COP Prioritisation Tool is very welcome. It is seen as a positive step towards managing competing priorities, and ensuring that our most vulnerable citizens' human rights are made highly visible. All the partners consulted are now looking to adopt the

tool within their own organisations

Question 6 - Mitigation

Please set out any steps you will take to mitigate/reduce any potential adverse effects of your decision on those sharing any particular protected characteristic. It is important here to do a genuine and realistic evaluation of the effectiveness of the mitigation contemplated. Over-optimistic and over-generalised assessments are likely to fall short of the “due regard” requirement.

Also consider if any mitigation might adversely affect any other groups and how this might be managed.

Those citizens within the cohort whose cases are considered lower priority will have their applications to the Court delayed. The following actions will mitigate the risks of these individuals remaining less visible:

- The development of new systems to record and hold all potential COP applications are being looked at, utilising a central database or work tray
- Any central database or worktray will be regularly reviewed by team managers and / or the COP Coordinator
- As an interim measure, the COP Coordinator will maintain a manual record of known cases that have been prioritised
- The COP Coordinator and Assistant COP Coordinator will continue to engage with care providers and adult social care teams to raise awareness of COP work and to pilot the tool
- Social Care Annual Reviews and changes in circumstances will include a consideration of the COP prioritisation level for that individual.

Question 7 – Balancing the Proposal/Countervailing Factors

At this point you need to weigh up the reasons for the proposal – e.g. need for budget savings; damaging effects of not taking forward the

proposal at this time – against the findings of your analysis. Please describe this assessment. It is important here to ensure that the assessment of any negative effects upon those sharing protected characteristics is full and frank. The full extent of actual adverse impacts must be acknowledged and taken into account, or the assessment will be inadequate. What is required is an honest evaluation, and not a marketing exercise. Conversely, while adverse effects should be frankly acknowledged, they need not be overstated or exaggerated. Where effects are not serious, this too should be made clear.

Although the proposal means applications for those of lower priority will be delayed, it is considered reasonable to believe that their care has been arranged by social care staff with the best intentions to keep them safe and well. The current social care and legal resources do not allow the local authority to make all potential applications to the Court without impacting on the needs of other citizens with protected rights. The President of the COP has stated publicly that the Court would not be able to manage all of Lancashire's applications in any case. The proposal is considered to be the best way of managing a very challenging and onerous legal process that has been described by the Law Commission as not fit for purpose

Question 8 – Final Proposal

In summary, what is your final proposal and which groups may be affected and how?

The final proposal is to recommend the adoption of a Court of Protection Prioritisation tool to enable Adult Social Care Services to identify those applications that need to be made to the Court of Protection according to urgency, using an agreed checklist as guidance. The groups most affected are people with a disability or health condition which significantly impacts on their cognitive functioning i.e. people with a learning disability and/or autism, older people with dementia and people with mental health problems, and who are potentially deprived of liberty. This will have a positive impact

on people whose cases are most urgent as the Court will have oversight of their care arrangements in a timely fashion, while there is a risk that less urgent cases will be delayed

Question 9 – Review and Monitoring Arrangements

Describe what arrangements you will put in place to review and monitor the effects of your proposal.

A review of the implementation of the COP Prioritisation Tool would be carried out by the COP Coordinator or other appropriate manager at least annually.

Equality Analysis Prepared By Cate Short

Position/Role Court of Protection (COP) Coordinator

Equality Analysis Endorsed by Line Manager and/or Service Head

Charlotte Hammond:



Decision Signed Off By Ian Crabtree:



Cabinet Member or Director

Please remember to ensure the Equality Decision Making Analysis is submitted with the decision-making report and a copy is retained with other papers relating to the decision.

Where specific actions are identified as part of the Analysis please ensure that an EAP001 form is completed and forwarded to your Service contact in the Equality and Cohesion Team.

Service contacts in the Equality & Cohesion Team are:

Karen Beaumont – Equality & Cohesion Manager

Karen.beaumont@lancashire.gov.uk

Contact for Adult Services ; Policy Information and Commissioning (Age Well); Health Equity, Welfare and Partnerships (PH); Patient Safety and Quality Improvement (PH).

Jeanette Binns – Equality & Cohesion Manager

Jeanette.binns@lancashire.gov.uk

Contact for Community Services; Development and Corporate Services; Customer Access; Policy Commissioning and Information (Live Well); Trading Standards and Scientific Services (PH), Lancashire Pension Fund

Saulo Cwerner – Equality & Cohesion Manager

Saulo.cwerner@lancashire.gov.uk

Contact for Children's Services; Policy, Information and Commissioning (Start Well); Wellbeing, Prevention and Early Help (PH); BTLS

Pam Smith – Equality & Cohesion Manager

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Contact for Governance, Finance and Public Services; Communications; Corporate Commissioning (Level 1); Emergency Planning and Resilience (PH).

Thank you