

**NORTH LINCOLNSHIRE COUNCIL**

**ADULT SERVICES  
CABINET MEMBER**

**MENTAL CAPACITY ACT DEPRIVATION OF LIBERTY SAFEGUARDS**

**1. OBJECT AND BRIEF SUMMARY OF SUBJECT**

- 1.1 To seek Cabinet Member approval to identify someone to lead the work required to manage and review the full delivery of the Mental Capacity Act 2005 Deprivation of Liberty Safeguards (MCA DOLS).
- 1.2 The Deprivation of Liberty Safeguards (DOLS) supplements the Mental Capacity Act (MCA) 2005.
- 1.3 That the Cabinet Member notes the council's statutory duties and pressures to implement to the designated deadline.
- 1.2 To outline and recommend the actions required to implement the statutory framework.

**2. BACKGROUND INFORMATION**

- 2.1 The MCA 2005 provides a statutory framework for acting and making decisions on behalf of individuals who lack the mental capacity to do so for themselves. It introduced a number of laws to protect those individuals and ensures they are provided with the support required to make decisions for themselves wherever possible. The Act came into force on 1 October 2007. In North Lincolnshire a Local Implementation Network (LIN) was set up to steer the introduction of the MCA across all organisations, voluntary and statutory bodies and reports to the local Safeguarding Adults Board.
- 2.2 The Government has added new provisions to the MCA in the form of DOLS. These safeguards focus on protecting the interests of some of the most vulnerable people in society, who for their own best interests, may need to be accommodated for care and treatment, which may result in depriving the individual of their liberty, and where the individual lacks capacity to consent. The decision to deprive someone of their liberty is an extremely serious matter and the DOLS are there to ensure this decision is not taken without following defined processes and in consultation with specific authorities.
- 2.3 The Department of Health has announced that the MCA DOLS will commence on 1 April 2009. A successful implementation of the safeguards requires:

- Briefing and information opportunities that enable Local Authorities, Primary Care Trusts, care homes and hospitals to understand their administrative roles and responsibilities within the safeguards procedures.
  - The carrying out of local impact assessments including modelling an estimate of the number of assessors required to carry them out when the safeguards are introduced.
  - Sufficient numbers of trained staff in place to deliver the MCA DOLS in a safe and managed way.
  - Information for health and social care providers that increases their understanding of the relevant issues (particularly what might constitute a deprivation of liberty).
- 2.4 Locally, it has been agreed that the work of the LIN should be extended to include the implementation of the MCA DOLS in line with other authorities within our region.
- 2.5 There are major challenges to engaging all the partners required for successful implementation of the safeguards to providing local leadership and finding the capacity within current staffing resources to meet the council's statutory duties under the MCA by the implementation date of April 2009.

### 3. **OPTIONS FOR CONSIDERATION**

#### 3.1 Option 1

The LIN has started to explore the full implications of the Act. A service manager within Adult Social Services has been given a lead role and is chairing the LIN. No extra resources have currently been dedicated to meeting the requirements of the Safeguards. Recommendations to appoint a project manager for a fixed term have been made by the LIN to ensure all processes are in place in order to implement the Deprivation of Liberties safeguards. This option would be to await the appointment of a project manager to commence the work for LIN members and undertake limited activity in line with their workload capacity.

#### 3.2 Option 2

To progress the implementation of the Deprivation of Liberties safeguarding more immediately a proposal from the LIN is to identify someone as quickly as possible to project lead the work required whilst also developing the longer term structures to manage and review the full delivery of the MCA requirements on an ongoing basis within Adult Social Services.

The Project Leader will be selected from the existing staff group, and be invited to undertake the role as a development secondment without any increase in grade. The funding allocated to the Mental Capacity

Grant will be used to fund any temporary backfill arrangements required.

#### 4. ANALYSIS OF OPTIONS

##### 4.1 Option 1 (as referred 3.1)

Although the LIN can deliver some elements of the DOLS without a specific project lead, the risks of not meeting the deadline of April 1<sup>st</sup> to deliver the council's statutory duties are high. Therefore delaying taking action to release dedicated resources is not felt to be an acceptable option.

##### 4.2 Option 2 (as referred 3.2)

This option is recommended to ensure more immediate priority actions can be achieved whilst giving time to consider the most effective long-term options for managing implementations of the MCA within the new Adult Social Services structure.

#### 5. RESOURCE IMPLEMENTATIONS (FINANCIAL, STAFFING, PROPERTY, IT)

##### 5.1 Financial

The Department of Health has made funding available to both the Local Authority, within the council's area based grant, and National Health Service North Lincolnshire to support the MCA implementation. There is currently £39,000 available to facilitate this implementation. This money can support the secondment of a project leader and deliver the training programme required.

##### 5.2 Staffing implications

The implementation of Deprivation of Liberties Safeguards has many implications for staff in order for the council's statutory duties to be met both immediately and long term.

These implications include pressures to develop the initial framework, monitor the ongoing implementation and to train staff to undertake their designated roles and responsibilities.

##### 5.3 Property Implications

None

##### 5.4 IT Implications

None

**6. OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17 – CRIME AND DISORDER, RISK AND OTHER)**

**6.1 Statutory Implications**

The council has clear and defined statutory duties associated with the implementation of the DOLS, which they are required to carry out.

**6.2 Risks**

6.2.1 In order to implement the DOLS some staff are required to undertake stringent best interest assessor training. Should staff decline to undertake the training or there are not enough assessors trained to meet demand the council will be unable to meet statutory duties.

6.2.2 Without priority and the required resources being allocated to this work there are risks to meeting the required implementation deadline.

6.3 There are no other implications.

**7. OUTCOMES OF CONSULTATION**

6.1 The Trades Unions have been consulted and have raised no concerns with this report.

**8. RECOMMENDATIONS**

8.1 That Cabinet Member approves option two in order to expedite the work required.

8.2 That Cabinet Member notes the council's statutory duties and pressures to implement to the designated deadline.

SERVICE DIRECTOR ADULT SOCIAL CARE

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**Background Papers used in the preparation of this report: None**