

## HEALTH AND ADULT SOCIAL CARE OVERVIEW AND SCRUTINY COMMITTEE



Report subject	<b>Liberty Protection Safeguards Briefing Report</b>
Meeting date	6 <sup>th</sup> March 2023
Status	Public Report
Executive summary	To provide Councillors with an update on the position on the national introduction of Liberty Protection Safeguards (LPS) what this means and how it will impact the Council.
Recommendations	<b>It is RECOMMENDED:</b> <ul style="list-style-type: none"><li>• <b>For Members to note the information within this Briefing</b></li></ul>
Reason for recommendations	To ensure Councillors are fully cited on the implementation of Liberty Protection Safeguards (LPS) and the impact on the Council.

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Wards	All
Classification	For Update and Information

## Background

1. The Deprivation of Liberty Safeguards (DoLS) are an administrative process for authorising deprivations of liberty in a hospital or care home.
2. In summary, the DoLS provide for a series of professional assessments – conducted independently of the hospital or care home in question – of whether the person lacks capacity to decide whether to be accommodated in the hospital or care home for the purpose of care or treatment, and whether it is in their best interests to be deprived of liberty.
3. Local Authorities are responsible for administering this process and authorising the deprivation (or not) where relevant. The authorisation can be challenged through an administrative review procedure or in the Court of Protection.
4. The Law Commission undertook a review of the existing DoLS process and found it to not be fit for purpose, overly complicated, and too bureaucratic.
5. This led to the drafting of a new piece of law, the Mental Capacity (Amendment) Act, which received Royal Assent in May 2019. It sets out measures to replace the DoLS process.
6. The Government want to ensure that under the new Liberty Protection Safeguards (LPS) scheme there is no outstanding work, so that people's rights are protected in line with Article 5 (Right to Liberty & Security) of the European Convention on Human Rights.

## Current Position

7. Due to COVID-19, the new draft Code of Practice, Regulations, and final Impact Assessment were delayed significantly, however, the draft Code of Practice and Impact Assessment were issued, along with the final Regulations on 17th March 2022. This also prompted a 16-week public Consultation phase, which ended on 7th July 2022. BCP Council gave thorough feedback and nationally the consensus is that there are some quite significant changes that need to happen to make the new legislation workable in practice and affordable to administer.

8. We have not had a final Code of Practice or Impact Assessment yet or implementation date set, but the Local Government Association (LGA) have indicated that this is unlikely to be until after Winter 2023.

### **What will change**

9. Responsible Body – The role of supervisory body will no longer exist under LPS. The relevant responsible body will be charged with authorising arrangements. Defining which organisation is the responsible body will depend on where the person is residing and which organisation is funding their care (it is unclear who will be responsible for self-funders, but it is likely to be the relevant LA). This change reduces some of the burden, however, the government have already made it clear that any outstanding work will not be tolerated, as it has been with DoLS. This infers that additional resources may be needed to manage LPS in the future.
10. Authorising Arrangements – The responsible body can authorise a deprivation of liberty if it is satisfied that the person lacks capacity to make decisions about their care & treatment, has a mental disorder and that the arrangements are necessary and proportionate. It is likely that evidencing this will rest with the person arranging and agreeing the care arrangements – so this may increase the burden on our community teams and our providers to undertake additional tasks.
11. Approved Mental Capacity Professionals (AMCP's) – AMCPs will replace Best Interest Assessors – there will be an additional requirement for the local authority to ensure sufficient numbers of AMCP's and approve them to act. We will need to provide initial conversion training, but it is unclear what format this will take, i.e. can it be done in house or via a University.
12. Wider Scope – LPS arrangements will apply in any setting (previously only residential care or hospitals), including domestic settings, i.e. person's home, Extra Care, Shared Lives etc. This increases the number of people who may need to be subject to LPS.
13. Increased Flexibility – An LPS authorisation can cover more than one setting and can travel with the person, however, only if their needs don't change as detailed in their care plan. So, if they require an unplanned admission to hospital, this is likely to require a fresh process.
14. 16/17 year olds – LPS will apply to this age group (recent case law also highlighted the need for applications to be made to the Court of Protection for this age group with immediate effect). This is a big change for Children's services to embed.
15. Role of Care Homes – if the person is residing in a care home, in theory, the responsible body can delegate the assessment process to the care home – however, early indications suggest that the Code of Practice will state that the assessor cannot be 'connected' to the care home, which suggests they need to employ additional staff. It is unclear who will bear the burden of this cost.

16. Renewable and longer lasting – LPS can be renewed after the first year for up to three years – DoLS can only be authorised for 12 months maximum.
17. Advocacy – in the absence of the person having a family member who can represent them, an Independent Mental Capacity Advocate (IMCA) must be appointed.

### **Impact for the Council**

18. In principle, the LPS will enshrine good practice in routine case management for Council staff working with people from 16+ who need care and support and who lack capacity to make decisions about their care. It will streamline the authorising of a deprivation of liberty and reduce the amount of bureaucratic process currently required.
19. However, because the scope of LPS will be wider than DoLS currently is, the number of people needing interventions linked to LPS will increase. There are many impacts for the Council, some greater than others. Below are a couple of examples of the most significant.
20. The draft Code of Practice has indicated that only registered professionals (e.g. Social Workers) can undertake a capacity assessment and best interest decision that leads to a person being deprived of their liberty. At the moment, non-registered, but highly skilled staff undertake this work. The impact will mean that additional demand will be placed on Social Workers, and this may require additional resource to meet the demand.
21. Increased numbers of people subject to a deprivation, caused by the widening of the scope of LPS, will require additional resources to be commissioned and extended to include young people for the IMCA role. It is unknown currently whether the Impact Assessment will be amended to reflect these new demands.

### **How are we preparing for LPS?**

22. Adult Social Care (ASC) are leading the Programme Management for LPS within the Council and we have recruited a dedicated Project Manager to support the wide changes required. Our project plan has been developed jointly with Children's Social Care (CSC) and other stakeholders.
23. Whilst we are still waiting for an implementation date, the LPS Project Team have agreed to work on implementation being 1st October 2023 until we hear different. The Project Team are undertaking as many tasks as possible in advance and preparing 'in theory' approaches, scoping, training plans etc. These 'in theory' plans will be adjusted once the final Code of Practice and Impact Assessment are received and we have a clear implementation timeline.
24. ASC are hosting a Pan Dorset Responsible Body's group, which involves Dorset Council and all local Health Commissioners and Trusts. This group began as a supportive peer discussion group to understand the changes. It is now evolving into a task and finish group, aiming to ensure a consistent approach,

collaborative working and Pan Dorset approach where appropriate. It may evolve further to form a quality assurance or governance group.

25. As part of the preparation for the LPS implementation, Department Health & Social Care (DHSC) are funding a joint national programme of implementation support to local authorities. As part of this programme, the Association of Adult Social Care (ADASS) and the Local Government Association (LGA) have been contracted to provide regional support to councils (both children's and adult's services) to implement the LPS. This has prompted the creation of LPS Local Government Regional Implementation Support Officer.
26. BCP Council ASC are hosting this role for the Southwest ADASS Region. The role works across all our region's Local Authorities, providers and government systems to evaluate readiness and support implementation of LPS. A key function is to liaise with counterparts undertaking a similar implementation role to facilitate future Responsible Bodies to undertake self-assessment stocktakes of their readiness to implement LPS, collate responses and feedback levels of readiness to LGA/ADASS.

### **Summary of financial implications**

27. There are no financial implications related to this report, as it is a briefing paper. It is important to note that a final Impact Assessment has not yet been issued. Due to the broadening of which citizens will be affected by LPS in comparison to DoLS, it is likely that more resources will be required to meet our statutory functions.

### **Summary of legal implications**

28. This is a statutory change to our functions; therefore, it is a change we will need to implement once the timeline is confirmed.

### **Summary of human resources implications**

29. It is likely that we will be able to train our existing workforce to respond to LPS. It is anticipated that we will need to develop a Workforce Strategy which takes account of demand and resource allocation once we have clarity over which professionals need to undertake which tasks. It is likely that there will be greater demands on registered professionals, i.e. Social Workers etc.

### **Summary of environmental impact**

30. There are no environmental impacts that we can identify at present.

### **Summary of public health implications**

31. There are no public health implications.

### **Summary of equality implications**

32. A full equality impact assessment is planned

**Summary of risk assessment**

33. There are no risks associated with this paper. A full Risk Log is included within the Programme Management tasks.

**Background papers**

There are no background papers

**Appendices**

There are no appendices to this report.