

Why LPS?

- substantial increases in numbers of applications in settings to which DOLS applies – care homes and hospitals – since Cheshire West judgement 2014
- many people in settings to which DOLS do not apply who need authorisation of their circumstances, currently only achievable by application to Court of Protection
- Law Commission review covered more broadly than simply DOLS
- House of Lords post-legislative scrutiny report MCA March 2014

‘For many who are expected to comply with the Act it appears to be an optional add-on, far from being central to their working lives... the prevailing cultures of paternalism (in health) and risk-aversion (in social care) have prevented the Act from becoming widely known or embedded. The empowering ethos has not been delivered. The rights conferred by the Act have not been widely realised. The duties imposed by the Act are not widely followed.’

types of arrangement under LPS

- can be used in settings other than care homes and hospitals – supported living, shared lives, private and domestic settings
- not tied to accommodation and residence – used to authorise day centre and transport arrangements
- authorisations can be given for arrangements being carried out in more than one setting
- apply to people aged 16 and over
- Court application no longer routinely required except for appeals
- meaning of deprivation of liberty will continue to be led by case law- currently Cheshire west

Responsible Body authorising LPS arrangements

- NHS hospital – hospital manager
- NHS continuing health care arrangements – relevant CCG
- any other settings – responsible local authority (ordinary residence)
- All other settings (including independent hospital)- Local Authority

authorisation conditions

- *p* lacks capacity to consent to the arrangements;
- *p* has a mental disorder – section 1(2) of the Mental Health Act 1983; and
- the arrangements are necessary to prevent harm to *p* and proportionate in relation to the likelihood and seriousness of harm to *p*

reducing existing 6 assessments to 3 assessments:

1. mental capacity assessment
2. medical assessment – determine mental disorder
3. ‘necessary and proportionate’ assessment

***LPS assessments should be part of mainstream assessment and care planning for the person.**

Responsible body can rely on previous assessments or assessments for any other purposes, if it is reasonable to do so.

Appropriate Person IMCA

- appropriate person (family or friend) to represent and support p
- appropriate person must consent to this role and cannot be someone who is engaged in providing care or treatment to p in a professional capacity or for remuneration
- p must consent to appointment of appropriate person; if p lacks capacity to do so, Responsible Body to appoint if appointment is in p 's best interests
- IMCA appointed for p if no appropriate person- IMCA appointment lasts all through LPS process- i.e before and after authorisation
- appropriate person has a right to IMCA support

Pre-authorisation Review

- carried out by a person who is not involved in the day-to-day care or providing any treatment to *p*
- review completed using information available to authorise; can request further information or meeting with *p* as necessary
- completed by competent staff
- reviewer to determine whether it is reasonable for Responsible Body to conclude that the authorisation conditions are met

Approved Mental Capacity professional AMCP (replaces BIA)

- completes pre-authorisation review where an objection has been raised, in independent hospital cases or other relevant cases as set out in the Code of Practice
- meets with p, completes consultation and looks at information relied upon for assessments
- Professionals who can become AMCP- social worker, nurse, OT, psychologist and speech and language therapist

Authorisation- effect and duration

- can have effect immediately or up to 28 days later
- last for an initial period of up to 12 months and can be renewed for a second period of up to 12 months and thereafter for periods of up to 3 years
- Responsible body can at any time determine that an authorisation should cease
- right of legal challenge to Court of protection

analysis and scoping

- potential numbers of transfer to CCGs and Hospital Trusts
- potential numbers Court of Protection DOLS cases, including potential numbers of transfer to CCGs (CHC)
- numbers of authorised and potential unauthorised community DOLS in locality teams, involving CLDS and CCGs in cases of joint funding
- numbers in independent hospitals (long-stay Transforming Care) or in the process of moving out into the community
- local authority AMCP capacity – trained BIAs to undertake relevant AMCP conversion programme
- Health AMCP capacity – consider AMCP arrangements for CCGs and Hospital Trusts; agree local arrangements with fellow Responsible Bodies

training and operational implications

- preparatory and ongoing training to front line staff and managers who would be expected to undertake most of the LPS assessments
- training for children's services regarding LPS for 16 and 17 year olds
- conversion training for BIAs
- training for new AMCPs

liaison with other services and partners

- children's services regarding LPS for 16 and 17 year olds
- CCGs and Hospital Trusts
- commissioning regarding expanded IMCA services
- One year transitional arrangement

Consultation on New MCA CoP and Implementation of the LPS – 17th March- 7th July

- ▶
- ▶ [Mental Capacity Act 2005 Code of Practice, including the Liberty Protection Safeguards \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)
- ▶ [Draft MCA Code of Practice: summary](#)
- ▶ [Draft LPS regulations: Assessment, Determinations and Pre-Authorisation Reviews \(England\)](#)
- ▶ [Draft LPS regulations: Training and Approval for Approved Mental Capacity Professionals \(England\)](#)
- ▶ [Draft LPS regulations: Independent Mental Capacity Advocates \(England\)](#)
- ▶ [Draft LPS regulations: Consequential Provisions \(England and Wales\)](#)
- ▶ [Draft LPS regulations: Commencement, Transitional and Savings Provisions \(England and Wales\)](#)
- ▶ [Draft LPS regulations: Monitoring and Reporting \(England\)](#)

The Consultation

- Response by 7th July
- Response on Line (electronic form)
- 25 Questions as part of the consultation
- Respond to consultation individually and/or in Teams and/or send response to DoLS Lead

Q & A