

Liberty Protection Safeguards (LPS) – Overview



August 2019: The Liberty Protection Safeguards (the new DoLS) are expected to come into force in October 2020.

Information and resources on LPS are available at: www.edgetraining.org.uk

A detailed training day on LPS is available (in-house or come to our venues). Visit www.edgetraining.org.uk for details

Who: aged 16 and over + mental disorder + lacks mental capacity + they are deprived of their liberty as defined by current case law such as *Cheshire West* (the acid test).

Where: anywhere in England and Wales. This could include hospitals, care homes, supported living, residential schools, extra care provision, shared lives and domestic settings ie a person's own home.

Duration: up to one year initially, renewed for a up to a further year and then renewals of up to three years.

Rights for the person detained:

- 1. Appeal to the Court of Protection**
The person, their appropriate person or IMCA can appeal.
- 2. Appropriate Person (AP)**
Some people will have an appropriate person (not involved in providing care or treatment) appointed for them. Their role is to support and represent the person.
- 3. Advocate (IMCA)**
If a person does not have an AP, they will have an IMCA instead unless they lack capacity and it is not considered in their best interests. An AP may also be supported by an IMCA
- 4. Review**
A review of the person's case to check the legal criteria are still met.

Assessors:

the responsible body (or care home) decides who will undertake the assessments. Care home managers may complete the consultation requirement. Registered professionals (nurse, social worker, OT etc) are likely to complete the mental capacity assessment and a doctor is likely to complete the medical (mental disorder) assessment. Other assessments could (at the time of writing) be completed by anyone (instructed by) the responsible body.

Responsible Body:

If the arrangements are mainly in an NHS hospital, the NHS Trust will be the responsible body. If the arrangements are mainly through NHS continuing healthcare the CCG in England or local health board in Wales will be the responsible body. Local authorities will be the responsible body in all other cases, including private hospitals in England (in Wales local health boards are responsible for private hospital cases).

The responsible body organises the LPS assessments + undertakes the pre-authorisation review + authorises the LPS + monitors it + renews it + attends the Court of Protection for appeals
(note: care home managers can be asked to organise assessments).

Procedure:

- 1. Assessments**
Any person considered by the Responsible Body to have the experience and knowledge needed to complete the assessments (see below). Mental Capacity and Mental Disorder are likely to require professionals.
- 2. Pre-authorisation review**
The responsible body identifies a person not involved in the 'day to day' care or treatment of the person to read the completed assessments below and decide if the criteria for LPS are met (there is no requirement to meet the person). If, however, the person is objecting or in a private hospital or at the responsible body's discretion, an Approved Mental Capacity Professional (AMCP) will undertake the pre-authorisation review. An AMCP must meet the person and consult others (unless not practicable/appropriate to do so).
- 3. Authorisation**
The responsible body authorises the LPS. No specific process is set out for this in the Act.

What needs to be assessed and recorded?

Everything on the list below needs to be assessed and completed *before* an LPS authorisation can be given (Para 17 (and 18 or 19) MC(A) Act 2019).

1. Does the person *lack mental capacity* to consent to the arrangements?
2. Does the person have a *mental disorder*?
3. Are the arrangements *necessary and proportionate* to prevent harm to the person?
4. Are the arrangements (restrictions) a *deprivation of their liberty*?
5. Is the person *aged 16 or over*? (aged 18 or over in care homes)
6. Could or should the *Mental Health Act* be used instead or is there any conflict with the Mental Health Act?
7. Have the person and those interested in the person's welfare/caring for them + others been *consulted* + what did they say?
8. Do they meet the legal criteria for an *AMCP* pre-authorisation review?
9. Is there an *Appropriate Person* who will 'represent and support' the person and/or does the case meet the criteria for an IMCA?

A pre authorisation review must be carried out in all cases AND a draft authorisation record prepared. The government have stated the arrangements under LPS must also be in the person's best interests and an LPA/Deputy (personal welfare) can object to the arrangements.