

<b>Report to:</b>	<b>Public Board of Directors</b>	<b>Agenda item:</b>	<b>10</b>
<b>Date of Meeting:</b>	<b>27 November 2019</b>		
<b>Title of Report:</b>	<b>Liberty Protection Safeguards-Briefing</b>		
<b>Status:</b>	<b>For information</b>		
<b>Board Sponsor:</b>	<b>Lisa Cheek, Director of Nursing and Midwifery</b>		
<b>Author:</b>	<b>Debra Harrison, Senior Nurse, Adult Safeguarding</b>		
<b>Appendices</b>	<b>Appendix 1: Liberty Protection Safeguards- Overview</b>		

<b>1.</b>	<b>Executive Summary of the Report</b>
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With the Mental Capacity (Amendment) Act 2019 the current scheme for managing deprivation of liberty (Deprivation of Liberty Safeguards-DoLS) will cease and be replaced by Liberty Protection Safeguards (LPS) This places new duties and responsibilities on the Trust around deprivation of liberty.

<b>2.</b>	<b>Recommendations (Note, Approve, Discuss)</b>
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To note.

<b>3.</b>	<b>Legal / Regulatory Implications</b>
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Compliance with the Mental Capacity (Amendment) Act 2019 to ensure the Trust does not unlawfully deprive any patients of their liberty while delivering their treatment and care (in patients).

Regulation 13. Health and Social Care Act 2008 (Regulated Activities) Safeguarding service users from abuse and improper treatment

<b>4.</b>	<b>Risk (Threats or opportunities, link to a risk on the Risk Register, Board Assurance Framework etc.)</b>
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There is a risk to CQC compliance (Regulation 13) if we do not meet our legal requirements relating to LPS. A risk assessment will be completed and added to the risk register.

<b>5.</b>	<b>Resources Implications (Financial / staffing)</b>
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There will be financial implications (staffing) currently unknown.

<b>6.</b>	<b>Equality and Diversity</b>
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All services are delivered in line with the Trust's Equality and Diversity Policy and Equality and Diversity will be maintained following the introduction of the Liberty Protection Safeguards.

<b>7.</b>	<b>References to previous reports</b>
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This has been raised at the Trust's October 2019 Safeguarding Committee.

<b>8.</b>	<b>Freedom of Information</b>
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Public

## Liberty Protection Safeguards Briefing Paper

### Background

The Mental Capacity (Amendment) Bill gained Royal Assent in May 2019 and is now an act of parliament (law) in the form of the Mental Capacity (Amendment) Act 2019. It created a new scheme, known as the Liberty Protection Safeguards (LPS), which will replace the existing Deprivation of Liberty Safeguards (DoLS) as the legal framework through which a person may be deprived of their liberty when they lack the mental capacity to consent to their care arrangements. It is intended to be introduced into practice in October 2020.

The LPS is one of the most significant legislative changes to affect health and social care in recent years and will impact greatly on the work of, amongst others, social workers, care coordinators, care home managers, advocacy staff, psychiatrists, GPs, NHS hospital staff, CHC practitioners and supported living staff. The rights and views of patient's subject to the new regime and their carers, are also central to its implementation and they should be the focal point of LPS.

The LPS introduce major changes to the existing DoLS scheme which widens the scope of those who will fall under its safeguards. This includes 16 & 17 year olds and those individuals in supported living/community settings. It also puts added responsibilities on hospital trusts and CCG's in that they will now be responsible for authorising their own cases where they are responsible for providing the care for the individual who lacks capacity to consent to arrangements that amount to a deprivation of liberty. Currently the responsibility for authorising the deprivation of liberty lies with the Local Authorities

Finally, one of the biggest changes brought in by the LPS is the sources of information by which the responsible body can authorise a deprivation of liberty. It will no longer be the sole responsibility of Best Interest Assessors (BIAs) and 'front-line' teams to complete the required assessments. The publication of the Statutory Regulations and Code of Practice is expected in spring 2020. The code will be an interpretive guide to the statutory framework to aid the processes and practice at the RUH.

There is significant work to be done in terms of planning for October 2020 and the introduction of LPS. The RUH has representation on the Bath and North East Somerset (BaNES) Project Board that has been established to bring together the relevant stakeholders in a co-ordinated manner to ensure its successful implementation in Bath & North East Somerset. The Mental Capacity Act Leads across three acute Trusts within the BaNES, Swindon and Wiltshire Clinical Commissioning Group (BSW CCG) are also liaising on implementation plans.

Author: Debra Harrison, Senior Nurse, Adult Safeguarding	Date 21 November 2019
Document Approved by: Lisa Cheek, Director of Nursing and Midwifery	Version: Final
Agenda Item: 10	Page 2 of 5

## Impact on the Trust

As a Responsible Body the Board must ensure from 1<sup>st</sup> October 2020 that the Trust is acting lawfully, reasonably, proportionately and fairly under the Mental Capacity (Amendment) Act 2019.

The Trust will be responsible for identifying where care plans (or arrangements) amount to a deprivation of liberty and to arrange for the LPS assessments to be completed. The amended law states that in the future mental capacity and mental disorder assessments require completion by a registered professional, however the code will give the final guidance on who can be assessors. In total there are 9 assessments to be completed and will need to consider if the patient requires support through an advocacy service.

Responsible Bodies must arrange for a pre authorisation review of the LPS assessments before the LPS can be authorised. Should the patient object to receiving care and treatment at the RUH then it is the responsibility of the RUH to appoint an Approved Mental Capacity Professional (AMCP) to undertake a pre-authorisation review.

The Trust have extensive duties to publish information on LPS and take steps to ensure that patients and their appropriate person (previously known as representative) understands their rights when LPS is being proposed and when authorised. The Trust has the responsibility to ensure the patient and their appropriate person has a copy of the authorised LPS.

The Trust is able to decide what time period applies to each authorised LPS within a maximum of 12 months.

## Current Activity

The table below shows the increasing trend of DoLS applications over the past 5 years

**Table 1: Comparison of Deprivation of Liberty Safeguard's Applications by Local Authorities**

	<b>Banes</b>	<b>Wiltshire</b>	<b>Somerset</b>	<b>S. Glos</b>	<b>Other</b>	<b>Total</b>
<b>2014 - 15</b>	148	149	38	10	4	349
<b>2015 - 16</b>	183	182	67	26	5	463
<b>2016 - 17</b>	237	314	90	15	6	662
<b>2017 -18</b>	241	308	97	34	6	686
<b>2018 - 19</b>	282	315	106	23	12	738

It is not anticipated that there will be a high number of 16-17 year old patients that will require LPS authorisations, however it is recognised that some patients who are not objecting, but cannot consent to their care arrangements, may not have been considered for a DoLS applications.

### **Actions to be taken in preparation for the new safeguards**

Prior to the publication of the Statutory Regulations and the Code of Practice the following steps are being taken now:

- A review of the staffing model required to deliver the new Liberty Protection Safeguards will take place in January 2020
- Identify potential funding implications to implement and sustain LPS
- Identify LPS leads within the Trust
- A review of policies and procedures to reflect the new framework
- Identify the number of people the new safeguards are likely to affect
- A review of training needs.
- Identification of who within the Trust will conduct the assessment / pre authorisation reviewers.

### **Recommendations**

That the Board notes the changes in practice required as a result of the new Mental Capacity amended Act and the introduction of the Liberty Protection Safeguards and the impact on the Trust

### **Appendix 1 – Liberty Protection Safeguards (PPS) Overview**

Author: Debra Harrison, Senior Nurse, Adult Safeguarding Document Approved by: Lisa Cheek, Director of Nursing and Midwifery	Date 21 November 2019 Version: Final
Agenda Item: 10	Page 4 of 5

## 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](http://www.edgetraining.org.uk)  
A detailed training day on LPS is available (in-house or come to our venues). Visit [www.edgetraining.org.uk](http://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.

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Document Approved by: Lisa Cheek, Director of Nursing and Midwifery	Version: Final
Agenda Item: 10	Page 5 of 5