

Liberty Protection Safeguards (LPS) – Overview



26th March 2019: The Liberty Protection Safeguards will replace DoLS. They are currently in the final Parliamentary stage before becoming law and are likely to come into effect mid 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 courses in central London). Visit www.edgetraining.org.uk for details

Who?: aged 16 and over +
mental disorder + lacks mental capacity

Where?: anywhere in England and Wales.

This could include hospitals, care homes, supported living, extra care provision 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. Renewals may be paper based without the person being seen by the responsible body.

Rights for the person detained:

- 1. Appeal to the Court of Protection**
The person under LPS, their appropriate person or their advocate can appeal.
- 2. Appropriate Person**
Some people may 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 appropriate person, they will have an advocate instead unless they lack capacity and it is not considered in their best interests.
- 4. Review**
A review of the person's case to check the legal criteria is still met.

Assessors:

the responsible body decides which staff will undertake the assessments. Care Home managers may complete the consultation assessment. Registered professionals (nurse, social worker, OT etc) must complete the mental capacity assessment and a doctor must complete the mental disorder assessment. Other assessments could (at the time of writing) be completed by any staff from the responsible body.

Responsible Body:

NHS Trust, Clinical Commissioning Group (CCG), Welsh Health Board or local authority.

If an NHS Trust, CCG or Welsh Health Board are providing or commissioning care they will be the responsible body. Local authorities will be responsible in all other cases (including private hospitals).

The responsible body (or care home manager) organises the LPS assessments. The responsible body undertakes the pre-authorisation review + authorises the LPS + monitors it + renews it + attends the Court of Protection for appeals.

Procedure:

- 1. Assessments**
Any member of staff with appropriate experience and knowledge completes the assessments listed below. Mental Capacity and Mental Disorder require professionals.
- 2. Pre-authorisation review**
Any member of staff from the responsible body not involved in the 'day to day' care or treatment of the person. They do not meet the person but read the completed assessments below and decide if the criteria for LPS are met. If the person is objecting/in private hospital/responsible body decides - an AMCP will undertake the review. They meet the person (but they don't have to in all cases) and consult others.
- 3. Authorisation**
The responsible body authorises the LPS. No specific process is set out for this in the Bill.

Assessments (full legal criteria under an amended Act):

1. Is the person at least 16 years old?
2. Does the person lack mental capacity to consent to the arrangements?
3. Does the person have a mental disorder?
4. Are the arrangements (restrictions) a deprivation of liberty?
5. Are the arrangements necessary and proportionate to prevent harm to the person?
6. Have the person and those interested in the person's welfare been consulted + what did they say?
7. Could or should the Mental Health Act be used instead?
8. Does the person meet the criteria for an AMCP review?
9. Is there an Appropriate Person who can be appointed? If not, an advocate (IMCA) should be appointed, unless not in best interests.

The government have stated the arrangements (DoL) must be in the person's best interests and an LPA/Deputy (personal welfare) is still able to object to the arrangements.

Note: these should all be recorded, and evidence provided.