Liberty Protection Safeguards (LPS)
Best Interests Assessors Information Sheet
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- **June 2019**: The Mental Capacity (Amendment) Act 2019 which creates the Liberty Protection Safeguards received Royal Assent on 16th May 2019. The Act will not come into force until 2020 in order to give organisations time to prepare for the implementation of LPS. The exact timetable is unclear.

- To download the Bill and other documents go to: https://services.parliament.uk/Bills/2017-19/mentalcapacityamendment.html

- A series of resources and a full day training course on LPS (hosted by Edge or delivered in-house) are available from www.edgetraining.org.uk/news/ or email admin@edgetraining.org.uk for details.

- If you have any questions about this information sheet, please contact: steven.richards@edgetraining.org.uk

This information sheet is designed specifically for DoLS Best Interests Assessors (BIAs). It aims to explain how their role and function changes under LPS. We have been asked questions about this by numerous BIAs around the country during the training we deliver on LPS. We will update this sheet as new information becomes available.

### Overview

The role of the BIA is replaced under the Liberty Protection Safeguards. A new role has been created entitled Approved Mental Capacity Professional (AMCP). Under DoLS the BIA carried out a series of detailed assessments for every person as part of the standard authorisation process. Under LPS, assessments are undertaken by other staff (general social workers, nurses etc) and the AMCP will read and review these LPS assessments completed by others, this is called the pre-authorisation review. Whereas at present, DoLS signatories only read assessments, an AMCP also meets the person and speaks to others interested in their welfare. It is likely that the AMCP will have to assess too. For example, if they disagree with the original assessor’s mental capacity assessment, they would need to evidence why they disagree and therefore, record the assessment. AMCPs will not be required for all pre-authorisation reviews (see below for further details).

### The Bill, Regulations and Code of Practice

**The Bill**: The main law on LPS is now complete. This creates the role of the AMCP and also states when an AMCP is required and the basics of their role (see below).

**Regulations**: These will be written later in the year and will provide detail on the qualification and training needed to become an AMCP and the ability of existing BIAs to become AMCPs. They will also provide detail on the registration process to become approved by local authorities. At the moment this is expected to be very similar to the process to become a BIA now.

**Code of Practice**: The Code is being written now and will probably be published late 2019 or early 2020. It will provide some practical detail on the role of the AMCP. It should be noted however that the Code cannot do more than the Law or Regulations allow. For example, the Code cannot say that all LPS cases should be seen by an AMCP as this would be beyond what the law states.

### What happens to existing BIAs when LPS starts

The Dept of Health and Social Care (DHSC) memorandum for LPS states ‘it is expected’ that existing BIAs will be ‘fast-tracked into the new role’. This means rather than having to re-qualify from scratch (see qualification for AMCPs below) all existing BIAs will be able to undertake a reduced approval course to convert from being a BIA to an AMCP. There are no details at present about how long this course would be, which organisations will provide it and when it will become available. In England, qualification courses have been associated with Universities and the conversion course may be similar. The course will need to be available before LPS starts but it will take some time to decide an approved content and for the DHSC to commission training providers etc. It should be noted that although someone may qualify as an AMCP before LPS comes into effect no one will be able to act as an AMCP until the legislation actually starts.

### When do AMCPs get involved

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Independent BIAs

A large number of BIAs are currently independent and not directly employed by local authorities but commissioned by them. LPS does not exclude AMCPs being independent either. This could change however with the statutory Regulations which are yet to be published. Our view is that this is unlikely as many local authorities rely on independent BIAs rather than employing them directly and this situation is likely to continue.
**Workload for AMCPs**

The question of workload for AMCPs is more challenging to answer. A simple response is that given AMCPs see only a certain percentage of LPS cases rather than all cases (as with DoLS and BIAs) there will be less work for AMCPs and so a reduced demand for them. However, a number of factors mean the demand for AMCPs may be greater.

1. The DHSC estimate for LPS applications is over 300,000 applications a year. This is more than for DoLS as it includes community cases and 16-17 years under LPS. It is also the case that 300,000 may in reality be an underestimate (see the Edge funding sheet on LPS).

2. The estimate for people objecting to care/treatment or their placement is put at 25%. This group of people qualify for a pre-authorisation review by an AMCP. This again may be an underestimate as an LPS authorisation (as with DoLS) is supposed to be arranged prior to a deprivation of liberty starting and therefore, could be when a person is first admitted and therefore the objection rate may be much higher leading to an increased demand for AMCPs.

3. LPS requires all private hospital cases to be seen by an AMCP.

4. LPS includes a general provision where a responsible body can request an AMCP to be involved in any case. This could include complex cases, use of covert medication, unusual restrictions or where a family are not happy with care or placement.

5. In addition, it may be that responsible bodies use AMCPs for assessments of cases (such as out of area or complex cases) because they have the skills and knowledge to ensure a robust assessment. In such cases the AMCP would be undertaking assessments and they would not carry out the pre-authorisation review.

6. Some responsible bodies, in particular CCGs, may decide to use AMCPs for assessments as they are do not have available staff to undertake the work required.

Currently under DoLS, different Supervisory Bodies work in different ways and some use only in-house BIAs whereas others use lots of independent BIAs (or agencies). This situation is likely to continue in the absence of the DHSC introducing a regulation to prevent independent AMCPs.