**Deprivation of Liberty and the Mental Capacity Act**

**Practice Briefing**

**Date:** 9th May 2023

**Introduction**

The government has announced the implementation of the Liberty Protection Safeguards (LPS) is being delayed beyond this Parliament. The LPS scheme was introduced through the Mental Capacity (Amendment) Act in 2019 as the planned replacement system for the Deprivation of Liberty Safeguards (DoLS). The LPS was intended to provide a more efficient framework for authorising deprivation of liberty for people aged 16 years and over, who need to be deprived of their liberty in order to receive their care or treatment, and who lack mental capacity to consent to their arrangements.

**What this means for Health and Social Care**

For the Health and Social Care sector, this means the DoLS will continue to provide the main legal framework for authorising deprivation of liberty under the Mental Capacity Act for the foreseeable future.

In broad terms, the DoLS establish an administrative process for the authorisation of deprivation of liberty in hospitals and care home, in cases where an adult lacks capacity to consent to being accommodated there for care or treatment. **In England, Local Authorities will continue to be the supervisory body for all cases in hospitals and care homes.** Under the LCS, NHS Trusts would have been responsible for those being deprived of liberty in NHS hospitals.

**Local Authorities will continue to need to arrange six DoLS assessments in order to give a standard authorisation.** Under the LPS, this would have been reduced to three assessments and the **‘relevant person’s representative’ role** (**which was to be replaced under the LPS by the ‘appropriate person’ role) will continue.**

**The Best Interest Assessors Role will remain.** Under the LPS, a new professional role would have been established - the approved mental capacity professional. This was intended to build on the BIA role and provide an additional layer of scrutiny and enhanced oversight for people who needed it most.

**Urgent authorisations, which allow hospitals and care homes to deprive people of liberty for up to two weeks, will also remain in place.** Under the LPS, urgent authorisations would have been replaced by an amended Section of the Mental Capacity Act 2005. Those amendments would have allowed decision-makers to take steps to deprive a person of liberty without an authorisation being in place, but only to enable life-sustaining treatment, or to prevent a serious deterioration in the person’s health. Such steps could be taken pending the outcome of an LPS referral, or where there was an emergency, without any statutory time limit.

**Deprivations of Liberty in the Community**

The LPS was intended to apply to all settings, not just hospitals and care homes. This would include, for instance, deprivations of liberty in supported living, shared lives, and private and domestic settings. **The effect of the pause means that all cases of community deprivation of liberty must continue to be taken to the Court of Protection.**

**Children and Young People**

The LPS was to have applied for everyone aged 16 years and over, whilst the DoLS only applies to adults. **This means that the deprivation of liberty of young people who lack the relevant capacity aged 16 and 17 years will continue to require a Court order (either from the Court of Protection or the National Deprivation of Liberty Court).**

**Further Information**

Research in Practice – Deprivation of Liberty and 16 – 17 Year Olds: Practice Guidance 2020 (dated 31/03/2020)

Research in Practice – Liberty Protection Safeguards: 16 – 17 year Olds and Deprivations of Liberty Webinar (published 02/12/2021) - <https://www.researchinpractice.org.uk/>

Mental Capacity Act Training (Dudley Safeguarding People Partnership - e-learning) <https://dudleysafeguarding.event-booking.org/elearning-list>

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