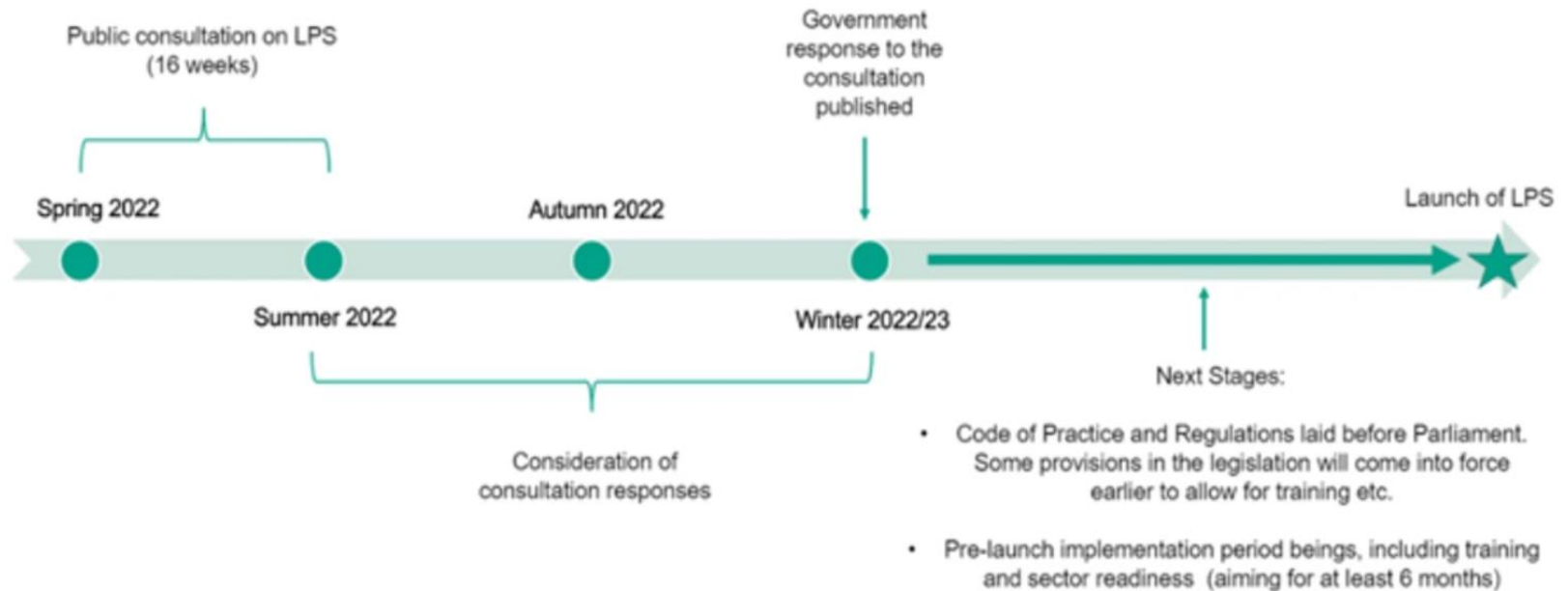


MCA / Liberty Protection Safeguards (LPS) code of practice consultation

Caroline Mann – DoLS team manager

Current timeline for LPS



MCA code highlights

Key changes:

- Change round so that first assess whether a person is able to make their own decision, then decide if that is linked to a impairment or disturbance in functioning of their mind and brain
- Increased emphasis on supported decision making
- Increased emphasis on considering the person's (P) past and present wishes / feelings / beliefs / values

- **Fluctuating capacity:**
 - If possible, delay until person regains capacity, if not take minimum action as necessary
 - When P has capacity clearly record and evidence their decision
 - For repeated decisions, if P only has capacity for limited period of time then it may be appropriate to proceed on basis that they lack capacity
- **Executive functioning:**
 - If there is a mismatch between what the person says and what they do, need to consider if they lack capacity re the decision
 - Must have clear evidence of repeated mismatch, therefore likely to require several assessments

- Capacity assessments should usually take place face to face but can be completed via video link if:
 - it is not possible to visit the person
 - doing is a practicable step to support the person's capacity

An explanation of why it was not carried out face to face should be recorded.

Section 4b

- Can deprive a person of their liberty for a short time in an emergency to enable life-sustaining treatment or to prevent a serious deterioration in the person's health (vital act – this includes admission to care home in emergency)
- It must be recorded in records.
- One of the following must apply:
 - A relevant decision is being sought from the court
 - LPS is being considered by Responsible Body (RB)
 - There is an emergency

Liberty Protection Safeguards:

Whole process – suggested max 21 days:

Notification:

- Staff in Responsible Body (RB) realise LPS required (needs to be recorded at this point that LPS is required for monitoring / data collection) OR
- Staff in RB notified by others that LPS may be required
- If it gets sent to wrong RB, then staff need to send it to the correct RB.
- If notified by others that LPS is required **WITHIN 5 WORKING DAYS** the RB should inform the referrer of the acceptance of the referral
- Appointed Person (AP) or IMCA appointed
- Staff should try to ensure that P is not be deprived without legal authority whilst LPS is being carried out. If required, section 4B can be used in an emergency

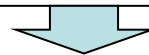


3 assessments - which must be completed by at least 2 different assessors are:

- **1) Mental capacity assessment** (can be completed by medical practitioner, nurse, OT, social worker, psychologist, S&L therapist)
- **2) Necessary and Proportionate assessment** (and draft the authorisation record) – Professionals who do this are same as MCA. Also complete consultation.
- **3) Medical assessment** (completed by medical practitioner or psychologist)

The local authority will have all situations where:

- The LA are funding
- Mainly in independent hospital (including hospices)
- Self funders in Worcestershire
- CCG will have all situations where they are mainly funding (if LA is funding at all, then it will go to LA)
- WHCT / Acute trust – will have to the situations where the arrangements are mainly in hospital



PRE-AUTHORISATION REVIEW

Reviewer:

- Desktop review
- decide from info given if conditions are met:
 - Lacks capacity
 - Mental disorder
 - Arrangements necessary and proportionate

AMCP allocated via LPS team for those where:

- The adult is objecting
- Arrangements mainly in independent hospital
- Any situation where the RB & AMCP agree AMCP needed:
 - Situation is borderline e.g. on boundary between MCA / MHA
 - High level of restraint / impact of the restriction is high
 - Situation particularly complex/would benefit from an AMCP

Role:

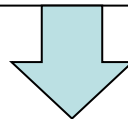
- Meet P (unless detrimental to P or safety of AMCP at risk)
- Speak to relevant people
- review / scrutinise assessments/determinations
- determine if conditions are met
- tell RB if further assessments needed
- place conditions / recommendations on authorisation record if required
- If arrangements not approved AMCP should put reasons in writing to RB & state what needs to be done to get approval

AMCP MUST BE INDEPENDENT

Authorisation:

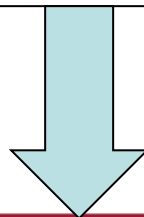
Reviewer / AMCP complete / sign authorisation record including:

- Can begin within 28 days of the authorisation being given
 - any required conditions / recommendations
 - Review intervals will be specified



Responsible body will need to:

- Record details on LAS and review dates
- Send out copies and details of LPS authorisation and rights to P and designated others
(within 72 hours)

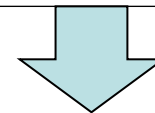
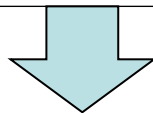


Reviews - to be completed by social work teams:

When should reviews be carried:

- Regular ongoing reviews to take place (schedule on authorisation)
- If a request is made for a review
- If P becomes subject to mental health arrangements / requirements
- If RB becomes aware of significant change in P's circumstances
- If a variation is needed. It can be used to make small changes to authorisation such as removing arrangements. Cannot be used to add new settings.
- If the person is now objecting- Face to face visit should be arranged. Case conference should be arranged, which includes P, the IMCA or their AP. The reviewer should chair the meeting and make the record of it which is shared with others. Further assessments may need to be arranged to determine whether the authorisation conditions are still met.

AMCP should complete review if pre-authorisation was not completed by AMCP and RB becomes aware that the person is objecting. AMCP will review the authorisation, visit P and consult relevant people including IMCA / AP



Renewal:

- the RB must be satisfied that the authorisation conditions continue to be met. If so, existing authorisation is continued /end date is extended. Renewal is recorded and shared with same people as original authorisation
- if everything is stable new assessments not needed. If not, then new assessments to be collated
- Renew for 1st – max 12 mths, 2nd – max 12 mths, 3rd - max 36 mths
- If changes to arrangements is needed then new authorisation is required

When an **authorisation ceases:**

- End of authorisation period and it has not been renewed
- The RB has decided it should end early as:
 - RB believes conditions no longer met
 - P is subject to MHA (1983) for treatment of mental disorder or mental health arrangements conflict with LPS

Further things to think about re LPS:

- Governments interpretation of the 'acid test' with lowered definition of 'continuous supervision and control' (see chapter 12). This is likely to be challenged in Court.
- Will be able to give **advance consent** to being deprived of liberty (including for the purposes of assessment / treatment under the MHA (1983))
- LPS will be monitored by CQC and Ofsted and they will report on its operation

- A wider, not tested in Court interpretation of the ‘Ferreira’ situation – e.g. if a person is receiving care for physical health problems in a care home which is similar to what a person with capacity would need, then they are not deprived of their liberty. Example given of a person who is cared for in bed.
- There is a question on the consultation canvassing opinion on whether the care home manager scheme should be reinstated (this was where care homes could arrange assessments etc)

Code of Practice consultation

- For further information on the code of practice and to respond to the consultation, please see:
 - [Changes to the MCA Code of Practice and implementation of the LPS - GOV.UK](https://www.gov.uk)
www.gov.uk
- The consultation closes on 7th July 2022