**Abstract**

**How can individual’s wishes and feelings be embedded at the heart of the Liberty Protection Safeguards (LPS)?**

When people lack capacity to consent to care plans designed to keep them safe, it is essential that issues of restraint and deprivation of liberty are recognised as part of the continuum of the Mental Capacity Act (MCA) and approached within the empowering ethos of the five statutory principles.

In preparation for the rollout of LPS, professionals in health and social care are recommended to remain alert for bulletins and guidance to be produced by the DHSC to help with implementation. When briefing stakeholders, for example commissioners and clinicians, about this conference, as we hope you will, it is essential to set the LPS firmly within the wider MCA: by doing this, the ‘novelty value’ of LPS can be used to enable much-needed improvement to practice throughout health and social care for adults who may lack mental capacity.

Additionally, respect for the autonomy of people with disabilities is an increasingly strong driver towards change, due the increased emphasis on autonomy irrespective of capacity coming from the CRPD committee. This presents clear challenges to the Mental Capacity Act, and in particular to the whole concept of depriving people of their liberty to give care and treatment. Some of these issues are unlikely to be tackled head-on within LPS; we await case law to lead in evolving understanding of how to interpret in practice the balance between protection and autonomy.

**What do we learn about MCA compliance from safeguarding adults reviews (SARs)?**

The importance of understanding issues about the LPS and their place within the wider MCA are borne out by research evidence.

For analysis of safeguarding adults reviews see, for example, Braye, S and Preston-Shoot M (2019): Analysis of Safeguarding Adults Reviews 2017-1019 [https://www.local.gov.uk/publications/analysis-safeguarding-adult-reviews-april-2017-march-2019 (20](https://www.local.gov.uk/publications/analysis-safeguarding-adult-reviews-april-2017-march-2019%20(20)10). These show that serious adverse effects are overwhelmingly often the result of a lack of understanding of the main elements of the MCA and how to apply them in practice. Professionals too often fail to recognise a person’s lack of capacity to make decisions about their care and treatment, which can lead to very real needs being unmet, and leave vulnerable people dangerously unprotected.

The implication of these and similar findings is that it is essential to continue to improve understanding of the MCA, including LPS, among health and social care professionals working with adults who may lack capacity.

**What principles should underpin audit and monitoring of the liberty protection safeguards?**

The missing feature of a lot of DoLS recording and monitoring has been the ‘voice of the person’, which must be central to all decision-making within the wider MCA. This is highlighted by the OPCAT expectations that place the person’s experience at the centre of information gathering. Successive CQC DoLS reports provide bleak evidence of how hard it is to find any records of the person’s actual words or actions that would communicate their happiness, or otherwise, with their care plans and with how they are being treated.

A major challenge comes with the far wider scope of LPS, to include younger people and those living in community settings: this is to recognise the importance of retaining as much autonomy as possible for the individual who receives services. It is essential for commissioners and providers of services to do all they can to preserve the natural rights of people to live as they choose, even when their care needs mean they might need to be deprived of their liberty, rather than thoughtlessly to make them fit models of institutional care. Young people have vastly different wishes and feelings about their lives from most older people, and it is right to enable these.

It is important that the new responsible bodies in NHS hospitals and integrated care systems (ICSs), which will replace clinical commissioning groups (CCGs) from April 2022, should set up systems from the very start to audit person-centred care. They need to assess how actively their organisation is working to align care and treatment with the wishes and feelings of the person at the heart of the process.

After all, if the LPS system doesn’t fulfil the government’s policy aim to ‘improve outcomes for people’, meaning, surely, to enhance the happiness and autonomy of those very people who are so vulnerable to having their freedoms curtailed, there must be serious questions about the system’s wider purpose and efficacy.

**Further Resources**

The Mental Capacity Amendment Act 2019, which brings into law the liberty protection safeguards (LPS): <https://www.legislation.gov.uk/ukpga/2019/18/pdfs/ukpga_20190018_en.pdf>

Up-to-date information on LPS implementation, see the DHSC LPS page: <https://www.gov.uk/government/publications/liberty-protection-safeguards-factsheets>

39 Essex Chambers: Guidance note on determining and recording best interests in health and social care: <https://1f2ca7mxjow42e65q49871m1-wpengine.netdna-ssl.com/wp-content/uploads/2020/07/Mental-Capacity-Guidance-Note-Best-Interests-July-2020.pdf>

Optional Protocol to the Convention against Torture: UK National Preventative Mechanism (NPM) Eleventh Annual Report (February 2021) <https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2021/02/6.6949_NPM_AnnualReport_2019_20_WEB.pdf>

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