

## REPORT FOR DISABILITY OVERSIGHT PANEL

<b>LONDON BOROUGH OF CAMDEN</b>	<b>WARDS:</b> All
<b>REPORT TITLE</b> Liberty Protection Safeguards (LPS)	
<b>REPORT OF</b> Director of Adult Social Care	
<b>FOR SUBMISSION TO</b> Disability Oversight Panel	<b>DATE</b> 06/11/2019
<b>SUMMARY OF REPORT</b> <p>This paper updates DOP on the Mental Capacity (Amendment) Act 2019, which replaces Deprivation of Liberty Safeguards (DOLS) with Liberty Protection Safeguards (LPS). It highlights key issues and provides an overview of the LBC LPS project brief, in preparation for implementation in October 2020.</p> <p><b>Local Government Act 1972 – Access to Information</b></p> <p>The following documents have been used in the preparation of this report:</p> <p><a href="https://www.communitycare.co.uk/2019/04/26/law-authorising-deprivation-liberty-will-change/">https://www.communitycare.co.uk/2019/04/26/law-authorising-deprivation-liberty-will-change/</a></p> <p><b>Contact:</b> Tony Anyaegbu, Manager- DOLS/MCA London Borough of Camden 5 Pancras Square, London N1C 4AG tony.anyaegbu@camden.gov.uk 02079745962</p>	
<b>RECOMMENDATIONS</b> That the Disability Oversight Panel is asked to:	
<ul style="list-style-type: none"><li>• note the key areas of consideration under LPS and relevant implications for the Council and partner agencies;</li><li>• note and comment on the key areas of work under the LPS Project to date and further development as we prepare for implementation of the new legislation</li></ul>	

## **1. Purpose of report**

- 1.1** This legislative change will have significant implications on different groups of disabled residents and vulnerable people in Camden.
- 1.2** This legislative change will affect all areas of adult and children's social care and wider strategic partners within LBC including legal services, commissioning, performance and learning and development, with potentially significant costs and resources implications.
- 1.3** This legislative change will also present new challenges in our work with external partners including the CCGs, Hospital Trusts, Mental Health, private hospitals and a wide range of social and health care providers.

## **2. Background to the report**

- 2.1** Deprivation of Liberty Safeguards (DOLS) have been subject to criticism since its inception in 2009. A 2014 Supreme Court ruling (*Cheshire West*) significantly widened the definition of deprivation of liberty, resulting in a ten-fold increase in the total applications nationally and hence a significant number of people who are unlawfully deprived of their liberty. Following the *Cheshire West* case, the Government asked the Law Commission to review the existing arrangements.
- 2.2** It is important to note that the substantial increases in the numbers of applications to date apply only to care home and hospital settings, leaving many in settings to which DOLS do not apply who need authorisation of their circumstances, currently only (in general) achievable by an application to the Court of Protection.
- 2.3** LPS will be applicable to all settings, including domestic settings, day care and transport arrangements, covering 16 and 17 year olds. The role of the Responsible Body in authorising LPS will be extended beyond the local authority to CCGs and Hospital Trusts.

## **3. Agreed recommended option and intended impact**

- 3.1** LBC is adopting a project approach to prepare for implementation in October 2020 (see appendix 1 – LPS project brief). The LBC LPS project group reports to LBC SMT and DMT, under the overarching governance structure of the Camden Safeguarding Adults Partnership Board (SAPB).
- 3.2** The extent of changes and the scope of implications across all areas of adult and children's social care and wider strategic partners within LBC and external

partners are significant and wide-ranging. The key aims of the LPS project are to promote early engagement, scoping and preparatory work.

- 3.3** Our health partners, including Camden CCG, Central and North West London NHS Foundation Trust (CNWL), Royal Free London NHS Foundation Trust, University College London Hospital NHS Foundation Trust and Camden and Islington NHS Foundation Trust (CIFT) will be 'extended' members of the LBC project group. They will join the second half of our two monthly LPS project group meetings. The project group will provide quarterly reports to LBC SMT.

#### **4. Risks and challenges**

- 4.1** Under LPS, authorisation by the local authority and health is dependent on good quality care plans and assessments, which need to stand up to legal scrutiny in relation to depriving vulnerable persons of their liberty.
- 4.2** The key risks and challenges cover the wide range of community and domestic settings the local authority either does not routinely make Court applications for or has limited or no knowledge of the nature and degree of deprivation of liberty. The project group needs to have on board the key strategic partners and senior managers in mapping these new territories of work.
- 4.3** The scoping work includes identification and analysis of numbers of authorisations which will be transferred to Hospital Trusts and CCGs, numbers of current and outstanding applications to the Court of Protection for community DOLS, potential numbers of LPS under children's services and other new areas, our expectation on all providers and additional capacity for advocacy.

#### **5. Timetable for implementation**

- 5.1** The Project is divided into three phases covering key milestones before, during and after the public consultation of the LPS Code of Practice and regulations. It is scheduled for the consultation to be published in December 2019 and the regulations to be laid before the Parliament in April 2020. Within the three phases there are five workstreams, covering awareness raising, stakeholder mapping and number scoping, public consultation and policy development, communication strategy and training programme, which require cross-Council and partnership working.
- 5.2** DOLS can run alongside LPS for up to 1 year from October 2020. The consideration of our local position on the 1-year transition period from October 2020 needs to involve early discussion and agreement with our Health partners, in order to ensure a smooth transition for this significant legislative change.

## **6. Consultation**

Consultation will continue under stakeholder mapping and engagement within the work of the project group. Work on awareness raising and consultation will include people with lived experience, families and carer, Camden Carers, Age UK, MIND and other community and third sector groups.

## **7. Resource implications**

**7.1** There will be resource implications relating to upskilling and training staff and providers across all relevant service areas.

**7.2** There will be resource and cost implications for additional advocacy under LPS, which should be addressed in the future procurement of advocacy service provision in Camden. Wider market engagement needs to be developed considering the potential competition amongst local authorities and health partners for the same limited pool of advocacy resources.

## **8. Equalities impact assessment (EIA)**

The Department of Health and Social Care published Impact Assessment on 30/01/2019 (see appendix 2 – Impact Assessment). The main findings being *The LPS will be more streamlined and less intrusive than the existing system, and a more effective and proportionate way of ensuring Article 5 rights for all. We expect that all people who lack capacity and need to be deprived of their liberty for their care or treatment will have the same access to the same protections, regardless of protected characteristic* (page 19).

## **9. Finance Comments of the Executive Director Corporate Services**

The full financial impact of the new responsibilities will not be known until the project group has completed its work and the new legislation is fully implemented.

## **10. Legal Comments of the Borough Solicitor**

The Borough Solicitor has been consulted and has no comments to add to the report.

## **11. Appendices**

Appendix 1 – LPS project brief version 4  
Appendix 2 – Impact Assessment

**REPORT ENDS**