

Liberty Protection Safeguards: Client-wide support

Questions for process/procedure documents to answer

These questions align to the boxes in the accompanying [overview flowchart](#).

Reference has been made to the primary legislation but also to the draft Code of Practice and/or Regulations (which are obviously still subject to change). Many of the questions posed in this document will be left for organisations (ideally in conjunction across ICSs) to answer.

Identifying a Deprivation of Liberty

- Which groups of staff will be expected to be able to identify a potential Deprivation of Liberty (DoL)? Therefore, what level of training do they require?
- What may constitute a DoL in your organisation's settings?
- Do you have guidance/checklist to support staff in considering whether a DoL is occurring? Could case studies be generated which contextualise the Code of Practice and case law specifically to situations most likely to be encountered in your organisation?

Making a referral

- Are there specific forms that you expect people to use (eg adoption of draft from Template 8 – Notice to Responsible Body that an LPS authorisation may be required)? If so, how will people find these?
- 'No wrong door' so need to be able to process referrals that come via alternative routes eg email, letter, telephone and a process for referring on to alternative Responsible Body.
- Is there a generic email address?
- How are people expected to identify the 'relevant Responsible Body' (public, staff, 'LPS Team')?
- What happens 'out of hours'?

Gathering Information

- Will information gathering be led by the administrative resource? (where everything is not sent along with the referral)
- In order to meet the overall 21 calendar days, what timeframes need to be met to obtain all of the necessary assessments and determinations?
- If an alternative legal framework is indicated (eg MHA) what is the referral route? Who makes this decision? Is there a set process/form?

Mental Disorder Assessment and Determination

Para 21(2) of Schedule AA1 states that "the person who makes the determination need not be the same as the person who carries out the assessment".

The draft Regulations indicate that registered medical practitioners and psychologists are eligible to complete these assessments and determinations.

However, para 16.13 of the draft Code of Practice states that a “professional may ask another professional or practitioner to carry out some or all of the elements of that assessment and determination on their behalf”. This is further supported by para 13.29.

- Which records should be checked? Is there a particular form that should be present?
- If not in your own records does the team have access to GP records/NHS records?
- Where no assessment is provided/available, who should a request for mental disorder assessment be sent to in the first instance?
- In what circumstances can the assessor and determiner differ?
- Where another practitioner is asked to carry out some or all of the assessment how will this be managed? Are there limitations on who can be asked?
- In what circumstances can/can't a previous/equivalent assessment be used? (eg length of time, purpose, any changes)
- How will the independence of assessors from each other be achieved? (draft Code of Practice states at least two assessors across three assessments and should not be part of the same clinical team (paras 16.8 and 16.9)).

Mental Capacity Assessment and Determination

Para 21(2) of Schedule AA1 states that “the person who makes the determination need not be the same as the person who carries out the assessment”.

The draft Regulations indicate that medical practitioners, nurses, occupational therapists, social workers, psychologists and speech and language therapists are eligible to complete these assessments and determinations.

However, para 16.13 of the draft Code of Practice states that a “professional may ask another professional or practitioner to carry out some or all of the elements of that assessment and determination on their behalf”. This is further supported by para 13.29.

- Which records should be checked? Is there a particular form that should be present?
- Is there a stage in the cared-for person’s journey that this assessment can/should be routinely completed at?
- Are there staff within the organisation who can undertake this assessment?
- If not, who should a request for a mental capacity assessment be sent to in the first instance?
- In what circumstances can the assessor and determiner differ?
- In what circumstances can a previous assessment be relied upon (ie from the last DoLS/LPS authorisation)?
- How will the independence of assessors from each other be achieved? (draft Code of Practice states at least two assessors across three assessments and should not be part of the same clinical team (paras 16.8 and 16.9)).

Necessary and Proportionate Assessment and Determination

Para 22(1) of Schedule AA1 states that the assessment and determination must be by the same person (also supported by draft Regulations).

The draft Regulations indicate that medical practitioners, nurses, occupational therapists, social workers, psychologists and speech and language therapists are eligible to complete these assessments and determinations.

However, para 16.13 of the draft Code of Practice states that a “professional may ask another professional or practitioner to carry out some or all of the elements of that assessment and determination on their behalf”. This is further supported by para 13.29.

- Who will be asked to undertake the necessary and proportionate assessment and determination? Will there be a group of staff who do this across the organisation or a couple of individuals per team?
- Is there a set form they should capture this on?
- Who should a request for assessment be sent to in the first instance?
- How will the independence of assessors from each other be achieved?

NB: There is no indication in Schedule AA1, the draft regulations or the draft Code of Practice that use of previous or equivalent assessments is permissible.

Identifying an Appropriate Person and appointing an IMCA

- What might discount someone as acting as an appropriate person?
- When might not having an IMCA be in P’s best interests?
- Who provides the IMCA service?
- How should a referral be made (is there a particular form)?

Consultation

- Consultation – when should this be face-to-face? Extent of effort to contact?
- Where should efforts made to contact and conversations held be recorded?

Schedule AA1 paragraph 23 lists the required consultation by the Responsible Body.

Identifying if P Objects

- Who decides whether it is reasonable to believe that P does not or would not wish to reside in the place or receive care or treatment in the place? What is the basis of this decision (evidence)? Should this be indicated as part of the application/referral or as part of the Necessary and Proportionate assessment/determination?
- If only one of a number of specific people involved indicates they believe it is reasonable to believe that P does not or would not wish to reside in the place or receive care or treatment in the place should this be determinative? Is there a dispute process?
- What are the most likely indicators of ‘objection’ in your setting(s)?
- Other than objection, in what other circumstances would you routinely refer to an AMCP? (eg where the assessor and determiner are different for one of the assessments, with a previous or equivalent assessment relied on)? *(NB it is required that arrangements within an independent hospital are subject to a pre-authorisation review by an AMCP).*

AMCP pre-authorisation review

Schedule AA1 paragraph 24 specifically spells out that the pre-authorisation reviewer must not be involved in the day-to-day care or treatment of the cared-for person. This is reinforced in the draft Code of Practice at para 13.45.

The draft Code of Practice at para 13.48 states that the pre-authorisation reviewer cannot be anyone who completed any of the assessments or determinations.

- Who makes the ‘referral’? Is there a specific form?



- How will allocations to a particular AMCP be made?
- How do you ensure independence?
- In order to meet overall 21 calendar day timeframe, what are the expected turnaround times?
- If not happy with one of the assessments/determinations what process should be followed?

Non-AMCP pre-authorisation review

Schedule AA1 paragraph 24 specifically spells out that the pre-authorisation reviewer must not be involved in the day-to-day care or treatment of the cared-for person. This is reinforced in the draft Code of Practice at para 13.45.

The draft Code of Practice at para 13.48 states that the pre-authorisation reviewer cannot be anyone who completed any of the assessments or determinations.

The draft Code of Practice at para 13.44 states that a non-AMCP pre-authorisation reviewer does not need to be a health or social care professional.

- Who makes the 'referral'? Is there a specific form?
- How will allocations to a particular reviewer be made?
- How do you ensure independence?
- In order to meet overall 21 calendar day timeframe, what are the expected turnaround times?
- If not happy with one of the assessments/determinations what process should be followed?

Completing Draft Authorisation Record

Schedule AA1 paragraph 27(1) identifies what must be included in the authorisation record.

- Guidance for determining authorisation period – when 3 months, when 1 year?
- In order to meet overall 21 calendar day timeframe, what are the expected turnaround times?
- Draft authorisation record – what form should be completed?

Authorisation

- Who authorises on behalf of Responsible Body?
- In order to meet the overall 21 calendar day timeframe, how quickly are they expected to complete this once notified?
- Is there a process for identifying who should authorise in any particular case and allowing for A/L etc?

Authorisation Record distribution

- Who sends out authorisation record? Is there a template letter? Standard information leaflet included?
- Can this be sent electronically?

Update Electronic Record

- Where should all the LPS information be captured?
- Whose responsibility is it to update the records?

Schedule routine review

Schedule AA1 paragraph 38(2) identifies that there should be regular programmed reviews, as well as reactive reviews in certain circumstances.

- How often will reviews be undertaken? Whose responsibility are these?

Reporting and central data submissions

- What reports need pulling for internal monitoring/reporting/governance purposes? Who will run these reports?
- Who will complete central data returns? How is data checked and confirmed prior to submission?

These questions will be updated on an iterative basis and at no stage is this list intended to be 'definitive'. If you believe any of the content to be inaccurate or if you believe there is further information that could enhance its usefulness then please do get in contact: Elaine Dower (elaine.dower@nhs.net, 07342 081522)

