

AGENDA ITEM

6.7

QUALITY & SAFETY COMMITTEE

LIBERTY PROTECTION SAFEGUARDS PREPARATION

Date of meeting

24/01/2023

FOI Status

Open/Public

If closed please indicate reason

Not Applicable - Public Report

Prepared by

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Presented by

Greg Dix – Director of Nursing

Approving Executive Sponsor

Executive Director of Nursing

Report purpose

FOR NOTING

Engagement (internal/external) undertaken to date (including receipt/consideration at Committee/group)

Committee/Group/Individuals

Date

Outcome

Safeguarding Executive Group

(23/01/2023)

NOTED

ACRONYMS

LPS

Liberty Protection Safeguards

DoLS

Deprivation of Liberty Safeguards

MCA

Mental Capacity Act

BIA

Best Interest Assessors

CTMUHB

Cwm Taf Morgannwg University Health Board

1. SITUATION/BACKGROUND

- 1.1 Liberty Protection Safeguards, like Deprivation of Liberty Safeguards will protect the rights of people who use health and care services not to be deprived of their liberty without a proper legal process and

rights to challenge. People who might have a Liberty Protection Safeguards authorisation include those with dementia, autism and learning disabilities who lack the relevant capacity.

- 1.2 The LPS were introduced in the Mental Capacity Act (Amendment) Act 2019 and will replace the DoLS system. It is documented in Government Guidance that LPS will deliver improved outcomes for people who are or who need to be deprived of their liberty. The implementation of the Liberty Protection Safeguards have been repeatedly changed by the Government. The current date for implementation is now October 2023. However, it is envisaged that this may be delayed further, with Spring 2024 being the anticipated time for implementation. Despite no definitive date for LPS, CTMUHB continue to take measures to prepare for the changes this legislation will bring to practice.

2. SPECIFIC MATTERS FOR CONSIDERATION BY THIS MEETING (ASSESSMENT)

- 2.1 Key changes introduced by the Liberty Protection Safeguards include;
1. Three assessments will form the basis of the authorisations of Liberty Protection Safeguards
 2. Greater involvement for families
 3. Targeted approach
 4. Extending the scheme to 16 and 17 year olds
 5. Extending the scheme to domestic settings
 6. Clinical commissioning groups (CCGs), NHS trusts and local health boards as Responsible Bodies

(Department of Health and Social Care, 2021)

These changes are expected to affect current practice in relation to authorisations. In particular, the required three assessments, which include a capacity assessment, a medical assessment to determine whether the person has a mental disorder and a 'necessary and proportionate' assessment to determine if the arrangements are necessary to prevent harm to the person and proportionate to the likelihood and seriousness of that harm. Currently, the Best interest Assessors and section 12 approved Doctors carry out these assessments. However, in line with LPS, it is expected that General Practitioners, Medical and Nursing colleagues will be expected to undertake these assessments and the Best Interest Assessor will scrutinise and authorise these on behalf of the Health Board, replacing the current signatories. Specific details remain unknown due to the final Code of Practice not being published. During the

consultation period this aspect of the code was heavily criticised by the All Wales Group.

- 2.2 CTMUHB have approximately 4579 professional staff that will require specific training for the LPS safeguards. However, the Wales LPS training package has not yet been developed. Therefore, in preparation for LPS focus has been given to delivering MCA awareness and training. It is envisaged that this will assist colleagues in understanding the principles of LPS when it is implemented.

The different roles required by the LPS will require differing levels of competency in terms of knowledge and application of the new procedures. Figure 1 below shows the competency groups required to deliver the LPS.

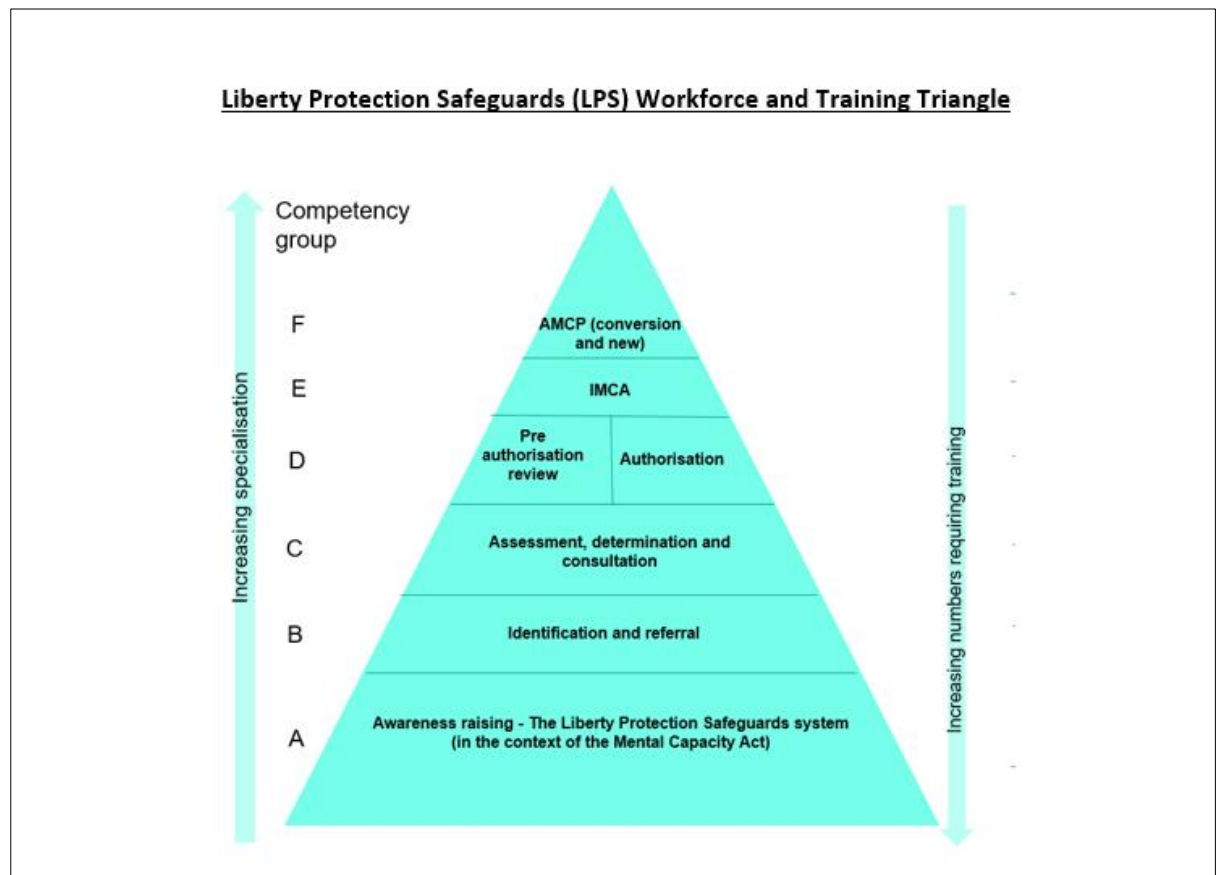


Figure 2 below provides a summary of roles that will be included in each competency group.

Competency Group	Description	Who
Competency Group A	Awareness raising	All stakeholders in health, care, education and other services, who may come across a person who might lack the capacity to consent to arrangements that may give rise to a deprivation of their liberty.
Competency Group B	Identification and referral	Supervisors and managers of staff and volunteers in Competency Group A
Competency Group C	Assessment, determination and consultation	All roles that under the regulations might undertake assessments, determinations and consultation
Competency Group D	Pre-authorisation Review and Authorisation	Managers in responsible bodies
Competency Group E	Independent Mental Capacity Advocate (IMCA)	Existing and new advocates
Competency Group F	Approved Mental Capacity Professional (AMCP)	People who meet the requirements set out in regulations, have undertaken full AMCP training or BIA to AMCP conversion training and have been approved by the relevant local authority in line with the relevant regulations.

A workforce planning estimate has been sent to Welsh Government identifying that 10,996 CTMUHB staff are in need of awareness training with 4,579 of those staff requiring more specialist training. To date 56% of the required workforce have completed MCA training online. Using Welsh Government funding, CTMUHB have recruited an MCA Practice Facilitator, who has developed face to face and virtual MCA training that is specifically aimed at embedding the Mental Capacity Act into everyday practice which will assist the implementation of LPS. The delivery of MCA training is already in progress across acute, community and Primary Care services.

CTMUHB have submitted a response to the Mental Capacity (Amendment) Act 2019 and also provided a response to the Consultation process for the LPS Code of Practice. The Code of Practice is currently being ratified by UK Government and publication is yet to be determined.

CTMUHB has been heavily involved and represented in an All Wales LPS Task and Finish Group which is led by Public Health Wales. DoLS colleagues also attend a National minimum dataset group, to develop a performance framework for reporting to the Education and Training Inspectorate for Wales (Estyn), Public Health Wales and Healthcare Inspectorate Wales. These groups continue to meet and share progress with each other.

CTMUHB was also represented in a Regional Response Group consisting of the three Local Authorities and the Health Board.

Participation at these groups allows colleagues to benchmark against other Health Boards and share ideas for improvements and progress.



3. KEY RISKS/MATTERS FOR ESCALATION TO BOARD/COMMITTEE

- 3.1 In preparation for the implementation of LPS, CTMUHB are required to reduce or eliminate their backlog of assessments. The waiting list has increased following the delivery of bespoke training and awareness sessions within community hospitals. Urgent authorisations make up for 78% of the referrals received in quarter three. The backlog of authorisations has been on the Health Boards Risk Register for a considerable amount of time. The backlog is reviewed regularly, with urgent authorisations being prioritised.

Whilst additional funding has been provided by Welsh Government for the recruitment of further Best Interest Assessors (BIA), there has been significant difficulties in colleagues being released for secondments from their clinical areas while there are such significant pressures on the Health Board. Thus far a further 1 full time and 2 part time BIA posts remain vacant.

- 3.2 The delay in the publication of the final Code of Practice is resulting in uncertainty, the full impact is not yet clear for CTMUHB. Roles and responsibilities will undoubtedly change for the BIA and nursing colleagues. Sessions have commenced to set our current expectations and offer support to clinical areas ahead of the finalised Code of Practice.
- 3.3 The implementation of LPS may change the roles and job descriptions of the current BIA, as they will be required to undertake the role of an Approved Mental Capacity Professional. These roles will be required to scrutinise all assessments undertaken within the clinical settings.
- 3.4 Whilst it is anticipated that funding from Welsh Government will continue into the next financial year, this has yet to be confirmed by Welsh Government.

4. IMPACT ASSESSMENT

Quality/Safety/Patient Experience implications	There are no specific quality and safety implications related to the activity outlined in this report.
Related Health and Care standard(s)	Safe Care
	If more than one Healthcare Standard applies please list below:

Equality Impact Assessment (EIA) completed - Please note EIAs are required for <u>all</u> new, changed or withdrawn policies and services.	No (Include further detail below)
	<p>If yes, please provide a hyperlink to the location of the completed EIA or who it would be available from in the box below.</p> <p>If no, please provide reasons why an EIA was not considered to be required in the box below.</p>
Legal implications / impact	Yes (Include further detail below)
	CTMUHB are required to comply with The LPS process within the Mental Capacity Act (Amendment) 2019 legislation once it is implemented.
Resource (Capital/Revenue £/Workforce) implications / Impact	Yes (Include further detail below)
	Extra WG funding secured to increase resources, however not yet agreed for 2023/2024.
Link to Strategic Goals	Creating Health

5. RECOMMENDATION

Members of the Quality & Safety Committee are asked to:

- 5.1 **NOTE** the content of the report
- 5.2 **DISCUSS** the content of the report and flag areas (if not already identified) where further assurance is required.
- 5.3 **NOTE** risks in respect of the ability to clear the backlog of DoLS authorisations with current vacancies and uncertainty of reoccurring Welsh Government funding. Also, vast MCA training requirements that will need to be completed prior to the implementation of LPS.