

## **Liberty Protection Safeguards Implementation cover sheet**

### **Health in Hackney Scrutiny Commission, 5 December 2022**

#### **What are the Liberty Protection Safeguards?**

The Liberty Protection Safeguards, known as LPS, are a set of safeguards designed to protect cared-for people who:

- Are deprived of their liberty<sup>1</sup>
- Lack the mental capacity to consent to their arrangements

They will replace the previous Deprivation of Liberty Safeguards (DoLS) system and expand this system in several key respects:

- LPS applies in community and domestic settings as well as hospitals and care homes
- The local authority is no longer the only body that can authorise a deprivation of liberty
- LPS applies to 16 and 17 year olds as well as 18s and over

Safeguards are essential in these scenarios because they protect people's Article 5 right to liberty given by the European Convention on Human Rights. Article 5 provides that your right to liberty and security of the person cannot be denied apart from in certain circumstances and in accordance with a procedure in law. LPS is the legal procedure we must follow when we believe a deprivation of liberty is in a person's best interests to keep them safe and provide care, and they cannot consent to this arrangement.

An LPS authorisation will confirm that the relevant procedures have been followed to ensure that a deprivation of liberty is legal and does not stand in contradiction to a person's human rights which apply universally.

In 2022 the Government published the draft Code of Practice for the Mental Capacity (Amendment) Act, 2019 which set out how LPS would operate. The draft code was open to consultation. The Government has not published its response to this consultation yet, or revealed any resulting changes to the Code of Practice. The information in this briefing is therefore subject to change, should amendments be made to LPS via the Code.

#### **When will they be implemented?**

We don't yet know when LPS will be implemented. The last firmly established date set out by the government was April 2022. However, implementation requires at least a six month lead in, during which training courses and other resources will be available.

#### **What are the main impacts for Hackney?**

The introduction of LPS will bring changes to the health and social care system, both in terms of procedures and practice. The key areas of change, some of which are Hackney-specific and some of which are general, are outlined in the presentation.

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<sup>1</sup> The Supreme Court Judgement of 2014 (Cheshire West and Chester Council vs. P) defined the acid test for a deprivation of liberty as the person being 'subject to continuous supervision and control' and 'not free to leave'. The new Code of Practice for the MCA, which sets out how LPS will work, interprets a DoL more loosely in its scenario exercises, but this is contradictory to case law and guidance is subject to change following publishing of the results of the consultation.