

Liberty Protection Safeguards (LPS) Training Needs Guidance



- **April 2021:** The Mental Capacity (Amendment) Act 2019 (the Act) which creates the Liberty Protection Safeguards received Royal Assent on 16th May 2019. The Act is due to come into force in April 2022. To download the Act and explanatory notes go to: <https://www.legislation.gov.uk/ukpga/2019/18/enacted>
- Some details not in the Act (qualification for AMCPs, transitional arrangements) will be addressed in statutory regulations. In addition, a Code of Practice is also being written, see further information below.
- A series of free independent fact sheets on LPS (DoLS & LPS comparison table + jargon buster + BIA to AMCP + LPS single page overview chart) and online courses on LPS are available from <http://www.edgetraining.org.uk/>
- In England, CCGs are due to be replaced by NHS Integrated Care Systems (NHS ICS) during 2021 and so references below to CCGs will become NHS ICS in the future.

National funding and guidance

The Department of Health and Social Care (DHSC) have allocated national funding for training staff on LPS. This information is contained in the Impact Assessment which looks at how LPS will be funded overall.

(<https://www.gov.uk/government/publications/impact-assessment-of-the-mental-capacity-amendment-act-2019>).

The funding for England and Wales will be given to local authorities, CCGs and NHS Trusts to commission training locally. The current figures are: £19.6 million for advocacy (IMCA), £18.2 million for doctors and social workers completing assessments, £2.3 million for care home managers and £600,000 for DoLS best interests assessors (BIAs) conversion to Approved Mental Capacity Professionals (AMCPs)

This funding is not fixed and is an area where local authorities, NHS Trusts and CCGs can lobby the DHSC for changes. For example, there is no money allocated to train nurses which is a significant gap given they would be the most likely staff group to assess NHS continuing healthcare (CHC) for CCG LPS cases and also cases in NHS Trusts. Edge produce a separate guide on funding for LPS. The DHSC has said it will **not** design and mandate detailed training products for LPS but will provide some learning outcomes for different staff groups. There is no time frame given for these, however.

Why Edge Training and Consultancy Ltd?

Knowledge

Our directors have been delivering training on LPS since 2018 when it was introduced to Parliament as a Bill. We delivered training for members of the House of Lords on the Bill to help them understand its scope and impact. During the Bill's progress through Parliament, we provided guidance to members of the Lords and MPs including drafting legal clauses which were used in order to table amendments, in an attempt to improve the original Bill. Two of our directors are authors of the best-selling guide to the Deprivation of Liberty Safeguards, [The DoLS Handbook](#) which is used by universities, health and social care staff and lawyers. We have been interviewed and quoted on the subject of LPS in professional magazines *Community Care*, *The Nursing Times* and *Pulse* (for GPs).

Independent view to help you prepare

All of our LPS trainers are independent of the Department of Health and Social Care and can therefore provide an independent view of the actual legal duties, responsibilities and procedures that LPS requires. In addition, our analysis of the law is highly practice based with case studies highlighting the practical application of LPS.

Experience

Edge have been delivering training on LPS continuously since July 2018 when it was a Bill. We have trained thousands of staff from local authorities, NHS Trusts, CCGs, Welsh Health Boards, hospices, advocacy groups, private hospitals, solicitors, care providers and charities across England and Wales. We deliver training in-house (currently online) and also at pay per person Edge Events (currently online).

The Code of Practice

Local authorities, NHS Trusts, Welsh Health Boards and CCGs (known as Responsible Bodies under LPS) should NOT wait for the Code of Practice to be published to start a programme of LPS training. The legislation on LPS became law in May 2019 and provides about 90% of the information on the who, how, where and when of LPS and the statutory duties placed on Responsible Bodies. The new unified Code of Practice is not due for publication until the winter of 2021 and in terms of detail, LPS will only be one part of the Code alongside chapters on lasting powers of attorney, deputies, the Court of Protection, advance decisions, the principles, the mental capacity assessment etc.

Any Code of Practice must follow the law as it is secondary to it. Whilst it will contain important guidance, Mr Justice Hayden, Vice President of the Court of Protection recently noted:

'The Code of Practice is not a statute, it is an interpretive aid to the statutory framework, no more and no less.'

Case of Re: Lawson, Mottram and Hopton (appointment of personal welfare deputies) [2019] EWCOP 22.

We believe that training, particularly for senior managers and front-line staff (pre-LPS courses) should start now followed by more comprehensive record keeping training for LPS assessors, pre-authorisation reviewers and AMCPs once the Code and regulations are available. There is a considerable amount of information to cover and for staff to undertake scoping exercises in an informed and timely manner they need to be properly prepared.

What do participants say about our LPS courses?

The following quotes are taken from feedback forms from just a few of our LPS courses over the last few years. Originally the training was face to face but due to the pandemic, it is currently online:

July 2018, face to face

fantastic - really appreciate the opportunity to discuss - start to understand the LPS. brilliant :)

November 2018, face to face

Absolutely brilliant delivery - very clear

March 2019, face to face

Enthusiastically delivered. Felt confident in the trainers great depth of topic knowledge. Made it an inspiring day & encouraged inquisitiveness to want to learn more.

October 2019, face to face

Great supporting resources for an excellent presentation. Fantastic trainer

February 2020, face to face

Brill! Very insightful & thought provoking!

May 2020, online

It was a very good course, well presented by a knowledgeable and experienced trainer. The webinar system worked well, helped by the fact that it was a small knowledgeable group who were able to ask questions and contribute comments.

January 2021, online

Excellent session. Very informative and helpful.

Very knowledgeable and approachable. Responsive to delegates questions.

March 2021, online

Very useful and clear - well paced and aimed at a range of professionals - all backgrounds accommodated

Really good course, well delivered. Lots to do!

LPS courses

All of the courses listed below can be tailored further to meet the needs of the service involved.

Strategic – Management level

LPS for managers

This is the starting point for training local authorities, NHS Trusts, CCGs and Welsh Health Boards (Responsible Bodies in the Act). A full day course covering all elements of LPS that considers the duties and responsibilities placed on Responsible Bodies. It enables managers to consider the strategic impact of LPS and what the organisation needs to consider in planning for its implementation including a focus on litigation risks. We have four versions of this course tailored to the particular needs of different Responsible Bodies.

Safeguarding Adults (and Children's) Board overview of LPS

A two or three hour overview for Safeguarding Boards. Designed to meet the needs of senior managers from a variety of different agencies it provides a focused and strategic overview of LPS.

Frontline staff – Assessors

Preparing for LPS: assessing mental capacity and best interests

The role of the BIA is removed from LPS and therefore front line staff (both qualified and unqualified) will be required to complete the statutory assessments and tasks for LPS. Many local authorities have realised that some of the current mental capacity and best interests assessments completed by their staff are not adequate or legally robust for the implementation of LPS considering they are more likely to be challenged in the Court of Protection. This full day course aims to embed best practice in assessing mental capacity and best interests as a pre-cursor for LPS starting. It also considers restrictions in care plans, which for many staff not previously involved in DoLS, can be challenging. We tailor this course to the staff group concerned – social care/social workers, nurses and associated health professions.

How to identify a deprivation of liberty

This is a single 3 hour session that aims to help staff recognise and identify different restrictions in a care plan (escorted outside, assistive technology, medication etc). Staff are then taught how to assess these restrictions to reach a conclusion of whether they have reached a level that means the person is under 'continuous supervision and control and not free to leave'. This is the level at which a care plan becomes an (objective) deprivation of liberty and therefore requires an LPS assessment and authorisation. As above, we tailor this course to the staff group concerned.

Completing LPS assessments for front-line staff

This course follows on from the *Preparing for LPS* course and will become available once the forms for completing LPS assessments are published (probably late 2021). It will take staff step-by-step through the forms and how to assess and record the multiple statutory criteria for LPS including: restrictions in a care plan, if those restrictions are a deprivation of liberty, if it is necessary and proportionate, if the person is 'does not wish' care or placement, identifying Appropriate Persons, consultation duties and if the Mental Health Act should be used instead. Different versions of the course will be available for staff from different Responsible Bodies.

LPS for Best Interests Assessors (BIAs)

This course is designed to inform BIAs of the changes from DoLS to LPS and considers the change in role to AMCP. As BIAs have existing knowledge and practice skills on deprivation of liberty and a procedure for authorising this, the course content reflects this. It is not a conversion course for BIAs to become AMCPs (see below).

Specialist courses

Pre-authorisation reviewers

The role of the DoLS signatory is replaced by the pre-authorisation reviewer under LPS. They are very similar and involve scrutinising the assessments on behalf of the Responsible Body to confirm they meet the legal requirements. Edge have delivered a DoLS signatory course for many years to numerous local authority managers and this new course will take over from this. The course will become available once the LPS assessment forms are produced.

LPS for children's social services

A full day course designed for children's services. LPS can be applied from the age of 16 upwards and in any setting, including domestic settings, children's homes and residential schools. This course and the case studies are all relevant for children's services to better understand the impact of LPS. With Ofsted due to monitor LPS for 16-17 year olds, children's social services can expect Ofsted inspectors to examine the use and application of LPS from April 2022. Note: we recommend that children's services have undertaken our course *MCA for children and young people* first.

BIA to Approved Mental Capacity Professionals (AMCP) conversion course

This course will become available once statutory regulations have been released and the Department of Health and Social Care have decided on commissioning arrangements. Currently this will be towards the end of 2020.

AMCP qualification course

In England it is expected that (like the BIA qualification course) the course will need to be a post graduate level course (registered social worker, nurse, occupational therapist and chartered psychologist). This is likely to be university accredited and over multiple days with an extended assignment. Edge would not deliver this training but may be invited to deliver a guest lecture as part of the university programme. In Wales, the procedure will be different (a separate statutory regulation) so Edge could potentially offer the qualification course to Welsh Responsible Bodies.

LPS for Approved Mental Health Professionals (AMHPs)

This course is designed to provide AMHPs with an overview and understanding of how LPS may impact upon their role. It will consider the use of the MHA or LPS in mental health hospitals and also its application in the community in relation to Community Treatment Orders, Guardianship and Conditional discharge.

Responsible Bodies

LPS for acute Trusts

Designed for NHS staff including nurses, doctors and allied health professionals. It provides essential information about LPS and in its implementation from the viewpoint of an acute hospital with appropriate case studies.

LPS for Mental Health Trusts

The interface between LPS and the Mental Health Act will present special challenges for mental health services. This course provides a detailed overview of LPS and considers the relationship between LPS and the Mental Health Act.

LPS for Clinical Commissioning Groups

Designed for staff working in CCGs this course considers the impact and responsibilities that LPS imposes on CCGs.

LPS for Welsh Health Boards and Local Authorities

In Wales there are a number of key differences in how LPS will operate (this includes, different inspectorate bodies, responsible bodies, statutory regulations, private hospital rules) and this course provides for this perspective.

LPS for care providers

LPS for palliative care and hospice staff

A specialist course that looks at LPS from the viewpoint of hospice and palliative care services. It focuses on the use of the MCA to deliver care and treatment at the end of life and considers the potential application of LPS in this setting.

LPS for care homes

This full day course provides essential information for care homes on the changes from DoLS to LPS.

LPS for care providers (not care homes)

This is a half day awareness course for care providers who are not registered care homes. It considers how LPS will affect them and their clients/service users. As LPS will apply to any care setting this course can be provided to a wide variety of staff from services including supported living, domiciliary care, extra care and residential schools.

Conferences and other talks

We have a range of speakers who can give keynote and other conference format talks or workshops on LPS.