

Consultation Responses

- 1. Changes to the MCA Code of Practice and implementation of the LPS (UK Government)**
- 2. Draft regulations for Wales: Liberty protection safeguards (Welsh Government)**

Consultation Response - Learning Disability Wales

Deadline 14 July 2022

About Learning Disability Wales

Learning Disability Wales is a national charity representing the learning disability sector in Wales. We work with people with a learning disability and their families, Welsh Government, local authorities, disabled people's organisations and the voluntary sector to create a better Wales for all people with a learning disability.

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Our response:

Summary:

We believe that the new code addresses some real problems in trying to put the person whose freedoms may be limited at the heart of the process. We agree that the DoLS system was overly complicated and needed simplifying. However, we are concerned that there are some issues with the LPS which need addressing. We also have some concerns around the communications around the Liberty Safeguard Protections, both in terms of the consultation and the material that will be available once the LPS come into effect.

1. Communications issues

We have some concerns with the communications around this consultation. While there was a lot of communication around this consultation from Welsh Government, the communications often were not very clear and there seemed to be no outreach from UK Government on this. Worryingly, we have heard from at least one parent of a young person who is affected by this

issue that they were not informed that the rules regarding their child would be changing through their service provider.

We have also found engaging with the consultation documents frustrating due to the way the consultation has been structured. This is an issue for the validity of this consultation process, but it also worries us in terms of the way that people will be able to access information when they are being affected by limitations to their liberty or when their family members are.

We note that the UK consultation included 17 non easy read documents, and 4 different easy read documents. The Welsh Government consultation included 14 non easy read consultation and 3 documents that were described as easy read (see below for comments on these documents). In addition to this, the consultation included 14 different videos and regular email updates with even more information. While it is important to be transparent and give people all the information they need to form an opinion, this amount of information is overwhelming and hard to navigate. For the implementation of the LPS we strongly urge UK Government to create one accessible, plain English handbook that can be used by anyone who may be affected by the LPS, including anyone who might act as an "Appropriate Person", to understand their rights in this process. This handbook should have a clear structure that enables people to navigate the process more easily.

We are aware that Welsh Government has committed to creating more easy read documents, in particular to produce an easy read version of the "My LPS journey" flowchart. We support this idea but would also like to emphasise that producing easy read documents does not in itself make the process accessible. There also needs to be plain English information available that covers all the relevant information that help everyone involved to navigate this process.

We are also concerned about the accessibility of the easy read material produced by Welsh Government. While the documents included pictures and less text than the other versions, we do not believe that the language was sufficiently simplified and instead the documents seemed to reproduce much of the language of the original documents. Similarly, while we support the ideas of using videos as a communication form in general, the videos produced so far seem mostly to just be parts of the consultation documents read out, they don't meaningfully simplify or illustrate the process.

Both the UK and Welsh governments should also consider developing specific training for carers and other people who might act as an "Appropriate Person" within these processes to make sure they are as fully informed as they can be.

2. Concerns around challenging limitations of liberties

Some of our members noted concerns around the time between reviews. There is a concern that LPS may inadvertently make it harder for people to challenge limitations of their liberty.

There is a concern that the LPS might legitimise the problems they are supposed to tackle. We have heard from one parent that they have felt that DoLS have been used to justify restrictions that had been put on their child instead of actually safeguarding liberties. The LPS is supposed to put the person whose liberty is being restricted at the heart of the process. But without people being able to understand the process and their rights within the process they will not be able to challenge their treatment.

We are also concerned about the Appropriate Person role. It is important that people who are supporting relatives or other people they care about are informed about how their role will change. It is also important to acknowledge that changes to the way safeguarding works elicits significant anxieties concerning people whose liberties are currently being limited. It is important that people are assured that they will not be disadvantaged as compared to their situation under the current DoLS system.

3. Placing an undue burden on family carers

While we are not generally against applying the LPS in home settings and for 16- and 17-year-olds, we are concerned that these changes may end up creating an undue burden for family carers and people receiving care at home. We are concerned that families with disabled children are put under disproportionate scrutiny and that through the LPS process they may not always be able to keep their children safe.

We are also concerned that the process itself might cause distress and fear in families. While it is important to safeguard everyone's liberties, the process of going through the assessments and being afraid that someone's home may be declared an unsuitable place for someone to receive care may have a significant detrimental effect on those affected. More effective and accessible communication would go a long way to let people know what to expect from the process and what their rights in this process are.

4. Understanding Liberty

As mentioned above, we have some concerns around how effective the LPS will be in practically protecting people's rights. We believe that the LPS should only be applied within a wider context of working towards maximising people's freedom. While it can be important to sometimes limit people's freedoms when they lack capacity to make their own decisions, care arrangements should generally be made in a way that enables people to

make their own decisions to the largest degree possible. To do this it would be good to get a better exploration of what it means for someone to make their own decisions and how to improve communication and social support to make sure people are receiving support that will help them to need fewer restrictions long term. It will be important therefore to ensure that the Welsh Government Framework for Reducing Restrictive Practice is used in conjunction with the new LPS process to ensure that any restrictions on people's liberties are kept to a minimum and are the least restrictive methods possible.

This also means putting a system in place where people have networks of support and a variety of social relationships around them. People's liberties may be restricted in some settings but they should nevertheless be able to build strong networks that support them. It is also these networks that will be able to give people support when their rights are being limited more than they should be.

Finally, we want to emphasise the need to put funding and support into developing self-advocacy groups to make sure people are enabled to speak up for themselves.

5. Resourcing and training

We are aware that there is currently a lack of Independent Mental Capacity Advocates. It is important that this is addressed and more funding put in to these roles to make sure people have the support they need. There were also some concerns that the schedule for the implementation of the LPS might be too tight. We would like some assurance that the changes are not going to come into effect before everyone who needs to be trained in the new procedures has time to receive the training.

In terms of training on this new process, we would like to emphasise that people with a learning disability should not only be involved in developing the training but also in delivering it.

6. Pre-existing diagnoses

We are aware that within the assessment process (regulations 6 and 7 of The Mental Capacity (Deprivation of Liberty: Eligibility to Carry Out Assessments, Make Determinations and Carry Out Pre-Authorisation Reviews) (Wales) Regulations 2022), medical professionals should assess whether someone has a mental health condition or a neurodivergence. Many people will have already had diagnoses. We would like some assurance that these diagnoses will be taken into account and that people will not have to go through another diagnostic process, particularly where they have a 'lifetime' diagnosis (eg Down's Syndrome, learning disability or genetic condition). This is especially important given that some conditions, autism for example, have

long and arduous diagnoses processes and it may be a disproportionate hardship for people to undergo further assessment.