

## Manchester City Council Report for Information

**Report to:** Health Scrutiny Committee – 11 January 2023

**Subject:** Planning for Liberty Protection Safeguards Implementation

**Report of:** Executive Director of Adult Social Services

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### Summary

The Mental Health (Amendment) Act 2019 for England and Wales introduces new statutory changes updating the current Code of Practice Deprivation of Liberty Safeguards (DOLS) to become the new Liberty Protection Safeguards (LPS). The draft code of practice was published in July 2022 and is yet to be finalised. It requires there to be new Responsible Bodies in Health as well as Adult Social Care and key new duties requiring organisational change and staff roles and practice.

The main changes widen the scope to those aged 16 from 18 and applicable in all community housing and settings not just those in hospital and 24-hour care where people are assessed as lacking mental capacity to make specific decisions in relation to receiving necessary and proportionate treatment, care and support enabling them to be appropriately involved and independent throughout the process.

New duties including evidence assessors put people at the heart of the LPS process and enable the voice of the person by respecting their experience, wishes, values and feelings supported by those who know them, or by independent advocacy throughout the LPS process and review.

### Recommendations

The Committee is recommended to receive the information and updates and impact of statutory changes and progress so far and comment on preparation stages.

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### Wards Affected: All

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| <b>Environmental Impact Assessment</b> - the impact of the issues addressed in this report on achieving the zero-carbon target for the city |
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| <b>Equality, Diversity and Inclusion</b> - the impact of the issues addressed in this report in meeting our Public Sector Equality Duty and broader equality commitments  |
| The LPS applies to all those who lack mental capacity and are unable to consent to specific decisions must have support and decision made are under Best Interest decision making to ensure proportionate arrangements are in place so can receive necessary treatment, therapy or care promoting their health and wellbeing. |

Any restrictions which impact on those with those protected characteristics will be considered under the LPS duty to consult to wishes , values and beliefs and promotion of independence during assessment. This is part of the Public Sector Equality Duty and enables the Council to learn from people with lived experience.

**The European Convention for Human Rights / Human Rights Act 1998** article 5 applies with regards to people’s rights and freedoms and the Mental Capacity Act new LPS code of practice upholds these principles.

An Equality Impact Assessment (EIA) for LPS has been drafted for consultation and advice from the Council’s Equality, Diversity and Inclusion Team and activities planned.

| Manchester Strategy outcomes  | Summary of how this report aligns to the OMS/Contribution to the Strategy  |
|---|--|
| A thriving and sustainable city: supporting a diverse and distinctive economy that creates jobs and opportunities | Likely increase of demand and capacity with additional trained AMCP and advocacy. Working within HR policies including the Recruitment and Retention Policy.                               |
| A highly skilled city: world class and home grown talent sustaining the city’s economic success                   | As above with increased specialist trained professionals to meet the needs of Adults and Young People. Building on current BIA cohort and recruitment to vacancies.                        |
| A progressive and equitable city: making a positive contribution by unlocking the potential of our communities    | Promotion of Strength based practice and working with people to maintain independence, learn new skills and maintain routines so people can remain in their own homes safely for longer. . |
| A liveable and low carbon city: a destination of choice to live, visit, work                                      | Enabling people to remain safely living in Manchester by least restrictive options and support approaches through LPS arrangements.  |
| A connected city: world class infrastructure and connectivity to drive growth                                     |  |

Full details are in the body of the report, along with any implications for:

- Equal Opportunities Policy
- Risk Management
- Legal Considerations

### Financial Consequences – Revenue

## **Financial Consequences – Capital**

Awaiting advice from the Local Government Association (LGA) to regional financial distribution to support LPS training and fund university courses for new Approved Mental Capacity Professionals training. Internal training/ awareness and IT Liquid Logic enhanced trainer will be arranged through existing resources.

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### **Background documents (available for public inspection):**

The following documents disclose important facts on which the report is based and have been relied upon in preparing the report. Copies of the background documents are available up to 4 years after the date of the meeting. If you would like a copy please contact one of the contact officers above.

1. National LPS Training Strategy – Health and Social Care Department (2022)
2. Mental Capacity (Amendment) Act (2019) draft LPS Code of Practice.

## 1.0 Introduction

### Strategic context

- 1.1 The Liberty Protection Safeguards Implementation is now a designated workstream within the Better Lives, Better Outcomes (BOBL) Safeguarding ASC Transformation programme. LPS adheres to the aspirations of the Our Manchester behaviours by putting people first, listening and recognising strengths of individuals and communities. It also links to the Manchester Safeguarding Partnership and Safeguarding Effectiveness.
- 1.2 This report is presented to provide information and receive comment on updates to LPS planning work in progress in preparing for major statutory changes.
- 1.3 **The Liberty Protection Safeguards Implementation project** was developed to give assurance, co-ordination and reporting of Manchester City Council and partner readiness in delivering and complying with new statutory duties. Change management approaches ensure principles of the Mental Capacity Act are maintained and internal LPS key changes are responded to and progressed.
- 1.4 **The LPS Partnership Steering Group** brings together leads across Manchester to provide oversight and governance to the LPS implementation arrangements and scrutinise activities of workstreams, risk management mitigations and consideration of opportunities for overarching arrangements and strategies.
- 1.5 **Deprivation of Liberty Safeguards Team**

Currently the Local Authority Deprivation of Liberty Safeguards (DOLS) Team directly processes all DOLS referrals received from providers (managing authorities) and hospital. Under LPS they will become the Local Authority lead team as part of 3 Responsible Bodies of the Integrated Care Board (ICB) and Manchester Foundation Trust (MFT). Under LPS the Local Authority will manage cases referred to adult social care and in private hospitals and hospices. The ICB will arrange LPS for those fully funded under Continuing Health Care at home or in nursing homes and the MFT for those in hospital both in the short and longer term.
- 1.6 In order to reduce the current DOLS waiting list additional resources have been deployed to cover vacancies and a robust review of the DOL's front door and has reduced the waiting list by 65% and will be continually monitored.
- 1.7 **The independent advocacy hub** is commissioned by the Local Authority to GADDUM who provides all types of advocacy and is anticipating an increase of referrals by 33% under LPS. Their Advocacy Annual report 2022 advises to a 20% increase in advocacy referrals in 2021-22 compared to 2020-21 figures.

- 1.8 **Preparing for Adulthood** current pathways will be reviewed to include Mental Capacity and LPS and inclusive Education Health and Care Plan reviews to enable earlier engagement with Young People and families using a Think Family approach The Children's Service have identified 30 young people who are likely to be in scope. Engagement and co production opportunities are key to this workstream

## 2.0 Background - Legal Context

- 2.1 The Mental Capacity Act 2005 was reviewed after the Cheshire West Supreme Court Judgement in 2014 revising the Code of Practice for the Deprivation of Liberty Safeguards (DOLS) with a criteria called the 'acid test' stating that a person is deprived of their liberty if a) they are under constant supervision and control b) Not free to leave where they are living and this criteria will be remaining under LPS.
- 2.2 In 2018 the Law Commission felt DOLS was not fit for purpose, so the Mental Capacity (Amendment) Act 2019 introduced the new Liberty Protection Safeguards as replacement to DOL's extending the criteria to those living at home who previously had authorised restrictions only under the Court of Protection.

## 2.3 Learning Disability / Autism and Mental Health Act reform

This workstream ensures joint work with the Learning Disability and Autism Service and Greater Manchester Mental Health (GMMH) integrated service with regards to LPS imperatives and reviewing the impact of the changes proposed in the Mental Health Reform Bill 2022. People will admitted to mental health hospitals for therapeutic purposes. Under LPS mandatory medical assessments have to define a mental disorder which currently includes a person having a Learning Disability and Autism .Under new Mental health legislation Learning Disability and Autism will not be seen as a mental disorder so LPS can only be applicable if a person also has a Mental Health diagnosis. Therefore, increased community based support and new protocols will be needed to plan implementation of two major legislative changes.

- 2.4 **The Care Quality Commission**, in its new duty to inspect local government social work services, as well as regulated services, will be responsible for overseeing quality practice and outcomes for people and how the LPS is implemented and new approaches to assessment and care planning.

## 3.0 Main issues

- 3.1 **Draft MCA Liberty Protection Safeguards code of practice** remains in place with no confirmation of when the final version will be published so LPS currently is scoping and planning around the current planned practice and organisational changes. Once published Responsible Bodies will have a 6 months lead in period to prepare for delivering implementation. It is anticipated that the implementation will move from the anticipated October 2023 date to

April 2024. The main current themes are expected to remain so workstreams continue to prepare accordingly.

- 3.2 LPS Training has been scoped with HR to numbers of staff against draft levels of training outlined in the National LPS Training strategy so await the published training objectives so can finalise training programmes for staff. Meanwhile LPS awareness training is being delivered with further sessions for the Communities of Practice as a rolling programme which invites all local professionals to attend and participate. Mandatory internal Mental Capacity Assessment training is rolling out to all staff with 50% currently reported as already completed.
- 3.3 Additional training will be sourced for our commissioned independent advocacy provider GADDUM with regards to supporting those with complex Learning Disability and Autism as well as maintaining interpreters for those with sensory impairment.
- 3.4 **Approved Mental Capacity Professionals:** New Approved Mental Capacity Assessor (AMCA) roles will replace current Best Interest Assessor (BIA) roles and will need enhanced conversion training. Cases known to assessment teams will progress LPS arrangements through mainstream casework. All staff need to be appropriately trained against the National LPS Training Strategy with regards to the level of role they hold.

Conversion for existing BIA'S is planned internally but University placements for new AMCP training will need to be scoped and funded for each Responsible Body. An AMCP hub is under discussion to enable a joint resource to prioritise local need, pool expertise so better response and outcomes for people.

- 3.5 **Impact on waiting times:** During staff attendance at LPS mandatory training and Liquid Logic LPS training, there could be a short term gaps in front line service which could impact on casework and referral waiting times so training will be staggered as mitigation. Social workers will be expected to arrange LPS processes for their cases up to reviews through as best practice. Again, the impact of less case throughput may impact on waiting times.
- 3.6 **Performance and system changes:** The Liquidlogic Project lead and designated LPS workstream alongside the Performance Reporting and Intelligence Team to identify new LPS national performance reporting improvement fields as well as improve current DOL's workflows and improved performance reporting. New Liquidlogic processes for those under LPS at 16 are being designed to assist the planning for adulthood waiting times.
- 3.7 **Independent Advocacy waiting times:** Waiting lists for independent advocacy are under review as an expectation that there will be no remaining referrals by LPS implementation date. The LPS advocacy workstream are looking at strategies and jointly review referrals with GADDUM and look to where people can be appropriately supported by others who are known to

them rather than independent advocacy service. Funding has been enabled to fund another 4-5 advocates to assist in reducing waiting times.

3.8 **DOLS Team Review:** The DOLS team will remain as is to support the transition of existing DOLS cases until LPS conversion as needed and receive new LPS referrals acting as a resource to other teams to embed LPS practice. The DOLS team structure will be reviewed within 12 months of implementation and redesigned as LPS practice is expected to be mainstreamed in services in the long term.

3.9 **Responsible Bodies network:** Is proposed working alongside the LPS Partnership Steering Group and workstreams to provide LPS Senior leads peer support during LPS planning for implementation as well as continued links with the Northwest LPS implementation group. This will enable positive conversations and relationships and development within this workstream so develop effective joint implementation strategies.

#### 4.0 Recommendations

4.1 It is recommended that the current Liberty Protection Safeguards preparation for implementation work and wider Safeguarding transformation work remains to meet agreed with objectives which meet new legislative requirements with improved health and social care outcomes. Once the LPS final code of practice is published these changes will increase in pace and workstreams actions and periodic progress updates can be provided.

4.2 That the LPS project will further community engagement and co- production work with local groups and focus on putting people at the heart of all we do.