

Report to Cabinet

23 March 2022

Subject:	Liberty Protection Safeguards
Cabinet Member:	Cabinet Member for Adults, Social Care and Health – Councillor Suzanne Hartwell
Director:	Director of Adult Social Care – Rashpal Bishop
Key Decision:	Yes Request for additional staffing resources for the Implementation of Liberty Protection Safeguards in Sandwell.
Contact Officer:	Project Lead – Liberty Protection Safeguards Donna_Patel@sandwell.gov.uk Graham Terry, Interim Assistant Director, Adult Social Care Graham_terry@sandwell.gov.uk

1 Recommendations

1.1 That approval be given:

1. To note the requirement to introduce Liberty Protection Safeguards (LPS) from a date to be determined by the Department of Health and Social Care (DHSC) following their announcement that this will be delayed from the original date of 1 April 2022.
2. To endorse the implementation plan in preparation for the introduction of the new Liberty Protection Safeguards.
3. To the revised structure for social work service as set out below, to enable the council to prepare for the implementation of LPS, and to recruit to the required posts.



Deprivation of Liberty Team

Roles to be converted -

Current Role	Grade	No of New Posts
Social Care Lead Officer x 2FTE	G	** x2 FTE Social Worker (AMCP)

New Liberty Protection Safeguards Team

Roles to be created -

New Role	Grade	No of New Posts
Social Care Team Manager (with AMCP)	H	X 1 FTE
Social Worker (AMCP)	G	X 5 FTE ** (This includes the 2 FTE current SCLO Converted posts). (To respond to the 25% LPS Challenge cases / complex assessments)

Community Social Work Teams

Roles to be created -

Role	Grade	No of New Posts
Social Worker	F	X 8 FTE (to support the current social work structure to respond to the LPS and outstanding C- DOL cases)

The staffing and commissioned resources in the current DoLS team have been repurposed in the table below in line with the proposed staffing model and requirements to support implementation of the LPS.

Role	Grade	Annual Cost (Bottom of Grade (£))	Annual Cost (Top of Grade (£))	Number of FTE Posts	Comments
Team Manager (with AMCP Status)	H	55,439	62,167	1	Creation of one New post.



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Co-ordinator (Administrator Role)	E	32,532	38,760	1	Currently funded by existing Business Support Budget
Business Support Officer Post	D	27,003	31,867	1	Currently funded by existing Business Support Budget
Total Cost		670,144	769,129		
Conversion of SCLO posts	G	(108,154)	(108,154)	2	Conversion of posts
DOLS Budget		(358,600)	(358,600)		Existing Funding
Existing Business Support funded posts.		(70,660)	(70,660)		Existing Funded posts.
Total Redirection		(537,414)	(537,414)		
Net Cost / (Saving)		£132,730	£231,709		

4. To the commencement of the required consultation with the affected workforce and Trade Unions
5. To authorise the Director of Adult Social Care, to implement the new structure and make any minor modifications required following the guidance from the code of practice on the Mental Capacity Act and LPS.
6. To note that additional funding for Advocacy Support (Independent Mental Capacity Advocates) for the implementation of Liberty Protection Safeguards is likely to be required.








7. To agree to provide a further report on progress and financial implications before October 2022 and to confirm any new timescales for the introduction of LPS and its implementation once agreed by DHSC.

1.2 That the Director of Adult Social Care, be authorised to implement the new structure in preparation for Liberty Protection Safeguards.


2 Reasons for Recommendations

2.1 To enable the Director of Adult Social Care, Rashpal Bishop to prepare for the implementation of Liberty Protection Safeguards across Sandwell.

3 How does this deliver objectives of the Corporate Plan?

	Best start in life for children and young people
	People live well and age well
	<p>Strong resilient communities</p> <p><i>Ambition 3 – “Sandwell is a place where we live healthy lives and live them for longer, and where those of us who are vulnerable feel respected and cared for”</i></p> <p>The proposed structure will ensure the right number of resources, in the right places with the required skills, training and experience to respond appropriately to the residents of Sandwell in accordance with new legislation</p>
	Quality homes in thriving neighbourhoods
	<p>A strong and inclusive economy</p> <p><i>Ambition 5 - “Our communities are built on mutual respect and taking care of each other, supported by all the agencies that ensure we feel safe and protected in our homes and local neighborhoods.”</i></p>



	<p>The proposed structure will ensure residents of Sandwell will be assessed to ensure that people only receive restricted care that is deemed ‘necessary and proportionate and in line with the forthcoming legislation and its Code of Practice, in a safe, appropriate least restrictive manner in the best interests of the person where there is no other option.</p>
	<p>A connected and accessible Sandwell</p>

4 Context and Key Issues

- 4.1 This report outlines a proposed restructure of the social work service that forms part of the Adult Social Care directorate in preparation for the implementation of the new Liberty Protection Safeguards (LPS).
- 4.2 The redesigned structure seeks to place an emphasis on the delivery of services and the statutory duty the Council has to ensure that people in all types of settings receive appropriate care and treatment without unlawful deprivation of their liberty freedom, or rights. The LPS will seek to ensure that in any care setting a person from the age of 16 years old and over who requires restricted care, will only be arranged if this is assessed as ‘necessary and proportionate’ and within a legal framework, and that this is only done when it is in the best interests of the person and where all other least restrictive options have been considered.
- 4.3 The focus of a small and defined re-modelling of the social work service is to ensure compliance with forthcoming legislation and the key objectives:
- The Local Authority is discharging its responsibilities and functions as the Responsible Body in cases where there are potential Liberty Protection Safeguards concerns with undertaking the assessments and authorisation of Liberty Protection Safeguards and the wider remit of this role.
 - Devising a service/structure that is equipped to respond to the changes in legislation.



- Ensuring that staff are skilled trained and experienced to meet the Council’s statutory obligations, the expectations of elected members and the expectations of our residents both now and in the future.
- Delivering a service that is affordable and proportionate in line with our statutory duties and can be expanded or reduced at a later date as the actual demand becomes known.

5 Background

- 5.1 The Deprivation of Liberty Safeguards (DoLS) were introduced in 2009 following the decision of the European Court of Human Rights. These DoLS enable Adults to be deprived of their liberty in hospitals and care homes when the person lacks the relevant mental capacity.
- 5.2 The Supervisory Body will arrange an assessment to decide whether the qualifying criteria for DoLS is met and will either grant or refuse an authorisation.
- 5.3 The Supervisory Body’s current operating model includes commissioned external Best Interest Assessors and Section 12 Doctors undertaking the required deprivation of liberty assessments.
- 5.4 In 2014, a report by a House of Lords Select Committee, which had been appointed to consider and report on the Mental Capacity Act, concluded that the DoLS legislation was ‘not fit for purpose’, specifically, the DoLS were not being used when they should be, leaving individuals without legal safeguards and care providers vulnerable to legal challenge.
- 5.5 This was followed by a decision of the Supreme Court (known as “Cheshire West”) which gave a broader definition of what constituted a deprivation of liberty and which resulted in an influx of DoLS referrals to local authorities.
- 5.6 Therefore, The Department of Health, asked the Law Commission to review the DoLS. Following a public consultation in 2015, the Law Commission published a final report in March 2017, which included a draft bill. The report called for the DoLS to be replaced as a matter of “pressing urgency” and set out a new scheme called the Liberty Protection Safeguards (LPS).



5.7 The government's response to the Law Commission was published in March 2017. It accepted that the current DoLS system should be replaced and broadly agreed with the commission's LPS model. The Mental Capacity (Amendment) Act Bill has been passed and enacted. LPS was initially proposed to be implemented from October 2020, then extended until the 1st April 2022 due to the COVID pandemic. The date has been further extended due to COVID 19 and the delay in issuing of the Code of Practice. It is anticipated that the Liberty Protection Safeguards (LPS) is likely to be implemented in October 2022. LPS will replace DoLS' and provide a framework to determine whether a deprivation of liberty is necessary and proportionate for the care and treatment of an individual in their setting.

5.8 LPS Legislation has a much wider remit to safeguard people living in their own home, supported living, including people attending day-care provision, whilst deprived of their liberty on transport, whilst attending specialist residential colleges and schools (up to age 25 years old). This will increase the level of Deprivation of Liberty to LPS significantly.

6 Preparing for LPS

6.1 The proposed new structure for the social work service seeks to deliver on the LPS legislation and ensure that decisions about deprivation of liberty are integrated into care planning, and that authorisation should be given as part of the process of deciding the arrangements which will, or which may not result in a deprivation of liberty.

6.2 The new legislation will identify Supervisory Body changes to become "Responsible Body (RB)" under the new legislation seeks to tailor the responsibilities to the appropriate organisation as defined:

- For people who are 100% Continuing Healthcare (CHC) funded, the RB will be the CCG
- For people in an NHS Hospital including Mental Health, the RB will be Health.
- All other requests for an LPS assessment will be the responsibility of the Local Authority (Adult / Children's Social Care) as the RB, and this includes Independent Hospitals and Self Funders for people aged from 16 years old.
- The Local Authority will also have responsibility for arranging Independent Mental Capacity Advocates (IMCA's) for all LPS Assessments, regardless of the RB.



- 6.3 The proposed new structure in preparation for LPS will have an impact on the following teams:
- Community Social Work Teams
 - Deprivation of Liberty Team
- 6.4 The proposed new structure will require: -
- Re-modelling of the current structure
 - The creation of new roles; to ensure compliance with legislation.
 - Conversion of some roles to ensure compliance with legislation
- 6.5 The remodelling of the current structure will require the service has the right number of resources with essential skills, experience and training to respond to the projected additional demands. Also, to ensure there is full consideration of potential interagency working with our partners.
- 6.6 This will be achieved by:
- Providing additional social worker posts to the current establishment
 - Creating a new post - Social Worker (AMCP Status).

The role of the AMCP

An individual from the RB, but not someone directly involved in the care and support of the person subject to the care arrangements must conclude if the arrangements meet the three criteria lack of capacity; mental disorder; necessity and proportionality.

Where it is clear, or reasonably suspected, that the person objects to the care arrangements, then a more thorough review of the case must be carried out by an Approved Mental Capacity Professional.

The Social Worker (AMCP status) is required to be employed directly by the RB, as advised by the DHSC.

- Creating a new post – Social Care Team Manager (AMCP Status).
- 6.7 Analysis of the projected demands from the changes from DoLS to LPS has been undertaken using national and regionally recognised tools to calculate the average time taken on each LPS and the likely volume to identify the new roles and number of staff required to meet these statutory duties. The proposed staffing model takes account of the fact that all LPS assessments will be completed by the community social work teams. Whilst also ensuring that there is sufficient resource for a



small dedicated LPS team who will be required to review and make arrangements to meet the person and family to assess whether a LPS is 'necessary and proportionate'. Notably, these will be when a person that objecting against their care arrangements. 25% of LPS's that are contested. The equality impact assessment is identifying that the additional tasks are likely to require three to 5 hours per assessment for the worker.

6.8 Community social work staff will consider whether care arrangements are 'necessary and proportionate' for the care and treatment of an individual and run as a golden thread in a person's assessment and care management documentation where they are being deprived of their liberty. (Care Act Assessments / Support Planning, Risk Assessments and Reviews).

6.9 Staffing Implications and Consultation

From a workforce perspective, the impact on existing staff within Adult Social Care will be minimal as a low number of employees will be directly affected.

Consultation on the change will be carried out in line with existing Council policies and further appropriate consultation will be arranged.

Trade union colleagues will be presented with the proposal at a special JCC in March 2022 and staff will be presented with the proposal in the same time period.

Details of the proposed changes are set out in the tables below.

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6.10 The Independent Mental Capacity Advocate (IMCA) Role is extended significantly under the new Mental Capacity (Amendment) Act 2019. The local authority has a responsibility to ensuring that there are enough IMCA's for its local authority area regardless of the responsible body. Where there is not an Appropriate (Suitable) Person to support the cared for person the local authority has a duty to instruct an IMCA. An "Appropriate Person" can also make a request to be supported by an IMCA in certain circumstances and the responsible body must take reasonable steps to appoint an IMCA in these circumstances. The Code of Practice will give more clarity. There is no date for the issue of the Code of Practice, but we are informed it is fairly imminent.

6.11 Current Projections for IMCA costs per person are:

There are two examples to illustrate the range of projected costs based on two variables, the average time it is expected to take per case for an IMCA, and the % number of cases that could require an IMCA.



Example 1

IMCA costs to support the Cared for Person: Projected 38 hours (Average) x £35 per hour = £1,330 per case. Based on the 2020/ 21 DOL data of 1,572 Assessments completed and an assumption of (25%) this amounts to £522,690 per annum.

Example 2

If the average time taken by an IMCA to support the Cared for Person is 19 hours instead of the 38 hours in example 1 and only 15% of cases require it the cost per case is £669 and at 15% amounts to £159,000 per annum.

6.12 The provision of an IMCA to an appropriate person

The following is an example cost for the provision of an IMCA to an appropriate person which is considered to take less time on average and is less likely to occur. The Code of Practice when published is expected to further clarify our responsibilities to appropriate persons.

IMCA costs to support the Appropriate Person: Projected 17 hours (Average) x £35 per hour = £595 per case. Based on the 2020/21 DOL data of 1,572 Assessments complete and an assumption of (10%) this amounts to £93,534 annum.

The financial implications of the extension of the IMCA role remain uncertain, however the above projections indicate potential costs within the range of £253,000 to £617,000 pa. The current budget to support this activity is £99,000; indicating a potential significant pressure.

7 Consultation (Customers and other Stakeholders)

- 7.1 The DHSC has delayed the proposed LPS implementation date of 1 April 2022. However, the proposed re-structure to support the implementation of LPS would be required to be progressed to enable all the necessary HR processes, training and the regulatory framework to be in place. This is required in readiness for implementing the change of legislation. All Local Authorities are similarly preparing while awaiting the Code of Practice: Mental Capacity Act and Liberty Protection Safeguards and regulations to be issued by the DHSC.



- 7.2 Engagement sessions have been undertaken with staff and will commence with the affected staff group in line with our Human Resources processes as part of this proposal.
- 7.3 Engagement sessions have commenced with the existing providers of this service and will continue to do so prior to the finalisation of this proposal. The feedback received has informed the final proposal.
- 7.4 The consultation proposed within this document is structured by the following legal position:

The statutory instrument that underpins the duty to consult is defined in the Local Government Act 1999 (Section 3) and the Statutory Guidance issued under it. Both the Act and Guidance state that Councils are under a duty to consult.

- 7.5 Consultation will be undertaken accordingly and proportionately.
- 7.6 The consultation with the effected workforce will have to comply with the legal principles that relate to consultation, namely the Gunning principles:
- Consultation should be at a time when proposals are still at a formative stage.
 - Sufficient reasons for the proposals to permit intelligent consideration.
 - Adequate time must be given for consideration and response.
 - The product of the consultation must be conscientiously considered.

8 Legal and Governance Considerations

- 8.1 The implementation of any cabinet decision should not result in the violation of any person's rights under the European Convention on Human Rights (ECHR). The consultation will ensure that any potential violation is identified and mitigated.



8.2 Public Sector Equality Duty (PSED) – When making a decision as to changes in service provision the local authority must comply with the requirements of the Equality Act 2010 and in particular section 149 (public sector equality duty). The protected characteristics to which the duty applies includes age as well as disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, sexual orientation, religion or belief and sex.

9 Equality Impact Assessment

9.1 When making a decision as to changes in service provision the local authority must comply with the requirements of the Equality Act 2010 and in particular section 149 (the public-sector equality duty). The protected characteristics to which the duty applies includes age as well as disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, sexual orientation, religion or belief and sex.

9.2 An Equality Impact Assessment has been completed. It concluded that the restructure of the community social work teams would not adversely affect equality on the basis of any of the protected characteristics. Any unforeseen adverse impacts will be identified through monitoring processes and statistical / other data analysis.

10 Data Protection Impact Assessment

10.1 As a result of the recent introduction of the General Data Protection Regulations a full review of data protection requirements was carried out across the social work service and the proposals contained in this report should not result in any material changes being made to the processes implemented as a part of this work.

11 Risk Assessment

11.1 The proposals outlined will increase the Council's ability to respond to its statutory duty in making sure that people in all types of settings are looked after in a way that does not inappropriately restrict their freedom. The safeguards should ensure that in any care setting a person from the age of 16 years old will only be deprived of their liberty in a safe and correct way, and that this is only done when it is in the best interests of the person and there is no other way to look after them.



11.2 The corporate risk assessment has been complied with to identify and assess any significant risks associated with the proposal. This includes (but is not limited to) political, legislation, financial, environmental and reputation risks.

11.3 Based on the information provided, it is the officers' opinion that where significant risks have been identified, arrangements are in place to manage and mitigate these effectively. This assessment has identified that there are some "red" risks that need to be reported and detailed in the project risk assessment.

11.4 If the report is not approved, then there is a risk that the Council is not meeting its legal obligation in safeguarding adults who are being deprived of their liberty and failing to respond and effectively apply the necessary structural and operational changes to deliver safe practice that falls in line within the parameters of the law.

12 Sustainability of Proposals

12.1 The proposed structure improves the sustainability of front line registered social workers and creates new posts of Social Worker with AMCP status and Team Manager with AMCP status to respond to changes in government legislation and comply with our statutory duties.

13 Health and Wellbeing Implications (including Social Value)

13.1 By providing services which continue to be responsive to Adults who lack the mental capacity to make decisions around their care arrangements whatever the setting, the proposals outlined will have a positive impact for the cared for person and their representative in ensuring they are accordingly safeguarded.

14 Impact on any Council Managed Property or Land

14.1 The proposals outlined have no impact on Council managed property or land.

15 Conclusions and Summary of Reasons for the Recommendations

15.1 The report outlines a proposed restructure of the social work service that supports the need for change of deprivation of liberty safeguards practice so that it falls in line with the new legislation, Liberty Protection Safeguards (LPS). This will move the primary focus of core deprivation of liberty assessments that protect and safeguard Adults who lack mental capacity around their care arrangements, in all settings, away



from the commissioned independent external assessors and into our social work activity and practice.

15.2 The cost of implementing the new staffing structure will be £231,709 per annum. We recognise the cost of the IMCA will be significantly higher, however this remains unknown at this stage.

15.3 The focus of restructuring the services area seeks to:

- Ensure there is the right number of registered social workers and social workers who are Approved Mental Capacity Professionals across the teams to meet the demand and potential increase of work following the introduction of the Mental Capacity (Amendment) Bill and LPS.
- Ensure the right resources are in the right places to meet the Council's statutory obligations, the expectations of elected members and the expectations of our residents both now and in the years to come.
- Deliver services that safeguard our most vulnerable residents and explore opportunities to develop inter-agency protocols with Children Trust, the NHS Trust, CCG and other Local Authorities so there is a consistent approach applied by all Responsible Bodies when applying Liberty Protection Safeguards.
- Accept the revised structure for social work service, as described in points 6.9 and 6.10 of this report, and as agreed by Rashpal Bishop, Director of Adult Social Care and Wellbeing to be implemented to respond to LPS and the additional responsibilities of the Local Authority.
- To agree to receive a further report on progress and financial implications before October 2022 and to confirm any new timescales for the introduction of LPS and its implementation once agreed by DHSC.



16 Alternative Options

- 16.1 The alternative option is to continue with the current staffing structure. However, we this is not a feasible or legally viable option for the council for the reasons stated below.
- 16.2 From a strategic perspective this would reduce the Local Authorities ability to successfully implement the forthcoming legislation and ensure the Local Authority meets its statutory obligations around safeguarding Adults who are being deprived of their liberty. This amounts to failing to meet our statutory duties enshrined in legislation.
- 16.3 From an operational perspective this would reduce the Local Authorities capacity to respond in a timely way to concerns raised around safeguarding Adults who are being deprived of their liberty leading to waiting lists for statutory assessments. It would also not allow the council to respond to the wider remit of the LPS legislation and projected increased demand.

17 Implications

<p>Resources:</p>	<p>The strategic resource implications are presented in detail within 6.9 to 6.12 of this report.</p> <p>The proposed staffing changes will generate an initial financial pressure of £132,730 pa which will be managed through the identification of efficiencies and the redirection of resources across Adult Social Care.</p> <p>The financial implications of the IMCA changes remain unclear, however initial projections indicate an annual financial pressure in the range £154,000 to £518,000. Initial costs in this area will be closely monitored and incorporated into the management of the overall Adult Social Care budget and the development of the financial strategy for future years.</p>
<p>Legal and Governance:</p>	<p>The cabinet report is to ensure compliance and in preparation for the implementation of the new legislation changes under the Mental Capacity Amendment Act 2019.</p>



Risk:	An LPS project risk assessment has been completed and will be submitted with the cabinet report.
Equality:	An Equality Impact Assessment has been completed and accompanies this Cabinet Report. It concluded that the restructure of the community social work teams would not adversely affect equality on the basis of any of the protected characteristics. Any unforeseen adverse impacts will be identified through monitoring processes and statistical/ other data analysis.
Health and Wellbeing:	This cabinet report and its proposals support the Health and Wellbeing of our communities, citizens' and safeguards vulnerable adults' rights
Social Value	There are no implications for social value from this report. The workforce structures are related to professional roles that are not suitable for the consideration of young people or local traders.

18 Appendices

None

19 Background Papers

Not applicable.

