

# **Liberty Protection Safeguards factsheets**

Information about Liberty Protection Safeguards (LPS)

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**The following document has been collated from guidance issued by the Department of Health & Social Care.**

**Please note this is not final publication and details are subject to change, following consultation of final Codes of Practice.**

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## Liberty Protection Safeguards: what they are<sup>1</sup>

The Liberty Protection Safeguards will provide protection for people aged 16 and above who are or who need to be deprived of their liberty in order to enable their care or treatment and lack the mental capacity to consent to their arrangements.

People who might have a Liberty Protection Safeguards authorisation include those with dementia, autism and learning disabilities who lack the relevant capacity.

The Liberty Protection Safeguards were introduced in the Mental Capacity (Amendment) Act 2019 and will replace the Deprivation of Liberty Safeguards (DoLS) system. The Liberty Protection Safeguards will deliver improved outcomes for people who are or who need to be deprived of their liberty. The Liberty Protection Safeguards have been designed to put the rights and wishes of those people at the centre of all decision-making on deprivation of liberty.

The Liberty Protection Safeguards are planned to come into force in April 2022.

### Key changes introduced by the Liberty Protection Safeguards

#### 1. Three assessments will form the basis of the authorisation of Liberty Protection Safeguards

1. a capacity assessment
2. a 'medical assessment' to determine whether the person has a mental disorder
3. a 'necessary and proportionate' assessment to determine if the arrangements are necessary to prevent harm to the person and proportionate to the likelihood and seriousness of that harm

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<sup>1</sup> Department of Health & Social Care, Liberty Protection Safeguards, 11 June 2021  
<https://www.gov.uk/government/publications/liberty-protection-safeguards-factsheets/liberty-protection-safeguards-what-they-are>

The assessment process will be embedded into existing care planning (for example under the Care Act 2014) and it will be easier to use existing valid assessments, where reasonable and appropriate.

Local authorities and NHS bodies will be 'Responsible Bodies' under the Liberty Protection Safeguards. Responsible Bodies will organise the assessments needed under the scheme and ensure that there is sufficient evidence to justify a case for deprivation of liberty. Ultimately, the Responsible Body is responsible for authorising any deprivation of liberty in certain settings.

## 2. Greater involvement for families

There will be an explicit duty to consult those caring for the person and with those interested in the person's welfare. There will be an opportunity for a family member or someone else close to the person, if they are willing and able, to represent and support the person through the process as an "appropriate person". Family members or others close to the person will also be able to raise concerns throughout the process and in response to any authorisation.

## 3. Targeted approach

Where it is reasonable to believe that a person would not wish to reside or receive care or treatment at the specified place, or the arrangements provide for the person to receive care or treatment apply mainly in an independent hospital, the case must be considered by an approved mental capacity professional (AMCP). This provides an additional protection.

The Responsible Body may also refer other cases to the AMCP. The AMCP can accept those referrals and consider those cases too.

The AMCP will review the information on which the Responsible Body relies, meet with the person if appropriate and practicable, and complete consultation if appropriate and practicable with:

- the person
- anyone named by the person as someone who should be consulted
- anyone engaged in caring for the person
- anyone interested in the person's welfare

- any attorney of a lasting power of attorney (LPA) or an enduring power of attorney (EPA)
- any deputy appointed by the Court of Protection
- any appropriate person
- any independent mental capacity advocate (IMCA)

#### 4. Extending the scheme to and 16 and 17-year-olds

Currently, when a 16 or 17-year-old needs to be deprived of their liberty, an application must be made to Court of Protection. Under the Liberty Protection Safeguards, Responsible Bodies can authorise the arrangements without a Court order. This will deliver more proportionate decision-making about deprivation of liberty and minimise potential distress and intrusion for young people and their families.

#### 5. Extending the scheme to domestic settings

The Liberty Protection Safeguards will apply to individuals residing in domestic settings who need to be deprived of their liberty. Domestic settings include:

- the person's own home and family home
- shared lives
- supported living

This change ensures that all individuals who need to be deprived of their liberty will be protected under the Liberty Protection Safeguards, regardless of where they reside, without the need to go to court.

#### 6. Clinical commissioning groups (CCGs), NHS trusts and local health boards as Responsible Bodies

The Liberty Protection Safeguards creates a new role for CCGs and NHS trusts in authorising arrangements. In England, if the arrangements are mainly taking place in an NHS hospital, in most cases the Responsible Body will be the 'hospital manager' (which in most cases will be the NHS trust responsible for that hospital).

In Wales, in most hospital cases the Responsible Body will be the local health board. If the arrangements that result in a deprivation of liberty

are being carried out mainly through NHS continuing healthcare (CHC), or the equivalent in Wales, the Responsible Body will be the relevant CCG in England or the local health board in Wales.

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## Liberty Protection Safeguards: overview of the process<sup>2</sup>

The Liberty Protection Safeguards (LPS) will provide protection for people aged 16 and above who are or who need to be deprived of their liberty in order to enable their care or treatment and lack the mental capacity to consent to their arrangements.

People who might have an LPS authorisation include those with dementia, autism and learning disabilities who lack the relevant capacity.

The LPS are planned to come into force in April 2022.

### Making a referral

In most cases, a local authority or an NHS body will be the 'Responsible Body' that will authorise arrangements for care or treatment under the LPS. Where it's felt that an authorisation may be needed, the Responsible Body must be informed so the LPS process can be triggered. Anyone can make a referral. The process could be very informal, for example a simple email, or official forms can be used. The 'no wrong door' principle will apply, and Responsible Bodies will be expected to work together to identify who is the correct body in cases where this is not clear.

### Representation and support

As soon as a referral is made to the Responsible Body, it must in relevant cases take reasonable steps to appoint an Independent Mental Capacity Advocate (IMCA), unless there is someone else (such as a family member or someone else close to the person) who could act as the appropriate person. The appropriate person and the IMCA's role will

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<sup>2</sup> Department of Health & Social Care, Liberty Protection Safeguards, 11 June 2021  
<https://www.gov.uk/government/publications/liberty-protection-safeguards-factsheets/liberty-protection-safeguards-overview-of-the-process>

be to represent and support the person through the process. When arrangements are proposed, the Responsible Body must take practicable steps, such as providing information, to ensure that the person, and the appropriate person understand the process.

## Assessments and authorisation

The Responsible Body will arrange the assessments needed for an authorisation. The Responsible Body will also consult the person and other individuals such as a family member or someone else close to the person.

Following this, a pre-authorisation review will be completed by someone not involved in the person's day to day care or treatment or with a prescribed connection to a care home. The review must determine whether the authorisation conditions are met, or whether it is reasonable for the Responsible Body to reach this conclusion.

The authorisation conditions are that:

1. the person lacks capacity to consent to the arrangements
2. the person has a mental disorder, as defined by the Mental Health Act 1983
3. the arrangements are necessary and proportionate; that is, the arrangements are necessary to prevent harm to the person and proportionate to the likelihood and seriousness of the risk of harm to the person

When the arrangements that amount to a deprivation of liberty provide for care or treatment mainly in an independent hospital, or the person does not wish to reside or receive care or treatment at the place, the pre-authorisation review must be completed by an Approved Mental Capacity Professional (AMCP).

In other cases, an AMCP must consider the case only if it has been referred to them by the Responsible Body and they have accepted that referral. The LPS code of practice will provide detail about which types of cases should be accepted by the AMCP. The AMCP must meet with the person (unless it is not appropriate or practicable to do so) and complete further consultation.

Once the pre-authorisation review has been completed and the appropriate determinations made, the Responsible Body may give an authorisation. The arrangements can be authorised for an initial authorisation period of up to 12 months, after which the authorisation can then be renewed for a further 12 months. Thereafter, an authorisation can be renewed for a period of up to 36 months, if appropriate. The code of practice will provide further detail on when this might be appropriate. Once an authorisation has been granted, the Responsible Body must arrange for the person, and the IMCA or the appropriate person to be provided with a copy of their authorisation record within 72 hours.

## Reviews

The Responsible Body will be required to specify, and carry out, a programme of ongoing and regular reviews to assess whether the authorisation is still needed. In some circumstances, it may also be necessary for the Responsible Body to carry out an unscheduled review if, for example, there is a significant change in the person's condition or circumstances.

The review could result in the authorisation being terminated by the Responsible Body because, for example, the person does not need to be deprived of their liberty or the authorisation conditions are no longer met. If the person or anyone else, such as their family or IMCA or appropriate person, wishes to challenge the authorised arrangements, they can apply to the Court of Protection.

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## Liberty Protection Safeguards: settings and Responsible Bodies<sup>3</sup>

The Liberty Protection Safeguards (LPS) will provide protection for people aged 16 and above who are, or who need to be, deprived of their liberty in order to enable their care or treatment and who lack the mental capacity to consent to their arrangements.

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<sup>3</sup> Department of Health & Social Care, Liberty Protection Safeguards, 11 June 2021  
<https://www.gov.uk/government/publications/liberty-protection-safeguards-factsheets/liberty-protection-safeguards-settings-and-responsible-bodies>



People who might have an LPS authorisation include those with dementia, autism and learning disabilities who lack the relevant capacity.

## Application in different settings

LPS will apply to a deprivation of liberty, for a person aged 16 and above, in any setting in England and Wales. That includes:

- care homes – registered care homes in which care is provided
- NHS hospitals – a health service hospital that is part of the national health service
- education facilities – including day and residential schools and sixth form colleges
- independent hospitals – a hospital that is not an NHS hospital, for example one run by a private company or a charity
- a person's own home – when a person is receiving care or treatment in their own home. This includes:
  - supported living – services designed to help individuals with disabilities keep their independence in their local community
  - shared lives – carers sharing their home and family life with individuals using a shared lives arrangement

## Responsible Bodies

Under LPS, the Responsible Body will authorise arrangements that amount to a deprivation of liberty to enable care or treatment. Which organisation is the Responsible Body will vary according to where the arrangements are mainly carried out.

Where arrangements are mainly carried out in an NHS hospital in England, in most cases the Responsible Body will be the hospital trust. In Wales, in most cases the Responsible Body will be the local health board.

Where arrangements are mainly carried out in an independent hospital, in England, the Responsible Body will be a local authority. The responsible local authority will usually be the authority meeting the person's care and support needs, for example under the [Care Act 2014](#). Otherwise, the Responsible Body will be the local authority where the

hospital is located. In Wales, the Responsible Body will be the local health board for the area where the hospital is situated.

If the arrangements are not mainly being carried out in a hospital, and instead are being carried out mainly through NHS continuing healthcare (CHC) or the equivalent in Wales, the Responsible Body will be the relevant clinical commissioning group in England, or the local health board in Wales.

In any other case, the Responsible Body will be a local authority, both in England and in Wales. The responsible local authority will usually be the authority meeting the person's care and support needs, or, if no local authority is meeting the person's needs, the authority in which the arrangements are mainly being carried out.

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## **Liberty Protection Safeguards: criteria for authorisation<sup>4</sup>**

The Liberty Protection Safeguards (LPS) will provide protection for people aged 16 and above who are, or who need to be, deprived of their liberty in order to enable their care or treatment and who lack the mental capacity to consent to their arrangements.

People who might have an LPS authorisation include those with dementia, autism and learning disabilities who lack the relevant capacity.

Under the LPS, the following steps must be taken for the Responsible Body to authorise arrangements which amount to a deprivation of liberty:

1. The Responsible Body has complied with its duty to appoint an appropriate person or independent mental capacity advocate (IMCA).
2. The person, and certain others, have been consulted as far as is practicable and appropriate, about the person's wishes or feelings.
3. The 3 assessments and determinations have been carried out.

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<sup>4</sup> Department of Health & Social Care, Liberty Protection Safeguards, 11 June 2021  
<https://www.gov.uk/government/publications/liberty-protection-safeguards-factsheets/liberty-protection-safeguards-criteria-for-authorisation>

4. A pre-authorisation review has been carried out, and the appropriate determination made.
5. The Responsible Body is satisfied that an authorisation should be given.

## The authorisation conditions

Once the LPS process has been triggered, the Responsible Body should determine whether the 3 authorisation conditions are met. These are:

1. The person lacks the relevant capacity to consent to the arrangements.
2. The person has a mental disorder, as defined by the Mental Health Act 1983.
3. The arrangements are necessary and proportionate, that is, the arrangements are necessary to prevent harm to the person and proportionate to the likelihood and seriousness of the risk of harm to the person.

To determine whether the authorisation conditions are met, there are 3 assessments and determinations which must be carried out:

1. The capacity assessment and determination.
2. The medical assessment and determination.
3. The necessary and proportionate assessment and determination.

## Consultation

Before the arrangements to deprive someone of their liberty can be authorised, the Responsible Body must ensure the following people are consulted to ascertain the person's wishes or feelings about the proposed arrangements:

- the person themselves
- anyone named by the person as someone who should be consulted
- anyone engaged in caring for the person or interested in the person's welfare

- any attorney of a lasting power of attorney (LPA) or an enduring power of attorney (EPA) granted by the person
- any deputy appointed by the Court of Protection
- any appropriate person
- any IMCA

## Pre-authorisation review and authorisation

Once the consultation and assessments and determinations have taken place, a pre-authorisation review will be completed. During the pre-authorisation review, all available evidence should be evaluated. The Responsible Body can then decide whether to authorise the arrangements or not.

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## **Liberty Protection Safeguards: the appropriate person and independent mental capacity advocates<sup>5</sup>**

The Liberty Protection Safeguards (LPS) will provide protection for people aged 16 and above who are, or who need to be, deprived of their liberty to enable their care or treatment and who lack the mental capacity to consent to their arrangements.

People who might have an LPS authorisation include those with dementia, autism and learning disabilities who lack the relevant capacity.

The Mental Capacity (Amendment) Act 2019 introduced the new role of the ‘appropriate person’

The appropriate person is a non-professional who provides representation and support for the person during the LPS process and throughout the duration of any authorisation given.

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<sup>5</sup> Department of Health & Social Care, Liberty Protection Safeguards, 11 June 2021  
<https://www.gov.uk/government/publications/liberty-protection-safeguards-factsheets/liberty-protection-safeguards-the-appropriate-person-and-independent-mental-capacity-advocates>

This is a key role in securing the person's views, wishes and feelings about their care, treatment and support.

It is the Responsible Body's responsibility to determine if there is someone suitable to fulfil the requirements of the appropriate person role.

The appropriate person role will normally be carried out by someone who is close to the person. For example:

- a family member
- a volunteer from a third-sector organisation

Fulfilling the role of the appropriate person is a way of allowing family members or individuals close to the person to have more involvement in the LPS process.

The appropriate person will usually be someone who knows the person well and are in the best position to represent and support them.

The appropriate person role will be undertaken by individuals who are willing and able to take on the role.

In certain circumstances, the appropriate person is entitled to support from an independent mental capacity advocate (IMCA) to assist them in carrying out their responsibilities.

If a Responsible Body appoints an appropriate person and it becomes clear that they're no longer suitable, an alternative appropriate person or IMCA should be appointed in the vast majority of cases.

The appropriate person can also make an application to the Court of Protection, for example, to challenge an LPS authorisation. The appropriate person may also need to support the person who is seeking to challenge the authorisation in the court.

If there is no one suitable to act as an appropriate person, the Responsible Body may be required to appoint an IMCA to represent and support the person.

## Independent mental capacity advocates

An IMCA is an experienced and trained individual who should represent and support the person through the LPS authorisation process and while the LPS authorisation is in force.

IMCAs will be appointed in individual cases by the Responsible Body to represent and support the person or the appropriate person.

IMCAs will be a vital safeguard to the person's human rights throughout the assessment process and duration of any authorisation given.

There will be, in effect, a presumption that an IMCA should be appointed if there's no appropriate person, except, for example, when having an IMCA would not be in the person's best interests.

This might be the case if, for example, it's established that the person has clearly expressed that they do not wish to be represented and supported by an IMCA, both currently and in the past when they had capacity to make this decision and they remain of this view.

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## Liberty Protection Safeguards: the approved mental capacity professional role<sup>6</sup>

The Liberty Protection Safeguards (LPS) will provide protection for people aged 16 and above who are, or who need to be, deprived of their liberty to enable their care or treatment and who lack the mental capacity to consent to their arrangements.

People who might have an LPS authorisation include those with dementia, autism and learning disabilities who lack the relevant capacity.

The approved mental capacity professional (AMCP) is a new, specialist role providing enhanced oversight for those people who need it most. AMCPs will be independent, trained, registered professionals.

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<sup>6</sup> Department of Health & Social Care, Liberty Protection Safeguards, 11 June 2021  
<https://www.gov.uk/government/publications/liberty-protection-safeguards-factsheets/liberty-protection-safeguards-the-approved-mental-capacity-professional-role>

In some cases, AMCPs will carry out pre-authorisation reviews to determine whether the authorisation conditions are met.

The AMCP will carry out the pre-authorisation review if:

- the arrangements provide for the cared-for person to reside in a particular place and it's reasonable to believe that the cared-for person does not wish to reside in that place
- the arrangements provide for the cared-for person to receive care or treatment at a particular place, and it's reasonable to believe that the cared-for person does not wish to receive care or treatment at that place
- the arrangements provide for the cared-for person to receive care or treatment mainly in an independent hospital, or the case is referred by the Responsible Body to an AMCP and that individual accepts the referral

The AMCP will be required, if appropriate and practical, to meet with the person and consult with:

- anyone named by the person as someone who should be consulted
- anyone engaged in caring for the person or interested in the person's welfare
- any attorney of a lasting power of attorney (LPA) or an enduring power of attorney (EPA) granted by the person
- any deputy appointed by the court of protection
- any appropriate person
- any independent mental capacity advocate (IMCA)

The AMCP is also required to:

- review the information and decide whether the authorisation conditions are met
- take any other action, provided it is appropriate and practicable to do so

AMCPs will normally be employed by a local authority, NHS hospital trust, local health board or clinical commissioning group.

They do not all have to be employed by the local authority, but the local authority will need to have arrangements for approving them before they can practise.

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## **Liberty Protection Safeguards: deprivation of liberty and authorisation of steps necessary for life-sustaining treatment or vital acts (section 4b)<sup>7</sup>**

The Liberty Protection Safeguards (LPS) will provide protection for people aged 16 and above who are or who need to be deprived of their liberty in order to enable their care or treatment and lack the mental capacity to consent to their arrangements.

People who might have a LPS authorisation include those with dementia, autism and learning disabilities who lack the relevant capacity.

In exceptional circumstances it may be necessary to take steps which amount to a deprivation of liberty on a person before a decision to authorise such arrangements has been made by the 'responsible body', or a relevant decision is made by the court.

Exceptional circumstances are those in which it's necessary to carry out life-sustaining treatment or a vital act.

A vital act means any act which the person performing the act reasonably believes to be necessary to prevent a serious deterioration in the person's condition.

In these circumstances, there are 4 conditions that must be met before a decision maker can carry out the necessary steps to deprive a person of their liberty.

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<sup>7</sup> Department of Health & Social Care, Liberty Protection Safeguards, 11 June 2021  
<https://www.gov.uk/government/publications/liberty-protection-safeguards-factsheets/liberty-protection-safeguards-deprivation-of-liberty-and-authorisation-of-steps-necessary-for-life-sustaining-treatment-or-vital-acts-section-4b>



## Conditions

1. The steps consist of, or are for the purpose of, giving life-sustaining treatment to the person or for doing any vital act.
2. The steps are necessary in order to give the life-sustaining treatment or carry out the vital act.
3. There is a reasonable belief that the person lacks capacity to consent to the steps.
4. An authorisation to deprive someone of their liberty is being sought from the responsible body under the LPS, or a relevant decision is being sought from the court, or there is an emergency.

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## Liberty Protection Safeguards: authorisations, renewals, and reviews<sup>8</sup>

### The effect and duration of an authorisation

The Liberty Protection Safeguards (LPS) will provide protection for people aged 16 and above who are or who need to be deprived of their liberty in order to enable their care or treatment and lack the mental capacity to consent to their arrangements.

People who might have a LPS authorisation include those with dementia, autism and learning disabilities who lack the relevant capacity.

A LPS authorisation can have effect immediately, or at any time within 28 days of the authorisation being issued.

A person's first authorisation and renewal can be up to 12 months. Renewals can last for up to 36 months.

An authorisation will end sooner if the Responsible Body believes, or ought reasonably to suspect, that any of the authorisation conditions are not met. This means the authorisation ends if one of the following applies:

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<sup>8</sup> Department of Health & Social Care, Liberty Protection Safeguards, 11 June 2021  
<https://www.gov.uk/government/publications/liberty-protection-safeguards-factsheets/liberty-protection-safeguards-authorisations-renewals-and-reviews>

- the person has capacity, or has regained capacity, to consent to the arrangements
- the person no longer has a mental disorder
- the arrangements are no longer necessary and proportionate

An authorisation also ends at any time the Responsible Body determines that it should end.

The relevant part of an authorisation also ends if the arrangements, at any point, conflict with mental health requirements – for example, a requirement under a community Mental Health Act 1983 power such as a community treatment order.

## Renewal and reviews

The Responsible Body can renew an authorisation if it is satisfied that both of the following apply:

- the authorisation conditions are still being met
- it is unlikely that there will be any significant change in the person's condition during the renewal period, which would affect whether the conditions are met

Before the Responsible Body can renew an authorisation, it must consult with the person and other relevant individuals. This is important because the person's wishes and feelings in relation to the arrangements may have changed. If they have, the arrangements may no longer be necessary and proportionate.

The authorisation record must specify the programme for reviewing the arrangements during the authorisation period. This could include reviews on specified dates, or at specified regular intervals.

An authorisation record also provides key details about the authorisation, such as the authorised arrangements and the identity of the Responsible Body.

A review must also be carried out if one of the following applies:

- before an authorisation is varied (which can occur in limited circumstances), or if that's not practicable or appropriate, as soon as practicable afterwards

- if a reasonable request is made by a person with an interest in the arrangements
- if the person becomes subject to mental health arrangements or requirements
- if (in any other case) there has been a significant change in the person's condition or circumstances

The review process must be completed by individuals, such as approved mental capacity professionals (AMCPs), on behalf of the Responsible Body.

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## Liberty Protection Safeguards: the right to challenge an authorisation in court<sup>9</sup>

The Liberty Protection Safeguards (LPS) will provide protection for people aged 16 and above who are or who need to be deprived of their liberty in order to enable their care or treatment and lack the mental capacity to consent to their arrangements.

People who might have a LPS authorisation include those with dementia, autism and learning disabilities who lack the relevant capacity.

Where an LPS authorisation is in place, the person, their appropriate person or independent mental capacity advocate (IMCA), or anyone else can apply to challenge those arrangements under section 21ZA of the Mental Capacity Act 2004 at the Court of Protection.

In these circumstances, the court has the power to:

- uphold authorisations
- terminate authorisations
- vary the authorisation

It is also possible to challenge in court whether a decision maker is authorised by section 4B of the Mental Capacity Act 2005 (authorisation

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<sup>9</sup> Department of Health & Social Care, Liberty Protection Safeguards, 11 June 2021  
<https://www.gov.uk/government/publications/liberty-protection-safeguards-factsheets/liberty-protection-safeguards-the-right-to-challenge-an-authorisation-in-court>

in exceptional circumstances) to take steps which amount to deprivation of liberty for life sustaining treatment or vital acts.

In some scenarios, a Responsible Body may need to make an application to the Court of Protection. For example, when a person should have had their case taken to court but, for some reason, that has not occurred.

There is no means test for legal representation to challenge detention under an authorisation made under the LPS if the person, their appropriate person or IMCA is bringing the challenge. Otherwise, the person will have to satisfy a means test.