



Department
of Health &
Social Care

Memorandum of Understanding (MoU)

For Liberty Protection Safeguards Workforce Implementation

Project: Liberty Protection Safeguards Workforce Implementation

Version Number: 002
Date: 15 September 2021

Notice:

This document is commercially sensitive and confidential. Any person receiving this document in error must either return it to the Department of Health and Social Care or destroy hard copies and delete electronic copies in their possession

1. SECTION 1 – PARTIES

- 1.1 THIS MEMORANDUM OF UNDERSTANDING (“MoU”) is between the following parties (“Parties”):
- (1) The Secretary of State for Health and Social Care of 39 Victoria Street, London SW1H 0EU (“**DHSC**”), and
 - (2) Health Education England, Blenheim House, Duncombe Street, Leeds, SL1 4PL ([“**Partner**”]).

2. SECTION 2 – BACKGROUND AND PURPOSE OF THIS MOU

- 2.1 In 2019 the Mental Capacity (Amendment) Act received Royal Assent, introducing a new system of safeguards – the Liberty Protection Safeguards – which will replace the current Deprivation of Liberty Safeguards (DoLS). These safeguards uphold important human rights in cases where a person may need to be deprived of their liberty for the purposes of their own care and treatment.
- 2.2 During the passing of the Bill, the Government made several commitments in Parliament regarding the implementation of LPS, including specific commitments towards training the health and social care workforce with the assurance that some provisions are met. This included a commitment to work with organisations such as Health Education England towards training the workforce.
- 2.3 The partner shall undertake the Activities in accordance with the terms of this MOU.
- 2.4 This MoU establishes the responsibilities of the Parties and the general principles for their cooperation
- 2.5 This MoU is not intended to be legally binding and no legal obligations or legal rights shall arise between the parties from the provisions of the MoU. The parties enter into the MoU intending to honour their obligations

NOW THEREFORE the parties have agreed to cooperate under the MoU as follows

3. SECTION 3 – INTERPRETATION

- 3.1 Unless the context otherwise requires, references to this MoU shall be construed as a reference to this MoU as varied or amended in accordance with its terms. Reference to a person includes a legal entity, words importing a gender include all genders and words importing the singular include the plural and vice versa.

“**Activities**” means the list of activities set out in Annex A (Activities).

“**Crown**” means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government offices and government agencies and “Crown Body”. A comprehensive list of Crown bodies can be found in the National Archives, which is updated from time to time.

“**Confidential Information**” means any information which has been designated as confidential by either Party in writing (howsoever it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person or trade and all secrets, personal data and sensitive personal data within the meaning of applicable legislation. Confidential Information shall not include information which:

3.1.1 was public knowledge at the time of disclosure (otherwise than by breach of a duty of confidence by either Party);

3.1.2 was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;

3.1.3 is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or

3.1.4 is independently developed without access to the Confidential Information.

"Intellectual Property Rights" means patents, utility models, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, rights in confidence, know-how, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and including, the right to sue for passing off.

"Representatives" means the lead representatives of each Party, as described in paragraph 4 (Liaison between the Parties). The authorised representatives and addresses for service of notices are listed in Annex D.

"Principles" has the meaning set out in paragraph 3.1.

4. SECTION 4 – PARTIES' RESPONSIBILITIES

4.1 The Partner shall perform the Activities described in Annex A (Activities). DHSC shall perform those activities identified in Annex B (Activities) and shall make payments to the Partner for satisfactory completion of Activities in accordance with the provisions of Annex C (Pricing).

4.2 The Partner shall comply with all applicable laws in carrying out the Activities.

5. SECTION 5 - PRINCIPLES OF COLLABORATION AND THE PARTIES' RESPONSIBILITIES

5.1 The Parties agree to follow the principles set out at paragraph 3.1(a) below (**"Principles"**) at all times during the term of this MoU:

5.1.1 the Parties shall:

5.1.1.1 be accountable to each other for performance of their respective roles and responsibilities as set out in this MoU;

5.1.1.2 share appropriate information, experience, materials and skills to learn from each other and develop effective working practices,

5.1.1.3 work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost;

5.1.1.4 adhere to statutory requirements and best practice (including any relevant Governmental protocols such as the Regulators Code, Ministerial and Civil Service Codes) as well as all applicable laws and standards including EU procurement rules, data protection and freedom of information legislation.

5.1.1.5 act in a timely manner;

- 5.1.1.6 ensure sufficient and appropriately qualified employees and other necessary resources are available and (in the case of employees) authorised to fulfil the responsibilities set out in this MoU.

6. SECTION 6 – LIAISON BETWEEN THE PARTIES

- 6.1 Formal contact between DHSC and the Partner as Parties to this MoU shall be through the Representatives.
- 6.2 The Representatives are duly authorised to send and receive notices under this MoU at the addresses specified in Annex D (Authorised Representatives and addresses for service of notices).
- 6.3 Either Party may change the Representative any time by notifying the other Party in writing.
- 6.4 The Representatives shall:
 - 6.4.1 meet at least quarterly a year at a time and place to be mutually agreed to review the Activities carried out under, and the operation of, this MoU and to address any issues arising from this MoU;
 - 6.4.2 provide assurance to the Parties that the Activities agreed between the Parties are being undertaken and that work is proceeding in accordance with the Principles; and
 - 6.4.3 document key decisions in writing.

7. SECTION 7 – CARGES AND LIABILITIES

- 7.1 Except as otherwise provided in this MoU, each Party shall bear its own costs and expenses incurred in complying with its obligations under this MoU.
- 7.2 The Parties agree to share the costs and expenses arising in respect of this MoU between them in accordance with Annex C (pricing).

8. SECTION 8 – USE OF THIRD PARTIES

- 8.1 The Partner shall seek written consent from DHSC before using any third party to perform any of the Activities, which DHSC shall have the right to grant or deny.

9. SECTION 9 – INTELLECTUAL PROPERTY RIGHTS

- 9.1 Any Intellectual Property Rights that arise from or are developed by either Party in performing his MoU (“**Foreground IPR**”) shall be vested in and owned by the Crown.
- 9.2 Both Parties shall work together to ensure that in the performance of the Activities and use of any Foreground IPR does not infringe any Intellectual Property Rights belonging to a third party. Where use of Intellectual Property Rights belonging to a third party is required to perform the Activities or to use any Foreground IPR, the Partner shall use reasonable efforts to secure licences for both Parties to use any such Intellectual Property Rights on a royalty-free, non-exclusive basis. Where this is not possible, the Partner shall agree with DHSC other means to enable the performance of the Activities and use of

Foreground IPR without infringing such rights, which may include modification of the Activities to avoid infringement of any such third party rights.

- 9.3 The Parties hereby provide each other with consent to use each other's departmental or public sector organisation logos for the exclusive purpose of performing the Activities.

10. SECTION 10 – FREEDOM OF INFORMATION AND COMMUNICATIONS TO THE PUBLIC

- 10.1 Each Party shall provide to the other Party any information relevant to the Activities that may be reasonably requested by the other, subject to any confidentiality constraints, safeguards and statutory rules on disclosure. Each Party shall consult the other Party before making to any third party any disclosures of information under the Freedom of Information Act 2000.
- 10.2 The requirements below are subject to any government requirements as to transparency which may apply to either Party from time to time.
- 10.3 DHSC shall be responsible for handling media inquiries relating to the Activities. Each Party shall seek the other Parties' consent before publishing any information resulting from the use of exchanged data received of the other Party (which may include information where the other Party owes a duty of confidence to a third party) whether in the course of the performance of the Activities or otherwise.
- 10.4 Except to the extent set out in this section 11 or where disclosure is expressly permitted elsewhere in this MoU, each Party shall treat the other from the other Party. Consent shall not be unreasonably withheld and/or delayed.

11. SECTION 11 – CONFIDENTIAL INFORMATION

- 11.1 Each of the Parties understands and acknowledges that it may receive or become aware of Confidential Information Party's Confidential Information as confidential and safeguard it accordingly (which shall include complying with any protective markings on documents and instructions supplied by the other Party). In particular, neither Party shall do anything that may place the other in breach of a duty of confidence owed to a third party. A Party in receipt of Confidential Information from the other Party shall not disclose such Confidential Information to any non-Crown Body without the consent of the other Party.
- 11.2 The obligations of confidentiality in this section 11 (Confidential Information) shall continue in force until the information ceases to be confidential in nature.

12. SECTION 12 – PROTECTION OF PERSONAL DATA

- 12.1 The Parties shall comply with their responsibilities under the General Data Protection Regulations (Regulation (EU)2016/679) and shall not use any personal data exchanged under this MoU for any purposes which are incompatible with applicable data protection laws and regulations. No Personal data collated and/or exchanged under this MoU should be used for commercial purposes without the prior written agreement of the supplying Party (which use may be conditioned as the supplying Party sees fit).
- 12.2 Each Party must ensure that personal data under this MoU is not transferred outside the EEA without the prior agreement of the other.

13. SECTION 14 – TERM AND TERMINATION

- 13.1 This MoU shall commence on 1 September 2021 and (subject to earlier termination on the terms of this MoU) shall continue for a period of two year until 31 August 2023 which period may be extended by the mutual written agreement of the Parties.
- 13.2 This MoU may be terminated by either Party at any time by giving written notice to the other Party's Representatives as set out in Annex D (authorised Representatives and addresses for service of notices).
- 13.3 A Party terminating this MoU shall give as much notice as reasonably possible and shall offer all reasonable assistance to ensure:
- 13.3.1 an effective handover of Activities, if the Activities are not concluded at the time of termination, and
 - 13.3.2 to mitigate the effect of termination on the other Party by fully co-operating with the other Party in order to achieve an effective transition without disruption to operational requirements.

14. SECTION 15 – FINANCIAL CONSEQUENCES OF EXIT FROM THE MOU BY AN INDIVIDUAL PARTY

- 14.1 On termination of this MoU, a financial adjustment shall be agreed according to the principle that DHSC shall only be obliged to pay for Activities performed in accordance with the provisions of this MoU up to the date of termination (and upon request at any time, the Partner shall provide a final report detailing the Activities it has performed).
- 14.2 Where DHSC has paid any sums in advance, the Partner shall promptly repay amounts it has received which for Activities it has not performed (such amounts to be agreed with DHSC based on the final report provided further to the above paragraph 14.1).

15. SECTION 16 – REVIEW AND AUDIT OF THE MOU

- 15.1 In addition to the regular review meetings to discuss performance in accordance with paragraph 6.4, the Parties shall review this MoU at least every two (2) years, and whenever substantial changes occur to the policies, external relationships and structures of the Parties concerned. Any changes to this MoU shall only be effective if set out in writing and signed by both Parties.
- 15.2 Each Party shall keep and maintain until six (6) years after termination of this MoU full and accurate records of the Activities and all sums received in respect thereof. Each Party shall on request afford the requesting Party or their Representatives such access to those records as may be requested in connection with the MoU or as otherwise required in connection with audit requirements (including, without limitation, audit by the National Audit Office).

16. SECTION 17 – MISCELLANEOUS

- 16.1 This MoU does not confer any rights on any third party. Nothing in this MoU shall be interpreted as limiting, superseding, or otherwise affecting any Party's normal operations in carrying out its statutory, regulatory or other duties. This MoU does not limit or restrict any Party from participating in similar activities or arrangements with other entities.

- 16.2 DHSC shall have no obligation to incur any further fees under this MoU, nor shall the Partner be required to perform additional Activities unless and until this has been agreed in writing.
- 16.3 This MoU shall be governed by and construed in accordance with English law. Each Party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

SIGNATORIES

The duly authorised representatives of the Parties affix their signatures below.

Signed for and on behalf of DHSC

Signature:

Name:

Position:

Date:

[Redacted Signature]

[Redacted Name]

Team/policy lead: mental capacity and adult safeguarding

17/9/21

Signed for and on behalf of Health Education England

[Redacted Signature]

Signature:

Name:

Position:

Date:

.....

[Redacted Name]

Head of Technology Enhanced Learning

21.09.2021

Annex A. Activities

The funding will be used to support the development of a programme of learning on the Liberty Protection Safeguards (LPS) that will sit alongside HEE's elfh Mental Capacity Act elearning programme. This programme will be elearning blended with additional elements, such as webinars, filmed discussions, and interactive Q&A sessions.

The programme's structure will be based on the competency framework which the Department has developed, covering competency groups A to D, from awareness raising training on LPS through to pre-authorisation and referral training – see Figure 1. Competency groups E and F will not have learning aimed at this group but references will be made throughout the training developed to facilitate and support these roles.

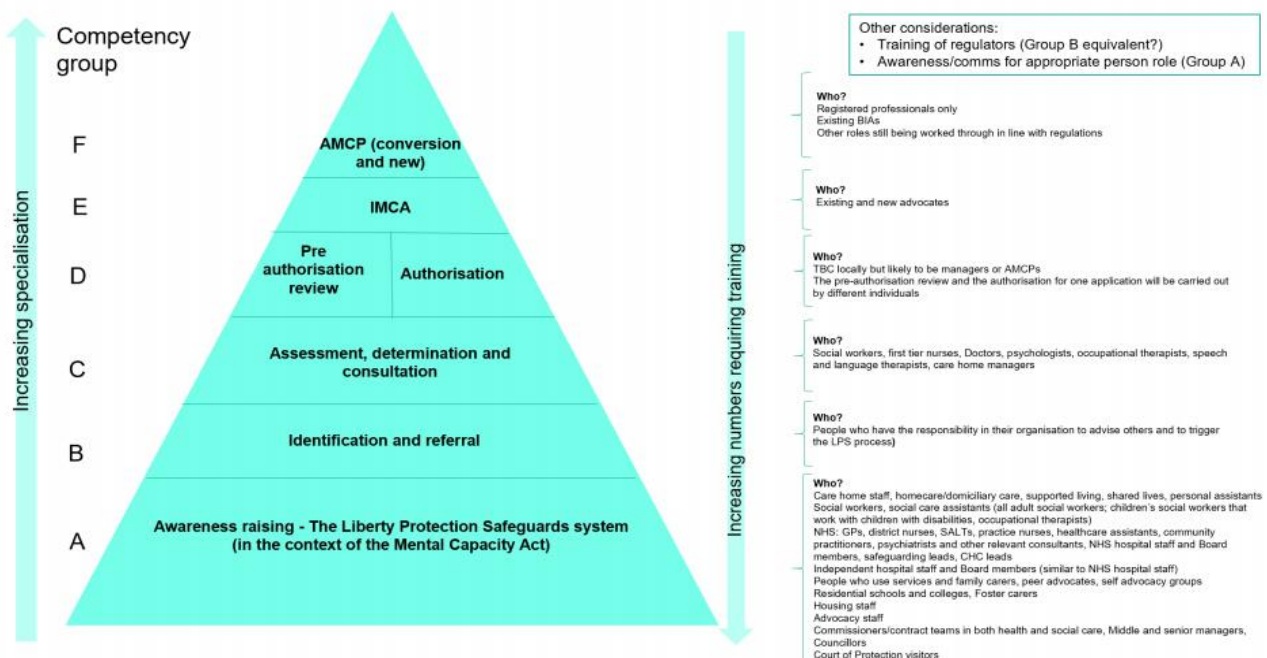


Figure 1 – LPS workforce training triangle and competency framework

Beyond developing new learning, updates will be made to current DoLS learning and discussions of deprivation of liberty within a health and social care context across content already hosted on HEE's elfh programme – such as the adult safeguarding programming.

HEE will also liaise with key organisations, such as the Royal College of Psychiatrists, about retiring current learning on DoLS and how to appropriately archive this.

In summary, the funding will support:

- The development of eight elearning sessions, covering the necessary learning from competency groups A to D;
- Attendance at meetings on LPS and support to the wider programme from HEE;
- Consultation and specialist authorising, to develop the elearning materials

Annex B. DHSC commitments

The Department will meet regularly with HEE to provide an update on LPS implementation. It will provide input from a project perspective on the content that is created.

It will share the necessary materials in a timely manner, such as draft policy, so that HEE is aware of what impact this will have on the training it is developing and the programme overall.

DHSC will ensure that the HEE team are invited to or kept informed of the outcomes from meetings that may discuss or be useful to the development of the necessary training.

Annex C. Pricing

The costs associated with this work are set out below:

a. Authoring Costs Overview	£
Specialist authoring, consultation Projected 6 days for each pyramid tier (a, b, c, d)	
Attendance at meetings, creation webinars/blended resources	
Total	

Associated Costs for the Development, Maintenance and Evaluation of the elearning Resources

b. elearning Design Costs Overview	£
Discovery	
Session Design and Development	
Animation Design and Development	
Implementation	
Comms and Promotional Activities	
Post Go Live Product Evaluation	
Operational Maintenance Costs	
c. Overall Costs (total costs a + total costs b)	
Cost Per elearning Session	

*Costs for graphic design are included however it should be recognized that animation work and or video recordings would need to be added to this budget since it is not clear at this point in time whether either/both would be required.

Total Projected Costs for the LPS elearning programme	65,913.75 ex VAT
--	-------------------------

Annex D. Authorised Representatives and addresses for service of notices

For the DHSC:

Name	[REDACTED]
Office Address	39 Victoria St London SW1H 0EU
Telephone number	-
E mail address	[REDACTED]

For the Partner:

Name	[REDACTED]
Office Address	Business Manager – TELBlenheim House, Duncombe St, Leeds, LS1 4PL
Telephone number	[REDACTED]
E mail address	[REDACTED]