

United Response consultation response: Changes to the MCA Code of Practice and implementation of the LPS

July 2022



About us

Since 1973 United Response has been supporting people with learning disabilities, mental health or physical support needs to live their life to the full. Our team of 3,400 people work across 330 locations in England and Wales to support around 2,000 people aged 16 to 65+. We campaign to ensure the people we support have equal access to the same rights and opportunities and challenge the negative attitudes and discrimination they face.

Response

Question 1: The Code states that applications to consider deprivation of liberty cases, only, should not generally be made to the Court. To what extent do you agree or disagree with the following statement? ‘Responsible Bodies should not be routinely making applications to the Court, once LPS is implemented’

Somewhat agree.

It would be helpful if the guidance outlined examples of situations when Responsible Bodies might make applications to the Court of Protection.

Question 2: How clear is the guidance in the Code at explaining the interaction between the LPS and other relevant legislation and planning for 16 and 17 year olds?

Somewhat clear

As highlighted in the final report of the Independent Review of Children’s Social Care, legislation for children and young people with special educational needs and disabilities is fragmented¹. It can be confusing to navigate for families and practitioners alike.

¹ Independent Review of Children’s Social Care, Final Report, 2022. Available here: <https://childrensocialcare.independent-review.uk/final-report/>

The Code will need to reflect any potential changes as a result of the SEND green paper consultation² that could impact on the interaction between the LPS and EHC planning for 16 and 17 year olds. In particular around the mandating of local multi-agency panels, there would need to be clear guidance on the roles and responsibilities within that panel for the LPS.

Question 3: How clear is the guidance in chapter 24 at explaining how challenges relating to the LPS can be made, including deciding when to make an application to the Court?

Somewhat clear

The guidance is clear for professional roles but it will be essential that it is available in an accessible format for those not in a paid social care role that will receive training and guidance on the LPS, for example family and unpaid carers.

Question 4: Are the principles of the MCA fully explained in the revised Code?

Yes

Question 6: Have there been any significant developments in case law or practice which the revised Code does not address but which you feel it needs to?

No

Question 7

Do you have any other comments on the proposed updates to the existing Code guidance?

- **Yes**
- **No**

Yes

² SEND Review: Right support, right place, right time, 2022. Available here: <https://www.gov.uk/government/consultations/send-review-right-support-right-place-right-time>

In paragraphs 4.5 and 4.6 the planning of capacity assessments is well described and easy to follow. The note about failing to assess capacity when there is reason to do so is of significant importance.

In paragraph's 4.8 and 4.9 the order of the capacity assessment makes it easier to set out the executive function deficits for people who self-neglect.

Safeguarding Adults Reviews have identified errant diagnosis as a result of not considering cultural matters so it is a welcome addition to reference cultural backgrounds as influencing thinking, behaviour or communication in paragraphs 4.18, 4.31 and 4.82.

We feel that the new text providing guidance on 'executive functioning' in paragraph's 4.35 to 4.38 is much needed guidance.

Question 8: How clear is the guidance in chapter 12 at explaining the meaning of a deprivation of liberty for practitioners?

Very clear

Question 9: The Code sets expectations about how long key LPS processes should take to complete. Specifically, it states that the LPS authorisation should be completed within 21 days and that Responsible Bodies have 5 days to acknowledge an external referral. Do you think the time frames set out in the Code are:

About right

Question 10: How clear is the guidance in chapter 13 at explaining the interface between the LPS and other health and care assessments and planning?

Somewhat clear

We feel this will place greater scrutiny on the record keeping and decision-making processes for service providers. Preparation within these services is often deferred until after the statutory sector services have established protocols. If the input of service provider is not explicit within the guidance then this may cause delays where appropriate information is not readily available in the format required by the statutory sector organisations.

In preparation for the Health and Care Bill, integrated assessments and the implementation of LPS we feel it would be beneficial to have clarity of which

information will be required and in what format. This would allow provider organisations to adapt their recording systems to streamline them in being compatible with the expectations of Responsible Bodies, thus reduce the level of scrutiny and additional assessment work.

Question 11: How clear is the guidance in chapter 16 at explaining the use of previous and equivalent assessments for the purposes of the LPS?

Very clear

Question 14: To ensure the independence of AMCPs, the Code provides a suggested model for a central AMCP team. Do you have any suggestions for how the model, as set out in chapter 18 of the Code, could be improved?

No

Question 16: To what extent will chapter 20 and the Monitoring and Reporting regulations help ensure the monitoring bodies deliver effective oversight of the LPS?

Somewhat effective oversight of the LPS

Question 23: Will the workforce and training strategy help your organisation prepare for the implementation of the LPS?

Yes

Question 24: Does the training framework cover the right learning outcomes?

Yes

Contact

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