

Department of Health and Social Care, Ministry of Justice, Department for Education and Welsh Government

Mental Capacity Act / Liberty Protection Safeguards

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 unclear.

The Code presents a new definition for “children” (aged under 16) and “young people” (aged 16-17) which are not consistent with existing policy and legislation. This may result in complexities and complications for how children and young people interact with a range of different services. It is more common to consider childhood up until the age of 18, with young people reaching up until the age of 25. Many young people often need support and protection from services up until the age of 25, such as care leavers and young people with learning disabilities and special educational needs. Accessing healthcare services is variable across this age range, with young people often transitioning from paediatric to adult healthcare settings between the ages of 16-18. We recommend that the Code better reflects on meeting young people’s needs up until the age of 25.

It is important to acknowledge that the process of depriving a young person of their liberty is likely to be a traumatic process. We recommend that there is appropriate follow-up support available for young people and their families, which may require interventions and support from a range of services. There must be adequate resource available to provide this.

It is important to ensure that any new framework in the Code does not remove or water down protections young people previously benefited from.

From your perspective, how clear is the LPS guidance in the Code and is there anything that you feel is missing? Please reference specific groups of people and chapters in your response.

A lay version of the Code should be co-produced with young people and their families, to ensure understanding for 16-17 year olds and their parents and carers. The current version of the Code is not accessible to young people. It is crucially important for young people to understand the Code and the implications this will have on their care. Young people should be supported and encouraged to read and understand the Code alongside understanding the UNCRC rights of the child.

We recommend there is specific focus on explaining to young people the role of parents and carers within the process, specifically surrounding the role of the Appropriate Person. It may not always be appropriate for the parent / carer to be the Appropriate Person. A trained advocate may be able to better take on this role alongside sustained parent / carer involvement. The choice to have an Appropriate Person external to the family as well as family involvement should be clear to both the young person and their parent / carers.

Does the training framework cover the right learning outcomes?

No.

We welcome that the guidance reflects upon the workforce implications and suggests core skills, knowledge and training requirements. This is essential due to the expansion of the LPS to cover 16-17 year olds and a broader range of settings. However, we are concerned that there is no mention of

specific training needs relating to working with young people, who have distinct needs compared to adults. We recommend that there is appropriate safeguarding training and policies implemented for all staff working with young people aged 16-17. Practitioners should also be skilled and trained in effective communication with young people, using appropriate language and understanding non-verbal communication traits in young people.

Are there further data items needed in the LPS NMDS to provide effective oversight of the LPS?

Yes.

We welcome the commitments within the guidance to improve the collection and publication of data who are deprived of their liberty. It is important that this data covers the outcomes of people deprived of their liberty, so we can better understand the process and appropriately support the needs of these individuals.

We recommend that data are reported by age breakdowns, as there will be different needs for young people that must be understood. We also encourage data on other protected characteristics and demographic factors to be collected and published, such as ethnicity, gender and deprivation status. Health inequalities are common among data on young people and it is essential we understand these in relation to mental capacity.

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