

**Children's Services Scrutiny Committee**  
Meeting to be held on Wednesday, 1 March 2017

Electoral Division affected:  
(All Divisions);

**SEND DoLS sub-group update**

Contact for further information:  
Brendan Lee, Tel: 01772 5 38323, Head of Service Special Educational Needs and Disability,  
brendan.lee@lancashire.gov.uk

**Executive Summary**

The Mental Capacity Act (MCA) 2005 directly impacts on work undertaken within the Special Educational Needs and Disability (SEND) Service and subsequently Officers must have due regard for the remits of this legislation. The MCA has far reaching implications for the SEND service in relation to decisions that young people using our service are making with regard to their education and care. The MCA interacts with other key pieces of legislation such as the Children Act 1989 and SEND Code of Practice: 0 to 25 years.

Within SEND, good progress has been made in a number of areas of the Work Plan (September 2016). Pathways have been developed in relation to how the Children with Disabilities Team (CwD) and Integrated Assessment and Monitoring Team (IA&M) work with children and young people to undertake capacity assessments and, where appropriate, consider what is in their best interests. These are currently being consulted on by a number of practitioners with various areas of expertise. The cohort of young people to whom the MCA is applicable have been identified and the procedure for prioritising these young people is being developed and will be implemented in due course. Training is being commissioned from April 2017. Learning from case law and casework within Lancashire is ongoing and will inform the development of procedures and practice guidance. In the last 12 months, the CwD Team have made seven applications to the Court of Protection under the MCA with no criticism received by the Local Authority from the work undertaken in these cases. The SEND Service has successfully built good links with Lancashire's Mental Capacity Act (MCA) Co-ordinator in the Deprivation of Liberty Safeguards Team who is providing advice and guidance where requested and has strengthened links with legal services to offer on-going support. In addition the MCA Working Group incorporates professionals with a range of backgrounds and knowledge.

**Recommendation**

The Children's Services Scrutiny Committee is asked to note progress made so far in relation to the implementation of the MCA within SEND and the development of policy, procedures and processes being developed to support compliant practice and positive outcomes for young people

## **Background and Advice**

The Mental Capacity Act (MCA) 2005 aims to protect and safeguard young people and adults and to enable people to have control over their lives and decision making as far as possible. It applies to everyone involved in the care, treatment and support of people aged 16 and over (living in England and Wales) who are unable to make all or some decisions for themselves. Its primary purpose is to promote and safeguard decision-making within a legal framework. The Act is underpinned by five key principles:

Principle 1: There is a presumption of capacity

Principle 2: People should be supported to make their own decisions

Principle 3: People should be allowed to make unwise decisions

Principle 4: Anything done for or on behalf of people without capacity must be in their best interests

Principle 5: The least restrictive option should be taken

The MCA impacts on work within the SEND Service in relation to decisions regarding educational and care placements for young people, the transport of young people to educational placements, supervision of young people and management of behavior. In addition it may be relevant to have due regard to the MCA when considering requests for a statutory Integrated Assessment of a young person's presenting Special Educational Needs or an assessment of their social care needs.

In relation to the deprivation of liberty, the MCA also impacts on children and young people from age 14 who are subject to Care Orders, and young people who are accommodated with parental consent under Section 20, Children Act 1989.

The SEND Service's response to the MCA remains a priority as we seek to promote independent and informed decision making for those young people who have capacity while protecting and working in the best interests of those that lack capacity

## **Consultations**

N/A

## **Implications:**

This item has the following implications, as indicated:

## **Risk management**

This report has no significant risk implications

**Local Government (Access to Information) Act 1985  
List of Background Papers**

Paper	Date	Contact/Tel
n/a	n/a	n/a
Reason for inclusion in Part II, if appropriate		
N/A		