

Report to: **East Sussex Health Overview and Scrutiny Committee (HOSC)**

Date: **27th November 2008**

By: **Director of Law and Personnel**

Title of report: **Mental Capacity Act HOSC Task Group**

Purpose of report: **To consider establishing a time-limited HOSC Task Group to research support for patients and carers in relation to aspects of the Mental Health Capacity Act.**

RECOMMENDATIONS

HOSC is recommended to:

- 1. Establish a HOSC Task Group to consider support for patients and carers in relation to aspects of the Mental Capacity Act to report back to HOSC in March 2009.**
 - 2. To nominate up to two HOSC Members to comprise the Task Group.**
-

1. The Mental Capacity Act

1.1 The Mental Capacity Act 2005 for England and Wales provides a framework to empower and protect people who may lack capacity to make some decisions for themselves. It makes it clear who can take decisions in which situations, and how they should go about this. It also allows people to plan ahead for a time when they may lack capacity.

1.2 It covers major decisions about someone's property and affairs, healthcare treatment and where the person lives, as well as everyday decisions about personal care (such as what the person eats), where the person lacks capacity to make those decisions themselves.

1.3 The Act may need to be used in situations where a person is unable to make any or certain decisions for themselves, for example as the result of a physical or learning disability, mental health problem or serious illness. It can be a long-term situation or short-term until the person recovers mental capacity. The Act therefore concerns patients, carers and families, health and social care staff and other people who may come into contact with people who lack mental capacity.

1.4 The Public Guardian exists to protect people who lack capacity from abuse. The Office of the Public Guardian supports the Public Guardian's role and oversees the system of applying for a nominated person to be able to take decisions on behalf of someone who lacks mental capacity (power of attorney). The Office works with the Court of Protection to safeguard the interests of people who lack mental capacity.

2. HOSC Task Group

2.1 On 16th June 2008 HOSC agreed its work programme for the coming year. This included a piece of work to examine aspects of the implementation of the Mental Capacity Act. Concerns had been raised that the process of applying for power of attorney was complex and may be difficult for families and carers of people lacking mental capacity to manage, particularly if in a traumatic situation. HOSC was interested to examine the support available to local families and carers, or individuals who wish to make arrangements for someone to take over their own decisions in the event they lose mental capacity.

2.2 It is recognised that the legal framework and process is set nationally and not within HOSC's sphere of influence. However, HOSC can consider the support available to East Sussex residents, and in particular whether available support is signposted through health services.

2.3 It is therefore recommended that HOSC establishes a Task Group to examine this issue during January and February 2009, in order to report back to HOSC in March 2009. The proposed terms of reference of the group are:

“To examine the support and advice available to individuals, families and carers in East Sussex when applying for power of attorney for someone lacking mental capacity and to make recommendations as appropriate.”

2.4 As this is a relatively short, limited scope project with a short timescale, a Task Group of one or two Members would be sufficient to oversee the project and make recommendations to HOSC for consideration.

ANDREW OGDEN
Director of Law and Personnel

Contact Officer: Claire Lee, Scrutiny Lead Officer
Tel No: 01273 481327