

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

Date: **19th March 2009**

By: **Director of Law and Personnel**

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

Purpose of report: **To update the Committee on the work of the HOSC Task Group established to research support for patients and carers in relation to aspects of the Mental Health Capacity Act.**

RECOMMENDATIONS

HOSC is recommended to:

- 1. Agree that the HOSC Task Group should make a full report to HOSC in July 2009.**
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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 At its meeting in November 2008, HOSC agreed to establish a Task Group to examine aspects of the Mental Capacity Act during January and February 2009, in order to report back to HOSC in March 2009. The agreed 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.”

2.2 Councillors Tidy and O'Keeffe were nominated to form the Task Group, which they have agreed to chair jointly. The Group met on two occasions in January and February 2009. At the first meeting the group reviewed information in relation to the Mental Capacity Act and agreed how to

approach the project. At the second meeting the Group reviewed evidence collected to date and discussed key findings and how to progress the project.

2.3 The Group has gathered information from a variety of sources, including:

- Staff from NHS organisations
- Adult Social Care officers
- Representatives of voluntary organisations
- Housing association staff
- The Internet

2.4 Contact with the organisations and people mentioned above has been based around the following key questions:

- Do you receive enquiries from people about applying for power of attorney? If so, what sort of issues do people ask you about?
- What sort of support can your organisation provide to people needing to apply for power of attorney? (e.g. signposting, general advice, direct support)
- What, if anything, could be put in place locally to help people who are in the position of needing to apply?

3. Findings to date

3.1 The Task Group has found that local health, social care and voluntary organisations do receive regular queries about applying for power of attorney and that many people do find the process complex. The Task Group recognise that the process, forms and costs are set nationally and are outside HOSC's sphere of influence, so the Group's work has focussed on the available support to help people through this process.

3.2 Many organisations are able to signpost enquirers to the Office of the Public Guardian for further advice and information, or to a local solicitor to manage the process on their behalf (at a cost). The Task Group has found that many people do engage a solicitor for this purpose and so have been particularly interested to find out more about the support available to people who are unable or unwilling to access the support of a solicitor (for financial or other reasons).

3.3 The Task Group has found that there is some good information available in the form of leaflets and websites (e.g. Office of the Public Guardian, County Council website) but that there may be further opportunities to provide information locally.

4. Next steps

4.1 The Task Group's initial research has highlighted a number of issues requiring further investigation including the training of staff, how people know that power of attorney is an option and potential ways to offer more information and support locally. It has emerged that the Citizens Advice Bureau is a key source of support, particularly for those unable to employ a solicitor. The Task Group wishes to gather further information from the local Bureaux.

4.2 In addition, the Office of the Public Guardian has recently consulted on simplifying the national process and its response to this consultation is not yet available.

4.3 For these reasons, the Task Group asks HOSC to agree that the timescale for its work be extended so that a fuller report can be prepared for the Committee's July 2009 meeting.

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