

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

Date: **20th November 2009**

By: **Director of Law and Personnel**

Title of report: **Mental Capacity Act HOSC Task Group – response to recommendations**

Purpose of report: **To update the Committee on the response to recommendations from the HOSC Task Group review on support for patients and carers in relation to aspects of the Mental Health Capacity Act.**

RECOMMENDATIONS

HOSC is recommended to:

- 1. Note response to recommendations on support for patients and carers in relation to aspects of the Mental Health Capacity Act.**
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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 In November 2008, HOSC established a Task Group (Cllrs O'Keeffe and Tidy) to examine aspects of the Mental Capacity Act. The Task Group reported back to HOSC in March 2009 with recommendations on the support and advice available to individuals, families and carers in East Sussex when applying for Lasting Power of Attorney for someone lacking mental capacity.

Recommendations

- 1 Local Mental Capacity Act managers, working with the health and social care 'access to information' project, should consider:
 - a) The production of a simple poster and flyer which would make people aware that Lasting Power of Attorney is available and sources of further information, to be placed in key locations such as GP surgeries, libraries, day centres, special schools etc.
 - b) Opportunities to place information about Lasting Power of Attorney into suitable existing publications, for example the 'Forward from 50' brochure.
 - c) Opportunities to link with information or services related to wills and life insurance in East Sussex.
 - d) Whether the Office of the Public Guardian leaflets could be made more widely available in public places in East Sussex.
- 2 Local Mental Capacity Act managers should liaise with Trading Standards to investigate the feasibility of promoting the Buy With Confidence scheme to local solicitors offering family legal services such as Lasting Power of Attorney applications.
- 3 HOSC should write to the Office of the Public Guardian to:
 - a) Request that they consider an accreditation scheme for solicitors to help consumers identify those with relevant training and/or experience in Lasting Power of Attorney matters
 - b) welcome the recent consultation on simplifying forms and reducing charges for Lasting Power of Attorney applications, but highlighting the fact that it remains difficult for individuals to complete the forms without assistance, and that most of the available support is costly.
 - c) request that they consider funding Citizens' Advice Bureaux nationally to provide a support service to people needing support with a power of attorney application who cannot afford a solicitor.
- 4 Local Mental Capacity Act managers should investigate any potential funding sources to pilot and evaluate a 'surgery' type service which could support local people needing to apply for power of attorney.

Attached as appendix 1 is a summary of the response to these recommendations.

ANDREW OGDEN
Director of Law and Personnel

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Mental Capacity Act review report – response to recommendations

	Recommendations	To	Response	Timescale
1.	<p>Local Mental Capacity Act managers, working with the health and social care 'access to information' project, should consider:</p> <ul style="list-style-type: none"> a) The production of a simple poster and flyer which would make people aware that LPA is available and sources of further information, to be placed in key locations such as GP surgeries, libraries, day centres, special schools etc. b) Opportunities to place information about LPA into suitable existing publications, for example the 'Forward from 50' brochure. c) Opportunities to link with information or services related to wills and life insurance in East Sussex. <p>Whether the Office of the Public Guardian leaflets could be made more widely available in public places in East Sussex.</p>		<p>a) Carol Wilkinson (CW) , MCA manager has forwarded specific LPA info link for distribution to all libraries, surgeries, ASC day centres, SEN manager and to speak to 200 GP's Feb 2010</p> <p>b) 'Forward from 50' has a piece on Power of Attorney. Once we develop the Buy with Confidence scheme for solicitors CAB etc , we can expand.</p> <p>c) The Buy with Confidence scheme and Forward from 50 advice should cover c.</p>	February 2010
2.	<p>Local Mental Capacity Act managers should liaise with Trading Standards to investigate the feasibility of promoting the Buy With Confidence scheme to local solicitors offering family legal services such as LPA applications.</p>	Mina O'Brien, BWC Scheme Manager	<p>Trading Standards happy to promote Buy with Confidence to local solicitors. (Approved first firm in August 2009 – not specifically for LPA though.) MO'B and CW to co ordinate expansion of scheme to solicitors offering LPA service by April 2010</p>	April 2010
3.	<p>HOSC should write to the Office of the Public Guardian to request that they consider an accreditation scheme for solicitors to help consumers identify those with relevant training and/or experience in LPA matters</p>	Martin John, Chief Executive and Public Guardian	<p>'...accreditation scheme for solicitors would be valuable...' (<i>but see below</i>)</p>	

4.	<p>HOSC should write to the Office of the Public Guardian to:</p> <p>a) welcome the recent consultation on simplifying forms and reducing charges for LPA applications, but highlighting the fact that it remains difficult for individuals to complete the forms without assistance, and that most of the available support is costly.</p> <p>b) request that they consider funding Citizens' Advice Bureaux nationally to provide a support service to people needing support with a power of attorney application who cannot afford a solicitor.</p>	<p>Martin John, Chief Executive and Public Guardian</p>	<p>Shorter and simpler forms came into force 1 October 2009. '<i>...many more people choosing to make an LPA should be able to do so without seeking professional assistance...</i>' (Cost of registering an LPA reduced from £150 to £120 from April 2009</p> <p><i>'...flexibility to fund external provision of additional support or services is very limited...'</i></p>	<p>Completed</p>
5.	<p>Local Mental Capacity Act managers should investigate any potential funding sources to pilot and evaluate a 'surgery' type service which could support local people needing to apply for power of attorney.</p>		<p>CW taking work forward with Age Concern and Citizens Advice bureau to include LPA in advice given, to complete by April 2010</p>	<p>April 2010</p>

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Appendix A

From: Carol Wilkinson
Sent: 22 October 2009 13:17
To: Alison Borland; Jean Haigh; Rita Stebbings; Rhona Drever; Lawlor Maurice (ES Downs & Weald PCT); Kay Holden
Subject: Lasting power of attorney (LPA) for vulnerable young people and adults

Please find attached details on how those using your service or their carers can find out more about 'Lasting Power of Attorney' to help plan for the future to allow trusted others to make decisions about their financial or personal welfare matters.

<http://www.publicguardian.gov.uk/forms/Making-an-LPA.htm>

This information is intended to be printed and displayed on notice boards in your service's buildings (libraries, GP surgeries, day and respite centres, schools) as appropriate, or for easy access via one of your newsletters or e info resources.

As Mental Capacity lead manager for Adult Social Care I am also happy to be invited to brief your staff or those using your service on applying for Lasting Power of Attorney and other related capacity issues for young people and adults.

Please forward to leads in your service and do come back to me if you need to know more on this important way to plan for the future.

Carol Wilkinson

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