

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

Date: **6th July 2009**

By: **Director of Law and Personnel**

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

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

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## **RECOMMENDATIONS**

**HOSC is recommended to:**

- 1. Endorse the final report and recommendations of the Task Group.**
  - 2. Agree to request responses to the recommendations as outlined in paragraph 3.3.**
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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 short-term Task Group to examine aspects of the Mental Capacity Act. The agreed terms of reference of the group were:

“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 chaired jointly.

2.3 The Task Group 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 was 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 and Recommendations**

3.1 The Task Group's findings and recommendations are outlined in the final report attached at appendix 1.

3.2 The Task Group 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.

3.3 The report makes five recommendations relating to the support available to local people in applying for power of attorney. Some of these are directed to local health and social care managers overseeing the implementation of the Mental Capacity Act provisions and others are recommendations for consideration by the Office of the Public Guardian. It is recommended that these latter recommendations are outlined in a letter from HOSC to the Office of the Public Guardian in order to obtain their response. Responses to the other recommendations will be sought from the relevant local managers.

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