

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

Date: **20<sup>th</sup> 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.**

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## **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

Contact Officer:

Lisa Schrevel  
Scrutiny Lead Officer

Tel: 01273 481327