

**Meeting of the Executive Members for
Housing and Adult Services and Advisory
Panel**

15 January 2007

Report of the Director of Housing & Adult Services

Mental Capacity Act 2005: Briefing Paper

Objective

1. The objective of this report is to inform the Executive Member of action that has been taken and is required to implement the Mental Capacity Act 2005

Summary of the Act

2. The Mental Capacity Act 2005 is due to come into force in England and Wales in April 2007 (legislation in Scotland has already been implemented – Adults with Incapacity (Scotland) Act 2000). The Act provides, for the first time, a statutory framework for assessing whether a person has capacity, for acting and making decisions on behalf of individuals who lack capacity and for empowering and protecting vulnerable people who are not able to make their own decisions. It makes it clear who can take decisions, in which situations and how they should go about this. It enables people to plan ahead for a time when they may lose capacity. It addresses the issue of providing care and treatment for people who lack capacity. Its scope is wide-ranging, involving decisions regarding personal welfare and financial affairs.
3. Everyone working with and/or caring for adults who lack capacity, whether they are dealing with everyday matters or life-changing events in the lives of people who lack capacity must comply with the Act. In a day-to-day context, mental capacity includes making decisions or taking actions affecting daily life – when to get up, what to wear and what to eat. In a legal context, it refers to a person's ability to do something, including making a decision, which may have legal consequences for the person lacking capacity, or for other people.
4. The Act is based upon five principles:
 - Assume a person has capacity unless proved otherwise.
 - Do not treat people as incapable of making a decision unless you have tried all you can to help them

- Do not treat someone as incapable of making a decision because their decision may seem unwise
 - Do things or, take decisions for people without capacity in their best interests
 - Before doing something to someone or making a decision on their behalf, consider whether you could achieve the outcome in a less restrictive way
5. Guidance on the Act is provided in a Code of Practice. The draft Code was circulated for consultation in the summer of 2006. The final version is to be published late December 2006 / early January 2007. The Act is outlined in more detail in Annex 1
6. Every local authority in England and Wales will be affected by the Act as they provide a range of services involving both personal welfare (social care) and financial management for people with reduced capacity, including people with:
- Learning Disability
 - Dementia
 - Mental Health
 - Fluctuating Capacity
 - Acquired Brain Damage
 - Those whose have communication problems & required testing of capacity

7. Implementation of the Mental Capacity Act

The Local Authority is responsible for establishing a Mental capacity Act Local Implementation Network within its area. The objective of this network is to support the three key areas of activity are required to implement the Act:

7.1. Review of policies & procedures

- All social care, housing & financial policies & procedures must be reviewed against the principles in the Act. Local Authorities need to request that Independent Sector care homes and hospitals and primary & secondary health care organisations use the toolkit supplied to assess their readiness to implement the Act.
- Staff in some authorities may already be receivers for clients under the Mental Health Act 1983 with power to control financial affairs. Receivers will be called deputies under the new Act and each local authority will need to consider whether it wishes to expand its role to manage personal welfare decisions as allowed for by the Mental Capacity Act.
- Staff involved in vulnerable adult procedures will need to take account of the Act, which should help make swifter decisions for people lacking capacity, especially with regard to moving accommodation.

7.2 Education & training: identify key staff to assess capacity

- Staff training and awareness raising across all the relevant organisations will be a key feature in the run up to the Act's implementation. City of York Council will receive a grant of £12, 000 in 07/08 (estimated) plus start up costs for 06/07.
- Government funding will be made available for Local Authorities for training on a local multi agency level. It has not been confirmed if this is an annual rolling allocation, but needs to focus upon the Act.
- Education & training falls into 2 main categories:
 - General Awareness: it is proposed to cascade training methods targeting first line managers across a range of public, care, healthcare & corporate settings
 - Assessment of Capacity: all identified staff who will be required to carry out assessments
- The delay in issuing the final code of practice will cause the delay of finalised training materials being issued, as they are linked to the Code.

7.3 Commissioning an Independent Mental Capacity Advocacy service

The Local Authority is responsible for commissioning an Independent Mental Capacity Advocate service (IMCA). The IMCA has a clear role in supporting a person lacking capacity who has no-one else to act on their behalf. The IMCA has legal authority to examine records (NHS, local authority, care home etc), obtain second medical opinions for treatment decisions, amongst a range of powers.

The IMCA service for York is to be funded from a £18,975 grant. A late growth bid to the Government can be submitted if this amount proves to be insufficient for the anticipated level of service and required calibre/skills base of IMCAs.

8. Action Plan

The action required to implement the Act breaks down to two phases:

Immediate Action (this has already started)

- A Mental Capacity Act lead officer and Training and Commissioning lead officers have been identified within the Council.
- The multi-agency Local Implementation Network had its first meeting on 18 December 2006. This will agree an Action Plan, sign off the Training Plan (when training materials & guidelines are produced by the DoH) & oversee the commissioning of the Independent Mental Capacity Advocacy Service required by the Act.
- An estimate is being put together for:
 - the number of people who may be 'unbefriended & lacking capacity' in a range of settings.
 - the numbers of staff who require training at both levels
- Commissioning the IMCA service. It has been agreed with North Yorkshire Council that this service should be commissioned on a North

Yorkshire and York basis to cover the geographical area of both authority's and the new Primary Care Trust.

- A review policies & procedures with special reference to operational practice will be undertaken.

Medium term Action

- To agree across all agencies a rolling programme of training: to cover the Primary Care Trust, Independent & voluntary sector training and CYC staff. Designated staff will need to receive training on assessment of capacity.
- To ensure the information and new data systems being implemented in the Directorate take account of the implications of the Act

9. Implications

9.1 Financial

The financial implications of this Act relate to the implications of developing the infrastructure required. The key components of this are

- the commissioning of the IMCA service for which there is the specific grant of £6,306 for 2006/07 and £18,975 for 2007/08
- staff training for which there is a specific grant of £12,626 in both 2006/07 and 2007/08.

9.2 Human Resources (HR)

There may be implications for job descriptions for staff taking additional responsibilities. The implications are currently being examined and will be reported if necessary at a later stage..

9.3 Equalities

This Act will enhance equality for vulnerable adults as it assumes capacity but recognises the need for specific support with decision making that is not currently available.

9.4 Legal

This is legislation from Central Government and Local Authorities are required to implement the Act from 1 April 2007. The Authority has legal representation on the Implementation Group.

9.5 Crime and Disorder

There is a new criminal offence within the Act of ill treatment or neglect of a person who lacks capacity. However, there are no immediate implications anticipated other than a review of the adult abuse procedures may be required.

9.6 Information Technology (IT)

There are no immediate implications but data bases will need to be adapted to reflect the implementation of the Act in individual circumstances.

9.7 Property

There are no property implications.

9.8 Other

There are no other implications.

10 Risk Management

The risk of not implementing the Act appropriately will be from legal/human rights challenges as the Act becomes live. This risk will be managed through the multi-agency Implementation Group and the training that will be provided for staff.

The risk of insufficient or unavailable advocacy services is to be managed through jointly commissioning the service with North Yorkshire Council utilising the funding available to both authority's.

11 Recommendations

That the Advisory Panel advise the Executive Member notes the contents of this report.

Reason: The Mental Capacity Act 2005 will be implemented on 1 April 2007 and Local Authorities are required to make the appropriate arrangements for systems to be in place by this time.

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All

For further information please contact the author of the report

Background Papers:

Mental Capacity Act 2005

Annex:

Annex 1 - Summary of Mental Capacity Act 2005