

# Mental Capacity Act Update

edition 22 | July 2009

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Llywodraeth Cynulliad Cymru  
Welsh Assembly Government



Office of the  
Public Guardian

## Welcome to edition 22 of the *Mental Capacity Act Update*.

If you know anyone who is interested in, or affected by the Mental Capacity Act (MCA) please forward this newsletter to them.

If you would like to get future editions of *Update* please email [mcaupdate@publicguardian.gsi.gov.uk](mailto:mcaupdate@publicguardian.gsi.gov.uk) to subscribe.

## News

### New Lasting Power of Attorney (LPA) forms laid in Parliament

New draft LPA forms were laid in Parliament on 15 July; they should be ready for use on 1st October 2009.

Users told us that the existing forms were too long, too complicated and solicitor's fees to help complete them were very expensive. Our own experience showed that too many forms were being returned because of errors, and the design of the forms could be improved.

Following on from the public consultation, *Reviewing the Mental Capacity Act: forms, supervision and fees*, and from workshops involving customers, stakeholders and OPG staff, the LPA forms have been redesigned:

- To be more streamlined with no tick boxes
- In plainer English, and
- To include completion guidance notes in the margins of the forms.

In-depth user testing with a representative sample of LPA form users has also taken place to ensure that the redesigned forms meet the needs of key customer groups.

While there is no further opportunity for consultation or comment on the new forms, we are confident that the new LPA forms will better meet people's needs.

## Research

As part of the OPG and Public Guardian's commitment to continuous improvement of our services and our pledge to keep the Customer at the heart of our business, the MCA Implementation Review Project (RMIP) will be commissioning research into understanding the impact of the legislation. Understanding how it is perceived and used in practice, will give us a better idea of how to improve supporting services.

There are two key pieces of research, one looking at the wider impact of the MCA on society and one looking at best interests decision making in complex cases. More information about the latter will be included in a subsequent newsletter.

## **Wider impact of the MCA**

The research into the wider impact of the MCA will explore the extent of and gaps in awareness of the Mental Capacity Act and Code of Practice among a variety of stakeholder groups and the general public. It will also explore how people dealing with those who lack capacity have interpreted the principles of the Act.

We have an encompassing method to understanding (good and bad) practical examples of how this awareness and interpretation has influenced the outcome of decision-making behaviours on behalf of those who may lack capacity.

The information from this research will be used to help the OPG:

- Explore understanding, and generate ideas to help cater to the needs of those who lack capacity
- Draw conclusions and possibly provide baseline indicators against which to measure change and success in the future
- Help identify areas for improvement to ensure that our stakeholders receive the best possible service available

The research is scheduled to begin in Autumn 2009 with the findings to be reported to the OPG by the end of April 2010. Once interpreted and evaluated, the findings and recommendations will be published by the end of the year.

## **OPG Birmingham fully operational**

OPG Birmingham is now fully operational and handling the sorting and distribution of all OPG post. Registration of EPAs and LPAs is also undertaken at Birmingham.

- A reminder that the new postal address for the OPG is:

**Office of the Public Guardian**

**PO Box 15118**

**Birmingham B16 6GX**

**DX 744240 Birmingham 79.**

- Any correspondence to the Court of Protection should be sent to:

**Court of Protection**

**11th Floor Archway Tower**

**2 Junction Road**

**London N19 5SZ**

## **Safeguarding Vulnerable Adults Policy**

The OPG has a general responsibility for safeguarding vulnerable adults; this responsibility is set out in the OPG Safeguarding Vulnerable Adults Policy. As well as formally investigating concerns that are raised about Deputies and Attorneys, the OPG must ensure that concerns that are outside of the Public Guardian's jurisdiction (e.g. relating to unregistered EPAs) are properly signposted to the correct agency so that the concern is addressed. The OPG has a protocol agreement with Local Authorities enabling us to exchange information in certain circumstances to protect vulnerable adults from abuse.

Information regarding the OPG's safeguarding role, the Policy document and our Protocol agreement with Local Authorities can be obtained from the OPG website at:

<http://www.publicguardian.gov.uk/concerns/concerns.htm>

## **Compliance & Regulation at the OPG**

The Public Guardian also has authority under the Mental Capacity Act to deal with representations (including complaints) about the way in which an attorney with a **registered** Lasting or Enduring Power of Attorney, or a Deputy appointed by the Court, is exercising their powers. The Public Guardian's powers relate to both Finance/Property and Health/Welfare Deputies and Attorneys.

The OPG Compliance and Regulation Unit conducts enquiries on behalf of the Public Guardian when a concern is raised. This includes obtaining bank statements and healthcare records relating to a customer, commissioning a visit or interviewing Deputies/Attorneys and liaising with other agencies. The investigator then reports to the Public Guardian with recommendations as to what action, if any, the Public Guardian should take. Recommended action can include making an application to the Court of Protection for the removal of the Deputy/Attorney, increasing the level of supervision assigned to a Deputy and/or referring matters to other agencies (e.g. the Police) for further investigation.

Concerns can be raised in writing to the Compliance and Regulation Unit or by telephone to 0207 664 7734.

## **Change to the rate of interest paid on funds held in Court**

From 1 July 2009 interest paid on funds held in the Court Fund Office (CFO) special accounts and basic accounts changed to a new rate. The interest rate is paid at a rate of 0.5% for the special account and 0.3% for the basic account.

Letters have been sent out to all special account holders to notify them of the change to the special account rate and CFO's website has been updated

<http://www.courtfunds.gov.uk/> and [http://www.courtfunds.gov.uk/cfo/investments\\_interest.htm](http://www.courtfunds.gov.uk/cfo/investments_interest.htm).

## **High praise for British Sign Language (BSL) DVD about the Mental Capacity Act 2005**

At the British Society for Mental Health and Deafness Conference, services and professionals in this field gave positive feedback about the value of the BSL DVD regarding the MCA, produced through a joint project involving the OPG and the RNID.

The social workers at the conference expressed how they felt the DVD was particularly clear for the deaf with high quality signing, and praised the OPG for undertaking this work with RNID.

If you require copies of the DVD, please contact the OPG Customer Contact Centre:

[customerservices@publicguardian.gsi.gov.uk](mailto:customerservices@publicguardian.gsi.gov.uk) or on 0845 330 2900

## **Mental Capacity Act**

The Social Care Institute for Excellence (SCIE) has developed a Mental Capacity Act resource that can be accessed here: <http://www.scie.org.uk/publications/mca/index.asp>

## **Mental Capacity Act Deprivation of Liberty Safeguards (MCA DOLS)**

### **Publications**

There are a number of publications that can be accessed on-line here: <http://www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/MentalCapacity/MentalCapacityActDeprivationofLibertySafeguards/index.htm#jumpTo7>

Hard copies of each of the following five publications can be ordered (in large volumes) by:

- Telephoning: 0300 123 1002
- Visiting: [www.orderline.dh.gov.uk](http://www.orderline.dh.gov.uk)
- Emailing: [dh@prolog.uk.com](mailto:dh@prolog.uk.com) or by
- Writing to: DH Publications Orderline PO Box 777 London SE1 6XH

## **1. Independent Mental Capacity Advocates**

[http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_095891](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_095891)

## **2. A guide for representatives**

[http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_094346](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_094346)

## **3. A guide for managing authorities**

[http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_094348](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_094348)

## **4. A guide for supervisory bodies**

[http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_094347](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_094347)

## **5. An “unexpanded” easy read for the person made subject to the process**

[http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_097320](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_097320)

There are **no** hard copies of the “expanded” easy read version but they can be accessed here:

[http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_097320](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_097320)

There are **no** remaining hard copies of the publication numbered Gateway number 10989 but can be accessed by visiting the following link:

[http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_091868](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_091868)

### **Supervisory body contact details**

Can all be accessed here: <http://www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/MentalCapacity/MentalCapacityActDeprivationofLibertySafeguards/index.htm#jumpTo15>

### **Standard forms**

Can be accessed here:

[http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_089772](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_089772)

There have been a number of changes since these were first published. It is therefore best to access the forms that are on the DH website as they have continued to be updated to overcome a number of technical problems that have been identified since their original publication. If you are still using earlier versions of the forms or using the CD-ROM that was sent to managing authorities to introduce you to the forms you are advised to use instead the forms that can be downloaded from the DH website and check periodically for any further updates.

## **IMCA Service update**

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### **IMCA service in England**

The following link provides a list of IMCA providers in England

[www.dh.gov.uk/en/Policyandguidance/Healthandsocialcaretopics/Socialcare/IMCA/index.htm](http://www.dh.gov.uk/en/Policyandguidance/Healthandsocialcaretopics/Socialcare/IMCA/index.htm)

More detailed information on the IMCA service in England is available at [www.dh.gov.uk/imca](http://www.dh.gov.uk/imca) or by emailing [IMCA@dh.gsi.gov.uk](mailto:IMCA@dh.gsi.gov.uk).

### **IMCA service in Wales**

For further information on the Act in Wales, including a list of IMCA providers, please contact [Claire.Fife@wales.gsi.gov.uk](mailto:Claire.Fife@wales.gsi.gov.uk) or go to our website <http://new.wales.gov.uk/topics/health/nhswales/healthservice/mentalhealthservices/mentalcapacityact/?lang=en>

IMCA providers in Wales are supported by an IMCA Network, which has met bi-monthly since summer 2007. The Network which until recently was chaired by an Assembly official is chaired jointly by IMCA providers, Shanaz Dorkenoo and Sorrel Smith. Further information can be obtained from our website.

Arrangements are currently underway to set up a national training programme to provide IMCAs with Protection of Vulnerable Adults training at Levels 2 and 3.

### MCA Regional Leads - Contact Details

Region	Lead	Email contact details	Telephone
Yorkshire and Humber	Bruce Bradshaw	<a href="mailto:bruce.bradshaw@yhip.org.uk">bruce.bradshaw@yhip.org.uk</a>	07940 361335
North East	Pat Stewart	<a href="mailto:pat.stewart@nmhdu.org.uk">pat.stewart@nmhdu.org.uk</a>	07799 343356
North West	Julie Foster	<a href="mailto:julie.foster@northwestjip.nhs.uk">julie.foster@northwestjip.nhs.uk</a>	07825 379358
East Midlands	Robert Nisbet	<a href="mailto:robert.nisbet@dh.gsi.gov.uk">robert.nisbet@dh.gsi.gov.uk</a>	01509 270201 ext 1
Eastern	Lou Brewster	<a href="mailto:lou.brewster@easterndc.org.uk">lou.brewster@easterndc.org.uk</a>	07717 576822
South East	Steve Appleton	<a href="mailto:sjappleton@btinternet.com">sjappleton@btinternet.com</a>	07747 863973
London	Steve Chamberlain	<a href="mailto:steve@oxberry.plus.com">steve@oxberry.plus.com</a>	07967 347764
South West	David Pennington Amanda Williams	<a href="mailto:david.pennington@dhsocialcareprogrammes.org.uk">david.pennington@dhsocialcareprogrammes.org.uk</a> <a href="mailto:amanda.williams@swdc.org.uk">amanda.williams@swdc.org.uk</a>	07799 627244 07825 843356
West Midlands	Colin Vines Ralph Hall	<a href="mailto:cvconsulting@btconnect.com">cvconsulting@btconnect.com</a> <a href="mailto:hall5954@ymail.com">hall5954@ymail.com</a>	07809 143683 07525 203107

### Regional Leads MCA DOLS - Contact Details

Region	Lead	Email	Telephone
Yorkshire and Humber	Bruce Bradshaw	<a href="mailto:bruce.bradshaw@yhip.org.uk">bruce.bradshaw@yhip.org.uk</a>	07940 361335
North East	Pat Stewart	<a href="mailto:pat.stewart@nmhdu.org.uk">pat.stewart@nmhdu.org.uk</a>	07799 343356
North West	Christine Hutchinson	<a href="mailto:christine.hutchinson@csip.org.uk">christine.hutchinson@csip.org.uk</a>	07795 963519
East Midlands	Robert Nisbet	<a href="mailto:robert.nisbet@dh.gsi.gov.uk">robert.nisbet@dh.gsi.gov.uk</a>	01509 270201 ext 1
Eastern	Joseph Yow	<a href="mailto:joseph.yow@easterndc.org.uk">joseph.yow@easterndc.org.uk</a>	07917 184109
South East	Keith Nieland	<a href="mailto:keith.nieland@dhsocialcareprogrammes.org.uk">keith.nieland@dhsocialcareprogrammes.org.uk</a>	07711 980057
London	Steve Chamberlain	<a href="mailto:steve@oxberry.plus.com">steve@oxberry.plus.com</a>	07967 347764
South West	David Pennington Amanda Williams	<a href="mailto:david.pennington@dhsocialcareprogrammes.org.uk">david.pennington@dhsocialcareprogrammes.org.uk</a> <a href="mailto:amanda.williams@swdc.org.uk">amanda.williams@swdc.org.uk</a>	07799 627244 07825 843356
West Midlands	Ralph Hall	<a href="mailto:hall5954@ymail.com">hall5954@ymail.com</a>	07525 203107

For more information and contact details for the regional leads in Wales please contact [Claire.Fife@wales.gsi.gov.uk](mailto:Claire.Fife@wales.gsi.gov.uk)

## Jargonbox

Your guide to abbreviations and terminology used in MCA Update

**CoP** - Court of Protection - a new Court of Protection that is able to make decisions on both property and personal welfare issues.

**DH** - Department of Health. For more information go to [www.dh.gov.uk/](http://www.dh.gov.uk/)

**DoLS** - Deprivation of Liberty Safeguards. For more information go to [www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/MentalCapacity/index.htm](http://www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/MentalCapacity/index.htm)

**IMCA** - Independent Mental Capacity Advocate. For more information go to [www.dh.gov.uk/imca](http://www.dh.gov.uk/imca)

**LPA** - Lasting Power of Attorney.

**OPG** - Office of the Public Guardian - a new public office supporting the work of the Public Guardian. For more information go to [www.publicguardian.gov.uk](http://www.publicguardian.gov.uk)

If you would like this document in an alternative format, call us on 0854 330 2900 or email [mcaupdate@publicguardian.gsi.gov.uk](mailto:mcaupdate@publicguardian.gsi.gov.uk)

### Contact details

Office of the Public Guardian  
PO Box 15118  
Birmingham B16 6GX  
DX 744240 Birmingham 79

tel: 0845 330 2900 (local call rate)

fax: 0870 739 5780

email: [mcaupdate@publicguardian.gsi.gov.uk](mailto:mcaupdate@publicguardian.gsi.gov.uk)

website: [www.publicguardian.gov.uk](http://www.publicguardian.gov.uk)