

Local Authority Circular

LAC (DH) 2009 (2)

To: The Chief Executive:
County Councils)
Metropolitan District Councils) England
Shire Unitary Councils)
London Borough Councils
Common Council of the City of London
Council of the Isles of Scilly

Chief Executive – Care Trusts
Chief Executive – Strategic Health Authorities

Date: March 2009

Gateway Reference: 11555

THE MENTAL CAPACITY ACT

Summary

1. The Mental Capacity Act 2005 came fully into force in October 2007. Resources were made available via the Area Based Grant http://www.dh.gov.uk/en/Publicationsandstatistics/Lettersandcirculars/Localauthoritysocialservicesletters/DH_081123 to enable Councils with Social Services Responsibilities (CSSRs) to:
 - a) train and raise awareness of staff across their local implementation network of the implications of the Act, now including the Deprivation of Liberty Safeguards, and to act accordingly;
 - b) commission an Independent Mental Capacity Advocate (IMCA) service
 - c) increase the staff time needed for assessments of capacity and best interests decisions.
 - d) deliver the Deprivation of Liberty Safeguards from 1st April 2009
2. The feedback from the first year of the Act's implementation was that the Act still required a large cultural shift in working with people who may lack capacity. As this requires time and resources the Department made additional funding available, over three years from 2008 -11, through the Area Based Grant (ABG) to support local

authorities to meet their statutory responsibilities. Area Based Grant is a non-ring fenced general grant. It is for local authorities and local implementation networks to choose the most effective ways of ensuring that all staff are aware of the requirements of the Act. This Local Authority Circular confirms the funding available for the year 2009-10.

The Mental Capacity Act

3. The Mental Capacity Act 2005, which received Royal Assent in April 2005, was fully implemented in October 2007. Councils with Social Service Responsibilities have set up local implementation networks to support the implementation of the Act. There are four key areas of the MCA which must be addressed.
 - I) *The Duty To Instruct Independent Advocates*
4. Statistical information continues to suggest that fewer people than expected have received the IMCA safeguard. Local authorities and NHS bodies have an ongoing need to ensure that all their affected staff are sufficiently trained; have local procedures and understand these procedures for instructing IMCAs and are held accountable if they do not.
5. The Mental Capacity Act created a new statutory service, the Independent Mental Capacity Advocate (IMCA) service. Its purpose is to help vulnerable people who lack capacity who are facing important decisions made by the NHS and Local Authorities about serious medical treatment and changes of accommodation, for example, moving to a hospital or care home. NHS bodies and Local Authorities have **a duty**, under the Act, **to instruct** and **consult** the IMCA in such decisions where the person lacking the capacity to consent has no family or friends supporting them. They may instruct an IMCA in relation to reviews of accommodation or in safeguarding/adult protection cases even if the person lacking capacity, in the latter case, has family or friends.
6. From 1st April 2009 IMCAs have additional duties and responsibilities arising from the Deprivation of Liberty Safeguards and services need to be in place whether as a result of extensions of existing contracts or other procurement means to deliver an extended IMCA service.
 - II) *The Duty to Carry out Assessments of Capacity by using the Test outlined in the Act and described more fully in the Code of Practice.*
7. The Act introduced clear requirements for the assessment of capacity. Assessments of capacity must now be undertaken by everyone; must follow the two stage test outlined in the Act and in the Code and must be specific to the decision that needs to be taken. This means home

care workers, day centre staff, care managers, social workers, nurses – and not just psychiatrists – need to be able to make assessments of capacity – and to record them to ensure there is a complete and accurate record of decisions and reasons for decisions.

8. Local authorities who have yet to do so will need to develop assessment of capacity procedures and monitor audit their staff's practice through supervision, quality and compliance audits.

III) The Duty to carry out and to record Best Interests Decisions

9. The Act made Best Interests Decisions statutory. The Act and the Code outline how Best Interests Decisions should take place, and include for example that there is a duty to 'do whatever is possible' to permit and encourage people to take part in decision making. It includes the requirement to try and find out the views of the person who lacks capacity are, for example, finding out about their past wishes and feelings, their beliefs and their values. It is a requirement that officers do not make assumptions about someone's best interests simply on the basis of someone's condition or behaviour. The Code spells out that not only should the Best Interests Decision be recorded, but the process of working out what is in someone's best interests should also be recorded, how the decision was reached and the factors considered in reaching that decision.
10. This is a requirement of the Act and must become the normal practice for decision making with all people who cannot make decisions for themselves. Local authorities who have yet to develop procedures for engaging particularly with people with dementia and learning disabilities in decision making will need to do so and should carry out audits of how frequently and how comprehensively these decisions have been made and recorded.

Resources for training and awareness raising

11. There may be a continuing need to provide training and awareness raising either for existing staff or new staff joining services since the Act's full implementation. The Department of Health has developed standard training materials to assist this process, which continue to be available electronically at http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_074491
12. When calculating the resources for the MCA implementation, in 2006 and again in 2008, the Department considered that awareness raising and training should be made available to the whole local health and social care economy through the local implementation networks. This includes relevant staff in social services, housing and other local authority departments, NHS staff in the local area, independent and voluntary sector health and social care providers. Those providing

training should emphasise the duties (on local authorities and partners), to refer to IMCAs, and address consent and capacity assessments and record best interests decisions as spelt out in the Code. Local authorities can choose how to carry out this responsibility, but cannot choose not to involve the partner organisations.

Resources for Deprivation of Liberty Safeguards

13. The Deprivation of Liberty Safeguards will be introduced on 1st April 2009. There is a comprehensive set of information to support implementation at:
<http://www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/MentalCapacity/MentalCapacityActDeprivationofLibertySafeguards/index.htm>

14. The Department has allocated funding to local authorities for 2009 /10 to deliver the Safeguards in their areas. The additional funding is at an average of £600 per assessment of their share of 21.000 assessments that the Government has estimated will be carried out in England and Wales in the first year of the Safeguards.

More detailed information about this funding is available in the implementation Q&A at:
<http://www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/MentalCapacity/MentalCapacityActDeprivationofLibertySafeguards/index.htm>

15. Further information on the operation of ABG can be found at:
<http://www.communities.gov.uk/publications/localgovernment/areabas edgrantguidance> .

16. In 2009 / 10 local authorities will receive £30.09M and the provisional allocation for 2010/11 is £28.926M. These address the additional costs of carrying out the Deprivation of Liberty Safeguards assessments, continuing training and awareness raising and increased time in relation to the Mental Capacity Act and commissioning of IMCA services. As in 2008/09 it will be for local authorities to determine their expenditure in relation to the audits of progress on MCA implementation. Annex A lists those allocations.

Enquiries

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Further copies of this Circular may be obtained from:

Department of Health, PO Box 777, London SE1 6XH. Tel: 0970 1555455. Please quote the code and serial number on the top right hand corner. Current circulars are listed on the DH website at www.dh.gov.uk.letters

Lucy Bonnerjea
Mental Capacity Act Implementation

Annex A

Mental Capacity Act AREA BASED GRANT RESOURCES 2009-10, 2010-11

Local Authority	2009-10 (£)	2010-11 (£) (provisional)
Principal Metropolitan Cities	2,466,261	2,357,160
Other Metropolitan Districts	5,187,759	4,974,556
Metropolitan Total	7,654,020	7,331,716
Inner London	2,103,358	2,014,816
Outer London	2,672,366	2,555,453
London Sub Total	4,775,724	4,570,269
Shire Counties	12,137,946	11,715,874
Shire Unitary Authorities	5,522,311	5,308,139
Shire Sub Total	17,660,257	17,024,013
England Total	30,090,000	28,926,000

Local Authority	2009-10 (£)	2010-11 (£) (provisional)
Principal Metropolitan Cities		
Birmingham	733,317	700,197
Leeds	433,500	415,542
Liverpool	393,121	374,053
Manchester	363,035	348,160
Newcastle upon Tyne	188,427	179,321
Sheffield	354,861	339,887
Sub Total	2,466,261	2,357,160
Other Metropolitan Districts		
Barnsley	167,355	161,272
Bolton	179,845	172,714
Bradford	306,720	294,823
Bury	106,682	102,480
Calderdale	117,931	113,486
Coventry	197,447	188,612
Doncaster	197,415	189,570
Dudley	194,952	186,960
Gateshead	139,850	133,568
Kirklees	240,614	231,687
Knowsley	131,741	125,909
North Tyneside	131,013	125,673
Oldham	148,207	141,983
Rochdale	143,801	138,233
Rotherham	176,914	170,526
Salford	172,122	164,248
Sandwell	229,997	219,643
Sefton	199,075	190,482
Solihull	101,374	97,481
South Tyneside	113,982	108,621
St Helens	127,396	122,254
Stockport	156,848	150,170
Sunderland	205,643	196,528
Tameside	151,128	145,122
Trafford	120,443	115,249
Wakefield	224,401	216,101
Walsall	178,344	170,536
Wigan	209,996	202,397
Wirral	239,959	229,882
Wolverhampton	176,564	168,346
Sub Total	5,187,759	4,974,556
Metropolitan Sub Total	7,654,020	7,331,716

Local Authority	2009-10 (£)	2010-11 (£) (provisional)
Inner London		
City of London	6,602	6,401
Camden	183,331	177,255
Greenwich	177,504	170,180
Hackney	185,736	176,863
Hammersmith and Fulham	126,177	120,673
Islington	164,041	156,579
Kensington and Chelsea	137,993	134,346
Lambeth	190,560	181,242
Lewisham	176,542	168,099
Southwark	198,152	188,942
Tower Hamlets	189,929	181,155
Wandsworth	170,484	162,379
Westminster	196,307	190,702
Sub Total	2,103,358	2,014,816
Outer London		
Barking and Dagenham	119,940	114,110
Barnet	182,219	174,916
Bexley	109,622	105,187
Brent	172,504	164,789
Bromley	140,828	134,843
Croydon	170,990	163,893
Ealing	178,419	170,066
Enfield	165,016	157,897
Haringey	143,603	136,920
Harrow	119,747	114,564
Havering	119,831	114,592
Hillingdon	127,635	122,167
Hounslow	119,330	113,860
Kingston upon Thames	68,064	65,323
Merton	95,113	90,950
Newham	189,518	180,643
Redbridge	139,887	134,135
Richmond upon Thames	78,859	75,760
Sutton	91,312	87,579
Waltham Forest	139,929	133,259
Sub Total	2,672,366	2,555,453
London Sub-Total	4,775,724	4,570,269

Local Authority	2009-10 (£)	2010-11 (£) (provisional)
Shire Counties		
Buckinghamshire	200,548	193,105
Cambridgeshire	285,001	276,379
Cornwall	347,242	336,463
Cumbria	322,126	310,056
Derbyshire	470,112	453,995
Devon	435,361	421,245
Dorset	223,373	215,715
Durham	357,715	343,465
East Sussex	302,479	291,460
Essex	714,574	690,063
Gloucestershire	302,491	291,178
Hampshire	549,434	530,266
Hertfordshire	500,970	481,712
Kent	719,662	694,460
Lancashire	707,110	681,418
Leicestershire	288,726	279,209
Lincolnshire	417,652	405,508
Norfolk	509,646	492,451
North Yorkshire	299,428	289,586
Northamptonshire	332,454	321,968
Northumberland	191,917	184,708
Nottinghamshire	444,727	429,074
Oxfordshire	282,746	272,676
Shropshire	167,403	161,870
Somerset	299,101	289,344
Staffordshire	443,476	428,076
Suffolk	391,772	378,700
Surrey	466,885	448,460
Warwickshire	275,812	266,662
West Sussex	382,021	367,693
Wiltshire	214,249	207,196
Worcestershire	291,733	281,713
Sub Total	12,137,946	11,715,874

Local Authority	2009-10 (£)	2010-11 (£) (provisional)
Shire Unitary Authorities		
Bath & North East Somerset	89,277	85,848
Bedford Borough	80,343	77,753
Blackburn with Darwen	100,617	96,436
Blackpool	118,386	113,573
Bournemouth	103,854	99,271
Bracknell Forest	43,123	41,531
Brighton & Hove	151,734	144,640
Bristol	249,828	239,014
Central Bedfordshire	103,529	100,384
Cheshire East	174,243	168,036
Cheshire West & Chester	183,026	176,335
Darlington	62,339	59,924
Derby	149,474	143,649
East Riding of Yorkshire	183,985	178,486
Halton	85,015	81,479
Hartlepool	65,741	63,136
Herefordshire	107,410	103,916
Isle of Wight Council	96,984	93,817
Isles of Scilly	1,413	1,367
Kingston upon Hull	190,671	182,246
Leicester	195,790	186,672
Luton	99,112	94,963
Medway	117,427	113,255
Middlesbrough	96,871	92,146
Milton Keynes	108,999	105,958
North East Lincolnshire	100,667	96,615
North Lincolnshire	95,422	92,230
North Somerset	110,515	107,125
Nottingham	202,834	193,776
Peterborough	97,283	93,667
Plymouth	161,124	154,796
Poole	73,778	70,687
Portsmouth	109,238	104,822
Reading	68,636	65,488
Redcar and Cleveland	92,940	89,162
Rutland	15,616	15,200
Slough	62,742	59,759
South Gloucestershire	111,312	107,893
Southampton	138,083	132,468
Southend-on-Sea	101,133	96,976
Stockton-on-Tees	108,918	104,971
Stoke-on-Trent	182,652	174,449
Swindon	89,605	86,223
Telford and the Wrekin	98,538	95,428
Thurrock	81,167	78,253
Torbay	107,763	104,158
Warrington	104,222	100,298
West Berkshire	58,855	56,820
Windsor and Maidenhead	54,089	51,855

Wokingham	46,550	45,022
York	89,438	86,163
Sub Total	5,522,311	5,308,139
Shires Sub Total	17,660,257	17,024,013