Mental Capacity Act 2005

Conference for NHS South East Coast Strategic Health Authority area Local Implementation Networks

Conference Report

Wednesday 17th December 2008

Stanhill Court Hotel, Charlwood, Surrey RH6 9EP

Introduction: what this report covers and includes

This Report covers the content and discussions at the NHS South East Coast Strategic Health Authority area Mental Capacity Act Local Implementation Networks Conference, 17 December 2008. These multi-agency Networks cover the geographical areas represented by Surrey County Council, Medway Council, Kent County Council, East Sussex County Council, Brighton and Hove City Council, and West Sussex County Council. Over 120 people attended.

The programme for the day was organised in such a way as to enable **two keynote presentations** to be provided. Paul Gantley, the national Implementation Manager for the Mental Capacity Act, based in the Department of Health, gave the first presentation. The second was given by John Dixon, current President of the Association of Directors of Adult Social Services, and Executive Director (Adults and Children) with West Sussex County Council.

The first presentation set out the learning with implementation of the Mental Capacity Act to date, together with future challenges for the workforce in terms of cultural change, whilst the second presentation focused more on how the Association of Directors of Adult Social Services is developing the interface between the personalisation of social care and healthcare services. In addition the need to safeguard the rights of customers of those services, particularly the rights of those lacking mental capacity for whom a best interests decision may need to be made.

In-between the presentations were **two formal workshops**, and an extended lunch break, enabling all who attended to network widely with colleagues not only across their own Mental Capacity Act Local Implementation Network but also with colleagues in other Networks.

Facilitation at the conference was led by Steve Chamberlain, the Mental Capacity Act lead for the Royal Borough of Kensington and Chelsea, and assisted by a number of volunteers from within the Mental Capacity Act Local Implementation Networks represented at the conference. Claire Barcham of the Care Services Improvement Partnership's London Development Centre led the afternoon's reflections and discussions.

We are very grateful to all those who played a part in bringing the conference together as well as helping out on the day to make it a success. We are also most grateful to the Social Care Institute for Excellence for agreeing to sponsor the costs of the conference.

Greg Slay
Practice Development Manager – Mental Health *and*
Mental Capacity Act implementation lead
West Sussex County Council

16th January 2009.

Background context

An initial proposal was put together in the 2007-08 financial year and provided to the Department of Health with a request for funding. The proposal was for a one-day conference event held at a hotel in northern West Sussex or Surrey borders that would involve members of the Mental Capacity Act Local Implementation Groups/Networks in the South East Coast Strategic Health Authority area (Sussex, Surrey, and Kent). In addition certain extra participants would be invited such as local Mental Capacity Act trainers, the IMCA Service and local leads for the Mental Capacity Act Deprivation of Liberty Safeguards.

The purpose of the day was seen as being focused on a facilitated sharing and review of the lessons learned with implementation of the Mental Capacity Act 2005, together with an opportunity to celebrate the work achieved by the six multi-agency Local Implementation Groups/Networks in this area. It was envisaged at that time that this conference might act as a template for similar conferences across all the Care Services Improvement Partnership regions.

For various reasons within the Department of Health and the Care Services Improvement Partnership, the proposal was not taken forward.

We revisited the proposal in the 2008-09 financial year and we were advised by the Department of Health that some funds had been made available to the Social Care Institute for Excellence to assist with Mental Capacity Act implementation. Accordingly we provided a revised proposal to the Social Care Institute for Excellence, and this was accepted for funding. Key to the revised proposal was inclusion of discussion about the implementation of the forthcoming Deprivation of Liberty Safeguards as well as a workshop on the interfaces between the Mental Health Act and the Mental Capacity Act.

A facilitator briefing was prepared in advance of the conference (copy attached at the end of this report) and facilitators agreed from within the six Mental Capacity Act Local Implementation Groups/Networks represented on the day. We were also successful in persuading the Care Services Improvement Partnership's London Development Centre to provide two of its staff to assist with input on the day.

The one condition attached to the funding from the Social Care Institute for Excellence that a conference report be produced and submitted to the Institute. This report is also being supplied to the chairs of the six Mental Capacity Act Local Implementation Groups/Networks for forward distribution to their members and to those who attended the conference. Due to the way in which the conference was organised this report is being supplied in hard copy although its individual components (including three Microsoft Powerpoint presentations) will also be circulated electronically.

Conference programme

0945 Arrival and morning coffee

1015 Welcome and 'housekeeping' introduction by Greg Slay, Practice Development Manager, West Sussex County Council

1030 Opening address by Paul Gantley, Mental Capacity Act Implementation Manager, Department of Health

1115 Refreshment break

1145 'Open space' format workshop exploring local and regional issues and solutions for the further development of the Mental Capacity Act implementation by Local Implementation Networks

1300 Conference evaluation session (postcard completion)

1315 Lunch and networking

1430 Workshop on ways to work better together to deliver the MCA Deprivation of Liberty Safeguards from April 2009, particularly in relation to the interface with the Mental Health Act's provisions

1600 Closing address by John Dixon, Executive Director (Adults and Children), West Sussex County Council, and current President of the Association of Directors of Adult Social Services

1630 Afternoon tea and depart

Biographies of our keynote speakers

Paul Gantley was appointed in July 2005 to a post as National Implementation Programme Manager Mental Capacity Act, Care Services Improvement Partnership/ Department of Health.

His previous experience was as a joint commissioning manager for adult mental health services. He also has twenty years experience of mental health social work, as a practitioner and Approved Social Worker, and also as a manager for forensic social work services in regional secure services and at Broadmoor Hospital.

John Dixon is Executive Director (Adults and Children) and deputy Chief Executive of West Sussex County Council. He is also the current President of the Association of Directors of Adult Social Services.

John started his social work career as a residential worker in a therapeutic community for drug addicts, the Cranstoun Project. He then qualified as a probation officer and worked in Surrey for seven years before moving to across to Surrey Social Services and heading up their County Youth Offender Team. He was Head of Commissioning and Deputy Director at Surrey Social Services before coming to West Sussex as Director in 1997.

West Sussex County Council has been one of the forerunners nationally in developing personalisation. It was one of the founder In Control pilots and then one of the Individual Budgets pilots. There are currently over 1,000 people who have chosen Individual Budgets.

Within the Association of Directors of Adult Social Services, and as Vice President, John led on the development of personalisation and was closely involved with the Department of Health on the 'Putting People First' Concordat. The focus of the Association's business plan in 2008 is the implementation of the Concordat, the forthcoming Green Paper on social care funding, and on the development of health and wellbeing across local authorities.

Workshop discussions (Morning)

The morning workshops were organised around a series of questions, discussion on which was open to all who attended, on a free-flow basis.

The workshops encompassed:

1. *What are supervisory bodies doing about engaging their own managing authorities in relation to DOLS?*
2. *How do we improve the relationship between managing authorities and supervisory bodies?*
3. *What is the role of managing authorities in relation to DOLS, and what are the emerging issues?*
4. *Should all DOLS assessment applications be treated as safeguarding adult investigations?*
5. *How do we engage meaningfully with other agencies, specifically around training?*
6. *How do we promote best MCA-compliant practice in multi-disciplinary discharge planning?*
7. *What do we need to have in place in relation to cross border protocols, the interface with delayed hospital discharge, and care pathway systems (the 'any other issues' discussion workshop)?*

There was also one other workshop in which participants gathered not to tease out systems and interface issues but rather to look at some real-life case examples and share the learning from them.

The following pages are a record of the discussions that took place in the workshops. These are largely unexpurgated transcripts, albeit with some annotation, and should enable the Local Implementation Networks to review the content and consider how best to tackle some of the emerging issues moving forward.

Morning workshop 1: *What are supervisory bodies doing about engaging their own managing authorities in relation to DOLS?*

- Training hospital managers;
- E-learning being cascaded, and made mandatory for all staff from Staff Nurse downwards;
- MCA leads meeting with representatives from all directorates so that they can disseminate information;
- Establishing a training sub-group of the Local Implementation Networks, focusing on the development of basic awareness training (to be reviewed in order that it can include DOLS);
- Managing authority training sub-group in the process of developing authorisation training (post conference note: it is unclear which specific Local Implementation Network geographical area this refers to);
- DOLS awareness-raising events held;
- Ensuring knowledge of urgent authorisations and standard authorisations processes within the safeguarding team;
- Use of e-mail, websites and newsletter communications

Morning workshop 2: ***How do we improve the relationship between managing authorities and supervisory bodies?***

- Need good, non-threatening communication;
- Meeting concerns over perceived non-independence of the Best Interest Assessor from the supervisory body: managing authorities not wanting conflict with Commissioners;
- Ensuring S.12 doctors who are more familiar with the MHA, become more familiar with DOLS so that they do not give preference to the former without fully considering the latter;
- But, some concern over whether S.12 doctors and Best Interest Assessors will have to talk with each other: view held that legally there is no requirement to do so, but it would be poor practice not to

Morning workshop 3: ***What is the role of managing authorities in relation to DOLS, and what are the emerging issues?***

- Lack of training and professional staff supervision in managing authorities – we need to bridge the poor practice gap;
- Inconsistency in receipt of funding by the Primary Care Trusts for training purposes: concerns about absence of funding in Kent area, whereas Surrey and Sussex areas appear to have good arrangements;
- Accurately estimating the numbers of people being referred for DOLS assessment has proved problematic in some areas;
- Embedding training in practice, such as the development of common induction standards and the importance of buy-in from professional bodies (the Royal College of Psychiatry was felt to be slow in taking up the initiative);
- Challenging professional practice is very challenging… ;
- Commissioners must ensure providers (managing authorities) comply with the minimum data set requirements set by the Care Quality Commission;
- Lack of awareness in the provider market of the vicarious responsibilities of commissioners;
- Incorporation of MCA into induction programmes and confirmation of competency evidence within appraisal processes;
- Poor recording of capacity assessment is endemic;
- Potential for self-funded care placements to be ignored by the DOLS assessors;
- Financial assessment: the role of deputies (Court of Protection) can appear to conflict with the contribution by and involvement of relatives;
- Need to take steps in avoiding a Big Bang impact on 1 April 2009;
- Staff need to feel empowered to challenge managing authorities and to feel supported when they do;
- Managers of professionals often don't understand the role of their staff in relation to the MCA; competency profiles need to exist which are evidence-based and can demonstrate MCA-related activity.

Morning workshop 4: *Should all DOLS assessment applications be treated as safeguarding adult investigations?*

Note. This workshop was very popular so it was split into two separate workshops.

Group 1

For

- The nature of the issues involved are potential abuse issues;
- People who haven't been referred for DOLS, but who are being deprived of their liberty, are a clear safeguarding issue;
- Treating DOLS assessment as a safeguarding alert ensures that issues beyond the immediate best interests are taken account of;
- The process of adult safeguarding provides an opportunity to spot what is being tolerated that should not be tolerated.

Against

- People doing this work will be experienced professionals, so will spot safeguarding issues should they arise;
- Identifying abuse is a necessary element of the DOLS assessment;
- This could generate an unmanageable quantity of additional work or no commensurate gain;
- It is a disproportionate response to the preventing situation;
- It makes a barrier which might put off some service users from making referrals for DOLS assessment.

In conclusion

- Our view is that DOLS assessment is **not** a safeguarding alert issue.

Group 2

- The main issue is where to draw the line between restrictive care and a deprivation of liberty;
- There is a need to develop a better understanding of patterns of restrictive behaviours and establish an overarching logging system embedding MCA DOLS training with safeguarding training;
- Training on best interests assessments (DOLS) should be required for adult safeguarding investigation officers;
- DOLS assessors will need to keep records regarding how many requests have been received;
- Safeguarding Unit needs to work with the Best Interest Assessors to develop guidance and protocols so that both safeguarding processes can work more effectively together;
- People may not understand DOLS if they and their organisations are still just starting to understand the MCA;
- The threshold for what is abusive/detrimental practice in both the NHS and in residential/nursing care homes is still unclear;
- Serious Untoward Incidents are not being identified as either safeguarding alerts or as complaints: is DOLS developing as another

similar system, and if so will this cause similar problems in recognising adult safeguarding?;
- Much rests on the experience and training of Best Interest Assessors, and it will be very important that they are familiar with adult safeguarding and have had adult safeguarding training

Recommendations and action
- Ensuring that communication between the DOLS assessment process and the adult safeguarding process is managed by the DOLS team manager, and that a process should be in place to interrogate that communication arrangement;
- Best Interest Assessors should undertake all the checks associated with adult safeguarding and then, and only then (if concerns are present) to formally refer an adult safeguarding investigation;
- Establish a quarterly partnership meeting between the DOLS assessors and the Adult Safeguarding Unit to keep matters under review.

Morning workshop 5: ***How do we engage meaningfully with other agencies, specifically around training?***

- Visit them (e.g. GP surgeries);
- Don't call it training, but rather sessions on consultative and reflective practice;
- Collate experiences for use as case studies;
- Provide training for personal assistants and brokers;
- Use carer forums;
- Use high profile national organisations and their local branches to provide support (e.g. Alzheimer's Society);
- Develop and encourage practitioner forums as the means to sharing best practice;
- Develop focussed bite-sized chunks for training, organised on a service or care group speciality;
- Go direct to clinical and professional leads and not indirectly via senior managers;
- Use team manager forums as an opportunity to share learning and experiences;
- Stress the importance of mental health NHS Trusts needing to participate in the Local Implementation Network.

Morning workshop 6: ***How do we promote best MCA-compliant practice in multi-disciplinary discharge planning?***
- Early recognition of mental capacity issues in the context of care planning, including the presumption of making arrangements to maximise the capacity of the service user/patient;
- Develop role-specific training, e.g. for doctors, nurses, physiotherapists and other allied health professionals;
- Develop professional role champions who can link with hospital discharge co-ordinators;
- Provide written information for relatives and other informal social networks about the relevance of the Mental Capacity Act.

Morning workshop 7: ***What do we need to have in place in relation to cross border protocols, the interface with delayed hospital discharge, and care pathway systems?***

- Good relationships between unitary authorities and their neighbouring two tier authorities;
- Familiarity of clinical and professional governance leads with the DOLS processes in NHS settings;
- Need to develop common understandings across NHS and local social services authorities in order to avoid legal wrangles;
- Importance of robust and consistent reciprocal arrangements being in place when needed;
- DOLS should not be used as a lever to delay discharge of patients.

Morning workshop 8: ***Practice issues and case examples workshop discussion***

1. A woman with three grown-up children who now lacks mental capacity. The three children share a financial LPA. Two of the children wanted their mother moved from her existing care home to the Isle of Wight; the third wanted her moved to a location equidistant between all three children's home addresses.

The initial legal view was that a decision by the majority of those holding Power of Attorney would suffice in this case. Subsequently it was established that the decision-maker was the local social services authority, because it was funding the care home placement. The local authority's case manager undertook a MCA assessment and subsequently decided that it was in the woman's best interests that she should not move from her current placement because to do so would cause her unnecessary psychological distress. Her grown-up children have complained about this decision and are now taking it to the Court of Protection for a decision.

2. In a specific case of a young man being cared for in a specialist NHS establishment where the funding panel was to move him to a different unit. Who is the decision maker? The father of the young man wants a different move to that proposed. In Surrey, the team manager would have the ultimate decision; a best interests assessment can be done by a team of people who have information about the young man; it is not a person on the funding panel who is the decision-maker; a recommendation for best interests and a decision about funding are not the same thing; it is OK to have a collective decision.

3. A stroke victim, lacking mental capacity, currently resident in an acute hospital ward, who is physically able but whose thought processes have been damaged. There are locked doors on the ward. Does this equate to a deprivation of liberty? The view was that this could require DOLS authorisation. Potentially therefore hospitals may be busier than residential or nursing care homes in considering making urgent DOLS referrals.

Workshop discussions (Afternoon)

The afternoon workshops were focused on a discussion about the practical implications arising from the interface between the Mental Health Act 1983 (revised 2007) and the Mental Capacity Act's provisions. We were advised that – if we didn't know it already - the key question being increasingly posed by practitioners is *'Do I use the Mental Health Act or should I be using the Mental Capacity Act?'* Our challenge as Local Implementation Networks is to understand why this is an issue at all and then to make use of our existing partnership arrangements and training programmes to ensure that staff are confident about which legislation to use and in which circumstances.

Participants at the conference all addressed the same questions in the afternoon workshops. Three separate workshop groups met in total.

Workshop Group 1

1. We need to set up appropriate systems…. what agreement has been made between organisations?

- Kent and Medway have negotiated a partnership agreement across five partner agencies;
- West Sussex has a well-developed local implementation network and intends to develop a partnership agreement;
- Brighton & Hove is considering development of a partnership agreement, but its form is yet to be determined

2. What areas of agreement still need to be reached?

- Forms of partnership agreements;
- Availability of mental health assessors;
- The identification of relevant person representatives;
- Identification of who will sit on or represent the supervisory body on any authorisation panel;
- Insurance arrangements across organisations in relation to both Best Interest Assessors and Mental Health Assessors

3. What role does the Mental Health Act have within training programmes on DOLS?

- In Kent and Medway a training sub-group is developing a programme involving managing authorities focussing on staff and managers in both supervisory bodies and managing authorities; training the best interest assessors; identifying the support and supervision requirements for best interests assessors following the completion of the formal training course; Medway has yet to identify any Best Interests Assessors;
- Brighton and Hove - awareness raising training is well under way; best interests assessors are being formally trained by Brighton University; a think tank approach has developed locally which also involves representatives of managing authorities;
- In West Sussex training sessions have been arranged for locality based social workers; West Sussex PCT has commissioned training sessions for its provider managers and is incorporating an e-learning

programme into this; events have been offered for managing authorities, but there has been low uptake to date; six staff are currently undertaking Best Interest Assessor training at Brighton University (and they have identified a consultation/ education role for themselves alongside undertaking the assessments)
- Unclear what discussions have yet taken place with mental health trusts in relation to the interface issues within inpatient wards and/or what is the knowledge base on mental health wards;
- Unclear how well established are the care pathways between acute medical trusts and local specialist mental health services.

4. What possible solutions are there locally?
- Mental Health Commissioners to lead the negotiations regarding the availability of mental health assessors;
- Strategic Health Authority to take an active interest in the performance management by Trusts of the availability of mental health assessors;
- Organising the sequencing of assessments by Best Interest Assessors to take place before the Mental Health Assessor becomes involved;
- Greater awareness of the use of MHA Guardianship alongside or as an alternative to the use of DOLS;
- Establish a rota of DOLS trained Mental Health Assessors;
- Establish a rota of Best Interest Assessors - seconded for a year (as per West Sussex); but need to clarify the interface with the Adults Safeguarding Unit; arrangements for supervision (by Approved Mental Health Professionals?);
- Establish best practice forums based on Local implementation Network boundaries

Workshop Group 2

1. We need to set up appropriate systems…. what agreement has been made between organisations?
- Contractual arrangements and partnership working in place

2. What areas of agreement still need to be reached?
- Work is needed on joint commissioning arrangements in some areas

3. What role does the Mental Health Act have within training programmes on DOLS?
- DOLS awareness within MHA and generic MCA training is generally negligible - no cohesive plan exists at present to take this forward (post conference note: it is unclear which Local Implementation Network geographical area this refers to);
- Good PCT-led training in some areas and senior nurses trained and aware of both MCA and MHA issues;
- Some experience of large multi-agency roadshows with providers;
- Bespoke training being developed in some areas, using real life case examples;
- Half-day DOLS conferences being organised both for providers and for professionals;

- An MCA and DOLS questionnaire has been distributed to providers in some parts of the region with a view to establishing the level of existing awareness, as well as to identify training needs.

4. What possible solutions are there locally?

- Note: this workshop group did not discuss this question (or if it was discussed no record was made!)

Workshop Group 3

1. We need to set up appropriate systems…. what agreement has been made between organisations?

- Need for clarity on the role and enthusiasm of the mental health NHS Trust to cooperate with for example the availability of mental health assessors;
- Work scoped in Surrey by the county council; role of Surrey PCT is unclear;
- West Sussex has a draft county council and PCT Agreement for the former to do all the best interests work, including that generated by the PCT commissioned care;
- The Department of Health's scoping tool was also used in Brighton and Hove, and as with Surrey and West Sussex, there is a named officer as lead

2. What areas of agreement still need to be reached?

- Care pathways need revisiting and checking so that DOLS referrals are tracked in the system;

3. What role does the Mental Health Act have within training programmes on DOLS?

- Awareness within NHS Learning Disability Services recognised as poor in most areas;
- Covert medication still being used in some Trusts - practitioners possibly unaware of the guidance from the Nursing and Midwifery Council;
- We need to manage down the expectations of staff and the organisation so that DOLS is seen as 'exceptional' activity rather than 'routine/ happening every day';
- Moving away from a reliance on seeing mental capacity assessment as automatically a medical assessment;
- Need to also record in case notes where mental capacity is present – this is not just about mental incapacity

4. What possible solutions are there locally?

- Commission the mental health assessors – from both the mental health NHS Trusts and from those in private practice – and clarify who pays for the examination fees;
- Formally evaluate the Best Interests Assessor role where it is a permanent staff role, because of the issues emerging around equal pay (an Agenda for Change issue within the NHS).

Conference evaluation

We invited everyone attending the conference to complete a postcard evaluation exercise, immediately before lunch.

We asked all participants to reflect on the following:

- What will you do differently as a result of what you have discussed this morning?
- How will you share your learning from today's conference with others locally and in your organisation?

Participants then completed one of the supplied postcards to do this together with a note of their name, e-mail address and the name of Local Implementation Network.

We agreed that we would send the evaluation back out to the leads for each of the six Local Implementation Networks early in 2009 to remind them of what their members said they would do and to ask them to update us on progress.

In total, 47 evaluations were completed.

So what did people say about the conference? Here are **some examples of what people said about what they will do differently in future:**

'Set up a best practice forum for social care team managers'
(Sarah Pryce, Surrey County Council)

'Develop a webpage with information, practice guidance and policy/procedures'
(Graham Wilkin, Surrey and Borders Partnership NHS Foundation Trust)

'Feedback to line manager and directorate'
(Veronica Olive, West Kent Primary Care Trust)

'Update my knowledge and training on safeguarding before becoming a Best Interests Assessor'
(Meg Lansom, East Sussex County Council)

'Make sure to make sense between the role of Approved Mental Health Professional and Best Interests Assessor'
(Amanda Rogers, Medway Council)

'Make sure safeguarding issues are considered alongside assessment of capacity or in discussion around Mental Capacity Act'
(Louise Archer, Sussex Partnership NHS Foundation Trust)

'Bring cases to Local Implementation Network to highlight good and bad practice'
(Sue Boakes, KAG Advocacy)

'Ensure Mental Capacity Act issues have a high priority within the team that I work'
(Andrew Caines, Brighton and Hove City Council)

'Aim to provide champions within the Trust'
(David Popple, East Kent Hospitals University NHS Trust)

'No major change but some minor adjustments'
(Les Carr, West Sussex County Council)

'*Include examples of practice involving Mental Capacity Act/ Deprivation of Liberty Safeguards that could have been improved through governance newsletter'*
(Christine Giles, Dartford and Gravesham NHS Trust)

'Encourage colleagues to be more explicit in recording considerations of a person's capacity (and do so myself)'
(Roni Burchfield, West Sussex County Council)

'*I will share the discussion with my line manager'*
(Lou Aish, Brighton and Hove City Council)

What about the sharing of the learning? Here are **some examples of how people said they would share the learning from the conference with others locally and in their organisation:**

'Use Paul Gantley's presentation at own Deprivation of Liberty Safeguards events and beyond, challenging practitioners to think about ways of making sure the Mental Capacity Act underpins practice'
(Annie Ho, Kent County Council)

'Discussion with team/ IMCA Network/ reference group'
(Jennifer Kelsey, Just Advocacy)

'Share with managers at forums etc. internally'
(Nicky Creasey, NHS East Sussex Downs and Weald)

'Use our newsletter and website to try to remind independent providers of their responsibilities'
(Birgitte Knudsen, Independent Providers Forum)

'Draft article for the internal press'
(Andrew Holmes, West Sussex Primary Care Trust)

'Issues raised will be cascaded to my team, and more questions asked in referrals'
(David Hails, West Sussex County Council)

'Identify lack of knowledge and understanding in the PVI (Kent) sector'
(Ann Bradfield, South Kent College)

'Briefing at team meetings, area older people board meetings etc.'
(Carol Farrow, Surrey County Council)

'Through safeguarding networks'
(Linda Stewart, Surrey County Council)

'Through policy and best practice groups'
(Clement Guerin, West Sussex County Council)

'Discuss with specialist mental health funding panel whether they might need some Mental Capacity Act training and whether they should write some protocols for applications to the panel'
(Helen Feazey, West Sussex County Council)

'Through social care and NHS management forum'
(Bridget Bygrave-Relf, Medway Council)

'I will meet with all Deprivation of Liberty Safeguards leads to share back information and review the as is/to be process with today's raised items'
(Lucy Johnson, East Sussex County Council)

Appendix

Wednesday 17th December 2008
Conference briefing for facilitators

Background

This is the first time we have brought together all the members (rather than just the lead officers) of the Mental Capacity Act Local Implementation Networks in the NHS South East Coast Strategic Health Authority area.

The reason we are able to do this is because West Sussex County Council successfully applied for funding from the Social Care Institute for Excellence to run an event that would:

- *involve members of the Local Implementation Networks in the South East Coast Strategic Health Authority area (Sussex, Surrey, and Kent) and invited guests (local MCA trainers, the IMCA Service and local leads for the MCA Deprivation of Liberty Safeguards);*
- *involve a facilitated sharing and review of lessons learned with implementation of the MCA 2005;*
- *incorporate a keynote speech emphasising national progress;*
- *include an afternoon forum discussion on ways to work better together to deliver the MCA Deprivation of Liberty Safeguards from April 2009 – particularly in relation to the interface with the Mental Health Act; and*
- *provide opportunities for the members of Local Implementation Networks to celebrate the work undertaken to date.*

Members and member organisations represented in Local Implementation Networks are key to the delivery of the Mental Capacity Act in their local geographical areas. If we are asking staff working in care settings, hospitals and in housing to embrace the opportunities presented by the MCA it is only right that we provide them with the information and support they need to fulfil their role. This conference is one element of this provision.

Aim and objectives of the conference

Our overarching aim is to deepen engagement with all our Local Implementation Networks and through them, the staff who work with vulnerable people covered by the provisions of the Mental Capacity Act – including the forthcoming Deprivation of Liberty Safeguards.

Our objectives are to:

- Increase the understanding of members and member organisations represented in Local Implementation Networks of the Mental Capacity Act and their role in delivering it;
- Celebrate and thank members of Local Implementation Networks for their involvement and achievements to date;
- Provide opportunities for members of Local Implementation Networks to feedback on their experiences to date with implementation; and

- Provide an opportunity for members of Local Implementation Networks to network and share experiences in an enjoyable way.

Who will be attending?

The conferences are open to all members of the six Local Implementation Networks in the NHS South East Coast Strategic Health Authority area. It is likely that those attending will include, amongst others,

- Operational staff with a professional qualification in medicine, nursing or social work (or allied health discipline)
- Implementation leads within organisations
- IMCA Service advocates
- Training managers leading on the Mental Capacity Act
- Safeguarding Adults' leads

The facilitators will be drawn from the above group and will also include members of the regional implementation team from London Development Centre.

Participants have been asked to arrive at 0945 hours in time for coffee and a prompt formal start at 1015 hours.

The conference has been booked for up to 160 people.

What is your role as facilitator?

There are two workshops. The morning workshop focuses on learning and celebrating, and on preparation work for the Deprivation of Liberty Safeguards. The afternoon workshop focuses on the interface between the Mental Capacity Act and the Mental Health Act.

Ideally there will be a facilitator on each table of participants. The tables are being organised cabaret style so participants will automatically split themselves into groups around the tables although some rearrangement may be necessary. Flip chart paper, pens and so on will all be set out in the room.

Please ensure that:

- In each small group/table notes are being taken
- The group keeps to time
- Any paper work produced by the group has your name on it and it is handed in to Greg Slay or his nominee before you depart

We will need your help to identify some of the less tangible things that are going on during the course of the day. This may be the tone of the conversation – fed up through to exhilarated - or words that you hear time and time again (especially if they never make it onto a flip chart).

If you can look out for those more subtle things that will provide us with some additional insights into how participants and members of Local Implementation Networks are thinking and feeling.

Background for morning workshop

After a 'housekeeping' welcome at 1015 hours, the conference starts with a celebration speech at 1030 hours by Paul Gantley (Department of Health) of the national picture. He will have woven into this any success stories provided to him in advance by Local Implementation Networks in the NHS South East Coast Strategic Health Authority area.

Following his speech, and after a 30 minutes refreshment break, the intention is that the morning workshop operates on a 'open space' format. This format will be introduced and explained at 1145 hours. The workshop will then run until lunchtime at 1315 hours.

An open space format workshop relies on participants understanding the nature of flexible but focused discussions that centre on finding solutions rather than reporting problems.

The design of the workshop will be introduced from the front. Each table has a specific set of starter questions to aid discussions. One question will be highlighted as the starting point for each table in order to avoid all tables starting at the same point on the standard list. Participants will be advised not to move to another table straightway but to think about whether they want to do this after say 15 minutes, so that they can contribute to other discussions in the room.

The Open Space starter questions (a copy on each table, with one question highlighted on each table as the starter point for discussion)

- What is it that you would like to change about the interactions between the Local Implementation Network and your own organisation?
- What can you offer to help those organizations within your Local Implementation Network area that have made slower progress than your own in implementing the Mental Capacity Act?
- What assistance might you need locally to progress that work and from whom might you get that assistance?
- What would make the difference to you wanting to remain involved in your Mental Capacity Act Local Implementation Network?
- What can you share with other Mental Capacity Act Local Implementation Networks as we move forward in implementing the Deprivation of Liberty Safeguards?

The quicker everyone gets settled the more time there will be in the workshop for discussion but obviously people will get lost, need to use the toilet on their way back from the coffee break.

Following explanation of the concept of an open space format, table participants should introduce themselves and their roles.

Participants should start by referring to the initial open space starter question that has been highlighted for the table, and reflect for a few minutes before sharing thoughts with the wider group. You should aim to record comments on flip chart paper within the small group.

The law of movement or two feet is a useful thing to remember and is essentially this: *'If you feel that you are no longer learning anything or contributing anything, it is OK to get up and move to another table/discussion'.*

We have allowed a total of 75 minutes for this workshop.

At 1300 hours, in the 15 minutes before lunch, we want each participant to reflect on the following:

- What will you do differently as a result of what you have discussed this morning?
- How will you share your learning from today's conference with others locally and in your organisation?

Participants should then complete one of the supplied postcards to do this (and can also make a personal note if they wish). They should write their name, e-mail address and the name of Local Implementation Network on one side and on the other side respond to the two questions given above. Asking participants to complete the postcard will enable us to evaluate the workshop. The completed postcards should be given to the conference organiser who will arrange their collation. We will send the postcards back out to the leads for each of the six Local Implementation Networks early in the New Year to remind them of what their members said they would do and to ask them to update us on progress.

Before people go for lunch at 1315 hours, please

- Remind them that they have 75 minutes for lunch and that at 1430 hours we will start again with the afternoon workshop; and
- The afternoon (workshop followed by a closing speech) is scheduled to run without a break until 1630 hours.

We will try to find a way of displaying the work from the morning session so that other participants can look at the results of the discussions. If this is not possible the flipcharts will be collected up and used to inform the conference report in due course. Your help in collecting up that work will be appreciated.

We will also need to visit the 'car park' and check out whether there are questions that need further exploration and consideration. If this is not possible the questions will be collected up and used to inform the conference report in due course.

The plan for the afternoon

The afternoon workshop is being co-ordinated by Claire Barcham of the London Development Centre. She will introduce herself, her colleagues and the content of the workshop.

The afternoon workshop is scheduled to start at 1430 hours and 90 minutes has been allocated for this, although this may be reduced slightly to allow for a comfort break.

At 1600 hours, John Dixon, Executive Director (Adults and Children) for West Sussex County Council, and current President of the Association of Directors of Adult Social Services, will join the conference and provide the closing address.

When John has finished, tea and cakes will be served. And then we will all go home.

What happens after the conference?

We will send the evaluations back out to the leads for each of the six Local Implementation Networks early in the New Year to remind them of what their members said they would do.

I shall be producing a summary report of the conference (the Social Care Institute for Excellence has requested this), and it will also be circulated to the six Local Implementation Networks in the NHS South East Coast Strategic Health Authority area.

Greg Slay
Practice Development Manager – Mental Health *and*
Mental Capacity Act implementation lead
West Sussex County Council

Mental Capacity Act Local Implementation Networks

Kent, Surrey and Sussex area conference

December 17th 2008

Greg Slay

Practice Development Manager

- Lead for implementation of the Mental Capacity Act and the Deprivation of Liberty Safeguards

West Sussex County Council

Websites with guidance for further information:

http://www.westsussex.gov.uk/mentalcapacity
http://www.westsussex.gov.uk/mentalhealth

http://www.scie.org.uk/publications/misc/mca
(plus a resources stall at this conference)

http://www.publicguardian.gov.uk
http://www.dh.gov.uk

Housekeeping arrangements

- ***We are not expecting a fire alarm today or that there will be a fire: if there is we will need to follow the directions of the hotel staff***
- **Do take the opportunity to look around you and work out where your nearest fire exit is**
- **Toilets and cloakrooms are near Reception**

Housekeeping - mobile telephones!

- ***Yes, we all like to listen to jolly ring-tones – but preferably not while our speakers are in full flow!***

- ***As a courtesy to others, please switch your mobile phone to divert or to silent/vibrate mode***

Getting the best out of the day… today is about:

- ***Sharing and celebrating good practice in implementing the Mental Capacity Act's provisions in your Network area***
- ***Enabling others to learn from your experiences***
- ***Reflecting on the outstanding issues and working out agreed solutions***
- ***Considering the interface issues with the Mental Health Act***

Final matters before we start:

- ***We will be asking you to complete a postcard evaluation***
- ***We are very grateful to the Social Care Institute for Excellence for sponsoring the conference***
- ***We couldn't have done this without your help – and the help of our speakers, facilitators and others…***

Implementing the Mental Capacity Act in practice: where are we?

Paul Gantley
National Programme Implementation Manager
Mental Capacity Act 2005

Paul.Gantley@dh.gsi.gov.uk

020 7972 4431

Back to the start

- Key objectives:
- Empower people who may lack capacity
- Give them greater protection
- Give them greater choice

What did we get?

- New Court of Protection / Court appointed deputies
- Office of the Public Guardian / Lasting Powers of Attorney
- Statutory advance decisions to refuse treatment
- New Independent Mental Capacity Advocate service
- New research provisions
- New criminal offence – ill treatment / wilful neglect

Self assessment of implementation

- A qualified success
- Was never going to be easy to reach 3M staff
- 500,000 booklets distributed
- 60,000 copies of training materials
- Organisations received funding assistance
- On-line availability of guidance
- SCIE website now launched
- Positive experience of multi-agency commissioning
- A new advocacy service in place on time
- Good networks – some excellent
- BUT there is resistance and lack of engagement and people are busy with other priorities

A sample of successes nationally

- Guidance: BPS best interests
- Strong buy-in from end of life care services; BMA; GMC and RC Psychiatry
- Consistent support from ADASS
- DVDs Wolverhampton / Leicester and elsewhere
- Council websites

Local success – West Sussex I

- Pan Sussex IMCA service – comparatively high activity levels
- Link to Safeguarding Adults networks
- Successful LIN
- Special consent form for Continuing Care has raised acute services' awareness
- E-learning & widespread dissemination of information materials (bulk buying of Code and contract printing of booklets)
- Targeted training e.g. NHS podiatrists

Local success – West Sussex II

- Care pathway development work
- Brighton and Sussex University Hospitals NHS Trust has reviewed its care and treatment pathways in its hospitals with A&E Departments
- Learning from a case where there was no care pathway in A&E to allow for people who self-harm and who could be assessed (in the hospital environment) as having no apparent mental capacity to understand what they were doing to themselves.

The lessons I

- Care pathway development work
- This is where the Act comes alive
- “We” have set out to educate people in the legislation and broadly achieved that BUT is not a short-term task and needs an honest “gap analysis” and now a longer-term strategy
- It is now really about how people practice: empowerment, protection and offering choice and not just what they know
- Major ongoing cultural and professional challenges in some instances

The lessons II

- Training now needs to focus on how the Act is delivered in situ
- The Act can be reduced to consent, capacity and best interests decision making.
- It may not be unhelpful to do so
- Has this person got the capacity to consent?
- If not does somebody need to make a best interests decision?
- Can we? Can somebody else? How do we / they do it?

LAC (DH) (2008) 4

- “Statistical information suggests that nationally about half the number of people expected have received the IMCA safeguard. Half have not. There are also very large local differences with some local authorities and NHS bodies making extremely few referrals. Each eligible person who does not receive the safeguard means a breach of the Act. Local authorities and NHS bodies 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.”

LAC (DH) (2008) 4

- “Early evidence suggests that many staff and managers are not taking and recording all best interests decisions. The new requirements for the assessment of capacity may require new procedures to be developed, documented and consulted on, covering; specific training; monitoring through regular supervision, and auditing in quality and compliance audits. There is little evidence that this is taking place in a comprehensive manner.”

LAC (DH) (2008) 4

- “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.

  Again the feedback is that this too requires a cultural shift which few organisations have yet achieved.”

Developments and experiences from the implementation groups and implementation leads in the “CSIP" regions

- Variable picture across 150 local implementation networks and 8 regional groups
- Some excellent examples of cross agency / multidisciplinary work
- Original work due to have ended by now but will continue into 2009
- LASSL(DH)(2007)2 - lays out funding for next three years – training and awareness raising go on beyond the date of the Act coming into force
- Not a quick fix – cultural change is a long term process

The future I

- Good practice guidance and examples about working with people who may lack capacity and how the legislation underpins this
- No more of simply what the Act says reworked and reworked other than for those still coming afresh but even then can we be cuter?
- Development of good practice forums > implementation networks
- What does MCA mean for strategic commissioning beyond IMCA services?

The future II

- SCIE national MCA development worker
- SCIE national IMCA development worker
- Both could play a part in the development of good practice forums
- Ongoing regional support following CSIP being secured
- Renewed efforts to get MCA integrated into professional training

Back to the future

- Key objectives:
- Empower people who may lack capacity
- Give them greater protection
- Give them greater choice
- Personalisation
- Individual budgets
- Direct payments

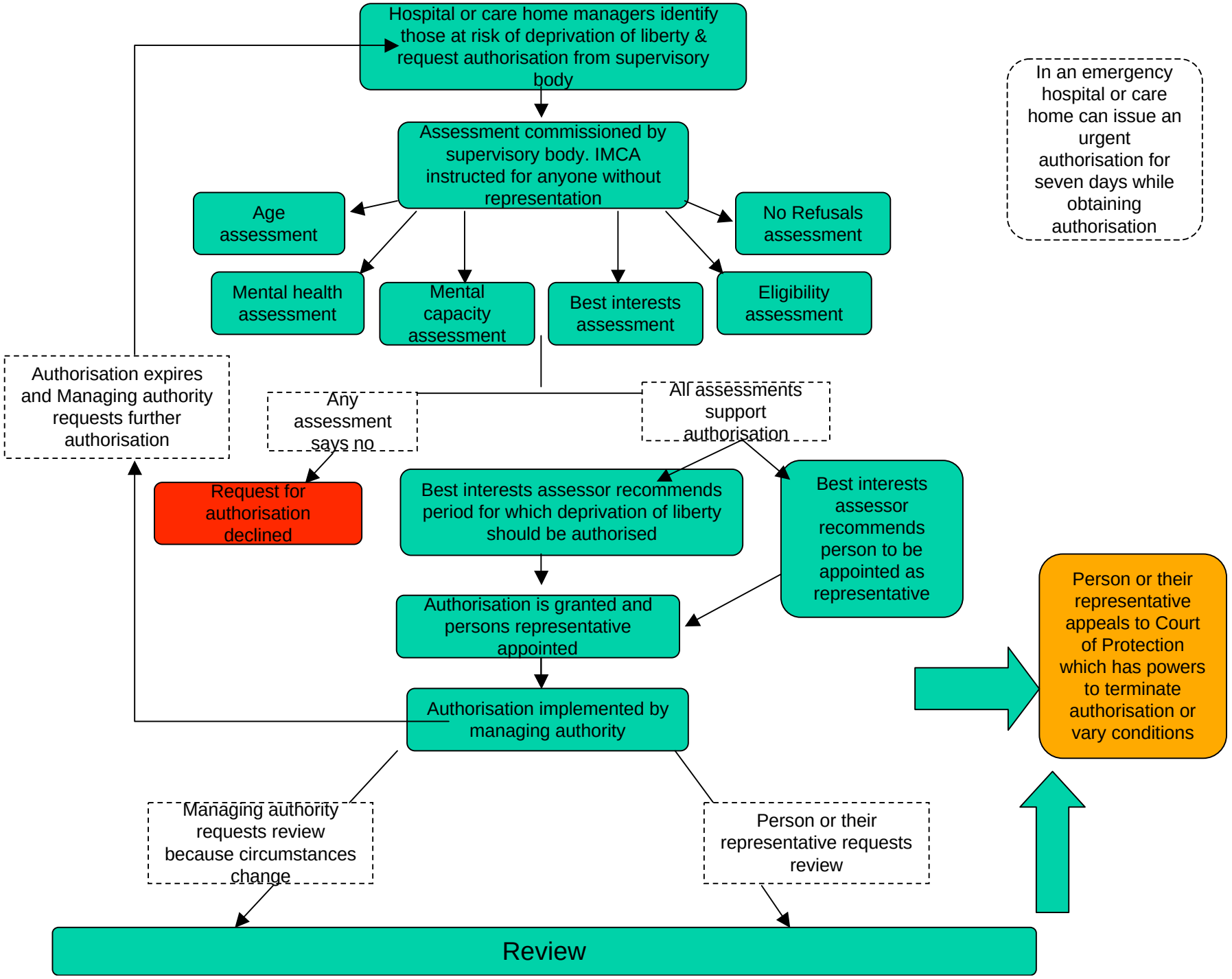
Your contribution – a success

- Your contribution has been and will continue to be critical
- May continue to be national and regional leadership but the real impact is local day by day and moment by moment
- It is about HOW care and treatment decisions are made as much if not more than what the decision is

Not a quick fix – cultural change is a long term process

The future III

- The amendments to the MCA
- MCA DOLS


Hospital or care home managers identify those at risk of deprivation of liberty & request authorisation from supervisory body
Assessment commissioned by supervisory body. IMCA instructed for anyone without representation
Age assessment
No Refusals assessment
Mental health assessment
Mental capacity assessment
Best interests assessment
Eligibility assessment
In an emergency hospital or care home can issue an urgent authorisation for seven days while obtaining authorisation
Authorisation expires and Managing authority requests further authorisation
Any assessment says no
All assessments support authorisation
Request for authorisation declined
Best interests assessor recommends period for which deprivation of liberty should be authorised
Best interests assessor recommends person to be appointed as representative
Authorisation is granted and persons representative appointed
Person or their representative appeals to Court of Protection which has powers to terminate authorisation or vary conditions
Authorisation implemented by managing authority
Managing authority requests review because circumstances change
Person or their representative requests review
Review

MCA DOLS

- Only really provide a gateway to the MCA
- Concern about how deeply MCA is embedded in advance of MCA DOLS
- Concern that some may think you need to use MCA DOLS simply to deliver the MCA to those who lack capacity
- Ongoing role for implementation networks; all PCTs in SE “CSIP” region has a named DOLS lead

The future IV

- A blend of local good practice forums to embed the Act’s requirements and local and regional implementation networks to deliver MCA DOLS

- Where does the MCA feature within strategic commissioning?

Thanks

- For all your efforts, help and support
- Today is a chance to celebrate your success and achievements so far and reflect on how you can build on that for the next phase
- Well done so far!

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adult social services

MENTAL CAPACITY ACT CONFERENCE

17th December 2008

John Dixon – Executive Director of Adults & Children
West Sussex County Council

- President, Association of Directors of Adults Social Services

Adults' Services – A Changing Role

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- New role of LAs and of Members
- Life Chances of Disabled People – Opportunity Age
- Independence, well-being and Choice – Our Health, Our Care, Our Say
- Safe and Prosperous Communities
- Place Shaping and The rise of well-being
- Shift in relationship between state and citizens
- 100% of population and personalisation
- DASS's huge assimilation of roles

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DASS: Joined Responsibilities

50% - Housing

40% - Crime Prevention

Regeneration

Safer Communities

Neighbourhood Services

25% - Culture, Leisure, adult learning

Most - Health

10% - Children's as DCS

All our Tomorrows - Revisited

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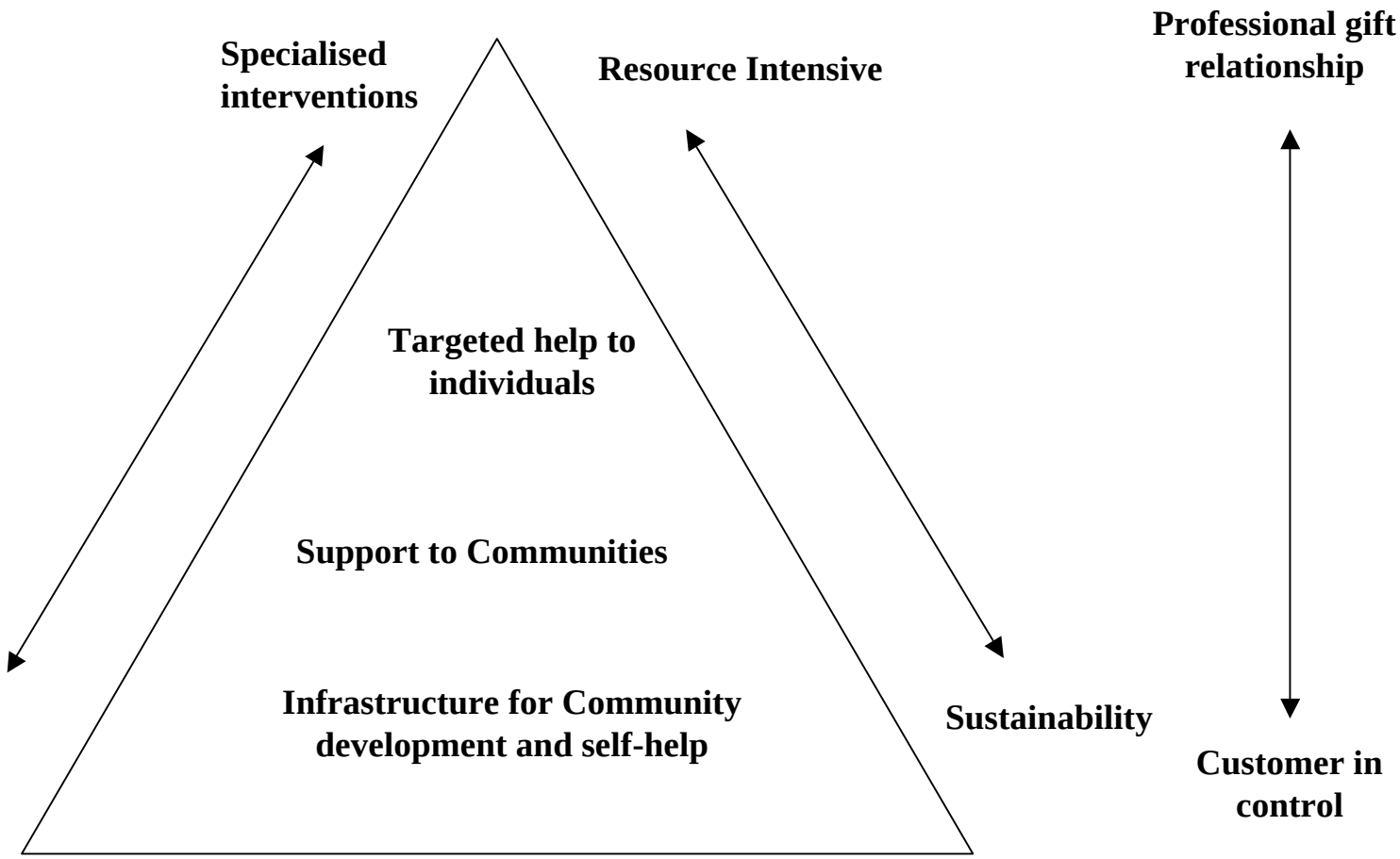

Personalisation

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- High national profile, but with the characteristics of a social movement
- Developed from the ground up, then adopted as cross-government policy
- Affects all LAs, wider than social care
- We're all beginners
- We all have a part of the answer
- High potential risks, high potential gains
- Pilot phase and partial testing now concluding
- Need to test, refine, share

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Some of the Challenges?

- Shifting from services to outcomes focus
- Self /Supported Assessment & Resource Allocation
- Bringing staff and stakeholders with us
- Developing the Market
- Simplifying what exists and it's complexity
- Mistrust - is it about saving money?
- Choice and control v responsibility and risk
- Charging
- Rules / legislation about how money is released and/or used
- IT Systems / Performance Indicators and Management
- For self-funders and 100% of residents

Personalisation, Eligibility & The Green Paper on Care & Support

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- It's about Social Justice as much as funding
- Need to agree principles of new settlement first
- Rethink dependency and contribution:
- The two groups : those currently eligible for state funding
  : those outside of the state net
- Those currently funded: not much longer affordable
  : to be given control
- Those not now funded : more than half the population
- Transparency and eligibility
- Some help for everyone, and more for those who need it most
- Public knowledge and affection: NHS vs. social care
- The weakest link in the welfare state: assurance for old age and disability?
- Affordability and £1.1trillion – insurance risk capping?

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Personalisation and Safeguarding

- Safeguarding Framework – currently
- Legislation or Regulation?
- Personalisation and Safeguarding – new gaps
- Different roles of LAs – ‘Trading Standards’
- Personalisation within universal services
- Advocacy and Brokerage
- Assessment and safeguarding risk
- CRB/Vetting and Barring and wider services

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ADASS 7 POINT PLAN

1. Power to enter domestic properties (being reviewed)
2. Duty to share information between statutory agencies & regulators
3. Duty to co-operate
4. Clarification of futures and powers of other LA's and Health across boundaries
5. Duty to act to investigate complaints
6. Duty of regulatory authority to work in partnership with LA's in identifying and responding to instances of potential abuse
7. Clarification of terminology

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Future Options

- Is there time for legislation?
- Need to construct a framework which balances safeguarding and personalisation.
- Accreditation scheme for PAs? Role of DH micromarkets project
- Offer of CRB/Vetting and Barring to adults who have PAs.
- Adoption of 7 Point Plan.
- Review existing risk assessment and risk management tools
- Address skills and development needs
- Learn from for child safeguarding debate.

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You have been reading the Report on the:

Mental Capacity Act 2005

Conference for NHS South East Coast Strategic Health Authority area Local Implementation Networks

Held on

Wednesday 17th December 2008

At

Stanhill Court Hotel, Charlwood, Surrey RH6 9EP

This report was prepared by West Sussex County Council on behalf of the six Mental Capacity Act Local Implementation Networks in the Kent, Surrey and Sussex areas.