

# Mental Capacity Act Update

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Llywodraeth Cynulliad Cymru  
Welsh Assembly Government



Office of the  
Public Guardian

## Welcome to edition 17 of the *Mental Capacity Act Update*.

If you know anyone who is interested in the Mental Capacity Act, or who may be affected by this new law, 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.

## Latest News

### OPG Progress

The Office of the Public Guardian (OPG), which was introduced under the MCA, assists the Public Guardian in carrying out his duties of supervising Deputies, registering Enduring Powers of Attorneys (EPAs) and Lasting Powers of Attorneys (LPAs) and dealing with queries via the Customer Contact Centre regarding the services of the OPG and the new Court of Protection. The OPG has been operational for over four months and the workload in all areas has been significantly above the predicted numbers.

The project of allocating a supervision regime to the existing caseload of 22,000 cases has been ongoing over the last few months, with over 90% assigned a supervision regime and the remaining cases on target to be finished by the end of March 2008.

Our Customer Contact Centre has been receiving an average of 1,200 calls per day. This is approximately treble the volume of calls received by the Public Guardianship Office in the same period last year.

Since October 2007, our Applications team who deal with the applications and registering of EPAs and LPAs have received an increasingly high volume of applications each month. In February the team received 5,005 applications, of which 1,970 were EPA's and 3,035 were LPA's (2,523 Property and Affairs and 512 Personal Welfare applications). This is 54% higher than the volume of applications received in the same period last year.

In the same period, the Court of Protection received over 8,000 applications, including almost 3,000 applications under the simplified procedure for former Receivers described later in this newsletter. The Court sent out 5,300 orders including 4,400 orders appointing a deputy.

### Fixed Costs for Solicitors and other professionals

The Court of Protection Practice Note covering the current rates of fixed costs is now available on the OPG website using the following link.

[www.publicguardian.gov.uk/about/sols-professionals-fixed-costs-news.htm](http://www.publicguardian.gov.uk/about/sols-professionals-fixed-costs-news.htm)

A new Practice Direction specifying the rates of fixed costs allowed in Court of Protection matters from April 2008 is now available.

## **Applications to the Court**

At present, applications to Court by people appointed as Receiver before 1 October 2007 to obtain approval to take actions not covered in their original order, can be made using a COP9 form. This simplified procedure applies only to former receivers who became deputies on 1 October and applications do not attract a fee. When a COP9 application is received, as well as dealing with the matter at hand, Judges will also consider whether to make a new Deputyship Order which will give the deputy wider decision-making powers which will avoid the need to make repeated applications to Court. On 1 July the COP9 application procedure will come to an end and all applicants will need to pay a fee.

After 1 July, if the application is for a routine matter such as accessing funds or straightforward sales of property, the Deputy will be able to make an application by completing a form COP1 only. For the more complex applications such as appointing a new Deputy or applying for a statutory will, a full application with supporting evidence will be required. All applications on or after 1 July 2008 must be accompanied by the application fee of £400.

## **Other News**

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### **Visitors' service**

Court of Protection Visitors provide reports to the Court and the Public Guardian to assist in decision-making and case management. The service is administered by the OPG. Due to changes associated with the Mental Capacity Act and the new role of the Public Guardian, the Visitors' service was reviewed in 2007 to ensure it met the requirements of the Act. As part of the review, we consulted existing Visitors, the Court of Protection and stakeholder groups during July and August 2007 and used their comments to help develop the new service.

The new Visitors' service will have a central role to play in supervising and supporting court-appointed Deputies to ensure they are carrying out the terms of their Court Order and are acting in the client's best interests, in accordance with the principles of the Mental Capacity Act and the Code of Practice. There will be an increased focus on cases that require more support and attention—mainly those allocated to a Type 1 (close) supervision regime.

There will be fewer routine visits than in the past, meaning that Deputies who are managing their duties effectively will be able to carry on with minimal intervention from the OPG. As before, Visitors will liaise closely with Deputies and clients to arrange visits at convenient times.

Previously, Visitors were self-employed contractors. They will be replaced by a mix of regionally based employed Visitors who will carry out general regulatory visits, and a bank of self-employed contractors with specialist medical, legal, financial or welfare skills who will provide Court reports and specialist reports to the Public Guardian. The new service will enable work to be progressed in a planned and streamlined manner whilst retaining flexibility to ensure that the Public Guardian discharges his role effectively and Deputies are supported in their duties.

Recruitment of the new employed Visitors will start shortly and we expect the new service to be fully operational by the summer of 2008.

### **Information about registering or making a Lasting Power of Attorney**

When making a Lasting Power of Attorney it is important that all the required parts of the form are completed and signatures are in the right place or it may be rejected when the time comes to register it.

If forms are not fully completed and we have to return them we may charge you another fee. To help avoid mistakes we have compiled a list of the most common ones that lead to applications being rejected:

Has the Certificate Provider confirmed they:

- are acting independently - Check page 15
- are aged 18 or over - Check page 15
- have completed the section 'I confirm and understand' - Check page 16

Have all the boxes in each attorney's statement been completed?

- Check Part C - pages 21 to 24

If the donor has not chosen any notifiable persons or the notifiable persons are also named as attorneys then there must be two certificate providers.

- Check Part B - pages 15 and 18

If you are not sure if a box needs to be completed do not leave it blank, read all the guidance provided with the form.

*Please Note: The OPG provides advice about OPG processes only, and cannot provide legal advice or services to any party. You should seek independent legal advice where appropriate.*

## **OPG DVD**

The OPG DVD "Three stories" is available online at [www.publicguardian.gov.uk](http://www.publicguardian.gov.uk). The OPG DVD "Three Stories" tells the stories of 3 individuals affected by the Mental Capacity Act.

Limited hard copies of the DVD are available. Please contact the OPG's customer contact centre on 0845 330 2900.

## **IMCA service update update**

The IMCA service is now operational in England and Wales.

### **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 training in England and Wales**

Training can be booked online at [www.actionforadvocacy.org.uk](http://www.actionforadvocacy.org.uk) or you can email [training@actionforadvocacy.org.uk](mailto:training@actionforadvocacy.org.uk) to get a booking form.

### **IMCA service in Wales**

Training of IMCAs is progressing well. Using Welsh trainers, Action for Advocacy have delivered two training courses in Wales. Courses were held during November and December 2007 and in January 2008. Two south Wales courses were held in Cardiff and a north Wales course was held in Wrexham. To date 30 IMCAs have been trained.

### **National Advocacy Qualification**

Wales is a member of the steering group overseeing the development of a national qualification for advocacy for England and Wales, which is expected to be available from September 2008. This will provide core modules for generic advocacy as well specialist modules for IMCA, IMHA and Advocacy for Adults.

## IMCA Network Support group

This group meets bi-monthly to share best practice and to support IMCA providers in relation to the new role.

For further information on the Act in Wales, please contact [Sarah.Austin@wales.gsi.gov.uk](mailto:Sarah.Austin@wales.gsi.gov.uk) or go to our website [http://new.wales.gov.uk/topics/health/nhswales/healthservice/mental\\_health\\_services/mentalcapacityact/?lang=en](http://new.wales.gov.uk/topics/health/nhswales/healthservice/mental_health_services/mentalcapacityact/?lang=en)

## Health and Social Care update

### Regional leads to support the Act

The role of the regional leads, contact details below, is to support awareness raising activities and events, assisting with the education and training of health and social care staff who are affected by the Act, and supporting the provision of IMCA services.

CSIP Region	Email	Telephone
North East, Yorkshire and Humber	<a href="mailto:Bruce.Bradshaw@nimheneyh.nhs.uk">Bruce.Bradshaw@nimheneyh.nhs.uk</a>	07940 361335
North West	<a href="mailto:Paul.Greenwood@csip.org.uk">Paul.Greenwood@csip.org.uk</a>	07795 963509
East Midlands	<a href="mailto:Sylvia.Manson@eastmidlands.csip.nhs.uk">Sylvia.Manson@eastmidlands.csip.nhs.uk</a>	07810 636462
Eastern	<a href="mailto:Lou.Brewster@csip.org.uk">Lou.Brewster@csip.org.uk</a>	01206 287541
South East	<a href="mailto:Keithnieland@aol.com">Keithnieland@aol.com</a>	07711 980057
London	<a href="mailto:Sarah.Haspel@londondevelopmentcentre.org">Sarah.Haspel@londondevelopmentcentre.org</a>	07890 191361
South West	<a href="mailto:David.Pennington@nimhesw.nhs.uk">David.Pennington@nimhesw.nhs.uk</a>	07799 627244
West Midlands	<a href="mailto:Colin.Vines@csip.org.uk">Colin.Vines@csip.org.uk</a> <a href="mailto:Richard.Bartholomew@csip.org.uk">Richard.Bartholomew@csip.org.uk</a>	07748 703687 07748 541956

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

**CSIP** - Care Services Improvement Partnership. For more information go to [www.csip.org.uk](http://www.csip.org.uk)

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

**EPA** - Enduring Power of Attorney.

**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)

### Contact details

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