

Independent Mental Capacity Advocacy (IMCA) service Information for Referrers

Who should be referred for an IMCA?

An independent mental capacity advocate (IMCA) **must** be instructed for people aged over 16 in the following circumstances:

- A decision needs to be made about a long-term change in accommodation (more than 28 days into hospital / 8 weeks into a care home)
- Serious medical treatment - defined in the MCA 2005 as treatment which involves providing, withdrawing or withholding treatment in circumstances where one or more of the following apply:
 - Where a single treatment is being proposed, there is a fine balance between its benefits to the patient and the burdens and risks it is likely to entail for them
 - Where there is a choice of treatments and a decision as to which one to use is finely balanced
 - What is proposed would be likely to involve serious consequences for the patient.

If the proposed treatment needs to be provided as urgent medical intervention there is no duty to consult an IMCA

- The person lacks capacity to make that decision – a formal capacity assessment should be undertaken, **and**
- There is no one independent of services, such as a family member or friend, who is “appropriate, able to, and willing to be consulted with”.

Who can refer to the IMCA Service?

It is the decision-maker’s legal responsibility to decide if the person meets the criteria and to make the referral. The decision maker should be:

- NHS staff e.g. a Doctor when a decision needs to be made about whether to act with the treatment or care of an adult who lacks capacity

- local authority staff e.g. Social Worker or Care Manager when a decision needs to be made about a long-term move.
- Anyone can make the referral for the service **but** with the authority and permission of the decision maker.

***Referrals should be made to the IMCA service commissioned by the Local Authority where the person is currently residing, even if they are staying there on a temporary basis such as a hospital stay.**

Deprivation of Liberty Safeguards – DoLS

IMCAs must be instructed for people who are being assessed as to whether they are currently being, or should be deprived of their liberty, where there is no-one “appropriate to consult” - 39A IMCA form

IMCAs must also be made available to people who are subject to a standard authorisation in the following circumstances:

- To fill gaps between appointments of person’s representatives – 39C IMCA form
- If a person has an unpaid representative, when requested by the person, their representative, or if the Supervisory Body believes either could benefit from the support of an IMCA. – 39D IMCA form

What to IMCAs do?

IMCAs are a safeguard for people who lack capacity to make some important decisions.

The IMCA role is to support and represent the person in the decision-making process. Essentially, they make sure that the Mental Capacity Act 2005 is being followed by:

1. Gathering Information

Meet and interview the person (in private if possible).

Examine relevant health and social care records.

Get the views of professionals and paid workers.

Get the views of anybody else who can give information about the wishes and feelings, beliefs or values of the person.

Find out other information which may be relevant to the decision.

2. Evaluating Information

Check that the person has been supported to be involved in the decision.

Try to work out what the person's wishes and feelings would be if they had capacity to make the decision and what values and beliefs would influence this.

Make sure that different options have been considered.

Decide whether to ask for a second medical opinion where it is a serious medical treatment decision

3. Making Representations

IMCAs should raise any issues and concerns with the decision maker. This could be done verbally or in writing. IMCAs are required to produce a report for the person who instructed them. In most cases this should be provided to the decision maker before the decision is made.

People who instruct IMCAs must pay attention to any issues raised by the IMCA in making their decision.

4. Challenging Decisions

In many cases IMCAs will be able to resolve any concerns they have with the decision maker before the decision is made. Where this has not been possible IMCAs may formally challenge the decision-making process. They can use local complaint procedures or try to get the matter looked at by the Court of Protection.

The Mental Capacity Act 2005 (Independent Mental Capacity Advocates) (General) Regulations 2006

Legal Requirements

People who instruct IMCAs are required to take into account any information given or issues raised by an IMCA. This includes having regard to the IMCA's report before the decision is made.

It is good practice for people who instruct IMCAs and IMCAs to maintain good communication. This would include having a common understanding of timescales and sharing, at the earliest opportunity, information which may be relevant to the other person's role.