



**Representing and promoting the
rights of people facing disadvantage**

Independent Mental Capacity Advocacy Service

Introduction

Independent Mental Capacity Advocacy (IMCA) was established from the 1st April 2007 as part of the Mental Capacity Act. The aim of the statutory scheme is to provide additional safeguards for people who lack capacity to take decisions in certain specific, important situations and who are particularly vulnerable because they have no close relatives, friends or any other person to help to protect their interests.

ONSIDE Independent Advocacy has been commissioned to provide the IMCA service across Herefordshire and Worcestershire

This brochure contains information on the IMCA service including eligibility criteria, how to refer and what might happen following referral.

If you have any queries relating to ONSIDE's IMCA service, please contact:

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Tel: 01905 27525

Email: imca@onside-advocacy.org.uk

To make a referral to ONSIDE's IMCA service:

Telephone: 01905 27525

Email: imca@onside-advocacy.org.uk

Scope & Eligibility for IMCA

The IMCA service provides safeguards for people who:

- lack capacity to make a specified decision at the time it needs to be made
 - are facing a decision on a long-term move or about serious medical treatment
- and
- have nobody else who is willing and able to represent them or be consulted in the process of working out their best interests.

IMCAs may also be involved in other decisions concerning:

- a care review, or
- an adult protection case.

What decisions require an IMCA?

There are three types of decisions that require an IMCA to be instructed for people who lack capacity. These are:

- decisions about providing, withholding or stopping serious medical treatment – this excludes situations where treatment needs to be provided as a matter of urgency
- decisions about whether to place people into accommodation (a care home for a period longer than 8 weeks or a long stay hospital for a period longer than 28 days) and
- decisions about whether to move people to different long stay accommodation (for a period of longer than 8 weeks).

There are two further types of decisions where the responsible body has the power to instruct an IMCA for a person who lacks capacity. These are decisions relating to:

- care reviews and
- adult protection cases.

In these situations the local authority or NHS body must decide on an individual case basis whether it would benefit the person who lacks capacity to have the involvement of an IMCA. (More details on this can be found at the end of this document.)

The role of the IMCA

The role of the IMCA is to provide statutory advocacy support to people who lack capacity to make decisions on specific issues. They:

- will make representations about the person's wishes, feelings, beliefs and values
- have a right to meet the person they are supporting in private
- are allowed access to relevant healthcare records and social care records
- provide support and representation specifically while the decision is being made, and
- Act quickly so their report can form part of decision-making.

IMCAs must be independent of the person making the decision. They provide information and represent the person without capacity to help work out the person's best interest (which must be taken into account by the decision-makers). IMCA's can raise questions or challenge any decisions that appear to be in conflict with this

The IMCA's involvement in a case should be short-term and decision-specific. It is most likely that the people requiring this service will be facing a crisis situation and so the IMCA will act as quickly as possible.

Making a referral to the IMCA service

A referral can be made to ONSIDE's IMCA service by a decision-maker, or someone who has been delegated by the decision maker.

The referral will then be assessed against the IMCA criteria and prioritised. ONSIDE will aim to allocate an advocate within 2 working days.

For Section 39A IMCA referrals ONSIDE will aim to allocate an advocate within 2 working days. In the case of an urgent referral the IMCA will liaise with the BIA (Best Interests Assessor) within 2 working days of when they are allocated the case.

What happens next?

The IMCA will arrange to meet the person without capacity in private wherever possible. This may need to happen on more than one occasion.

The IMCA will also meet with the decision-maker, relevant staff and other key people. They will also examine and review all relevant documentation including social and health care reviews.

The IMCA may also research other available options – for example look into a range of different care homes.

The IMCA will then prepare a report on their findings and present it to the decision-maker.

The decision-maker cannot make the final decision until they receive the report from the IMCA, and they must have due regard for the IMCA's report.

The decision maker is required to inform the IMCA of the final decision when it is made, and the reason for this decision.

Challenging the decision

An IMCA has the right to challenge both the decision around lack of capacity and the person's best interests. There may be occasions when the IMCA feels that the decision-maker has not taken their report fully into account, or there are particular concerns about decisions that have been made.

In the first instance the IMCA will try to resolve the disagreements informally through discussion and negotiation with the decision maker.

If this does not resolve the issue, the IMCA may decide to challenge the decision through more formal processes such as appeals and/or complaints procedures.

Frequently Asked Questions (FAQs)

Am I the right person to make the referral?

Referrals can only be accepted from the 'decision maker' or someone authorised by the decision maker to make the referral on his/her behalf.

Who are the decision makers?

The decision –maker will be the key professional based in the most relevant statutory agency who has the responsibility for making the decision as to what will happen. For example, in the case of a change of accommodation it might be the responsible social worker or senior medical member of staff. For a medical-based decision the decision-maker would normally be the senior member of the medical staff responsible for the person's treatment.

When does the capacity assessment take place?

This should take place before a referral is made for an IMCA, to ensure that the person referred meets the criteria for IMCA of lacking capacity.

However, a referral can still be made without this assessment and it would then be the role of the IMCA to ensure that the assessment is carried out before they continue.

If at that point the person being referred was then deemed to have capacity the IMCA would withdraw. In this situation, the person could then be referred to ONSIDE for general advocacy support. (The telephone number for general advocacy referrals is 01905 27525)

If, in working with an individual who has been assessed as lacking capacity, the advocate believes that the person, in fact, has capacity to make the decision in question, the advocate, may request a re-assessment.

If the IMCA feels that the person they are representing may, at some point in the near future, have capacity and so be able to be involved in the decision-making they may request for the decision-maker to put the decision on hold in cases where the decision is not urgent. The IMCA will then request for a capacity re-assessment at the agreed time.

Can the IMCA request a second opinion?

For decisions about serious medical treatment as IMCA may consider seeking a second medical opinion from a doctor with appropriate expertise.

What is 'serious medical treatment'?

The Code (10.43) gives the following definition of 'serious medical treatment':

Serious medical treatment is defined as treatment that involves giving new treatment, stopping treatment that has already started, or withholding treatment that could be offered in circumstances where:

- If a single treatment is being proposed there is a fine balance between the likely benefits and the likely burdens to the patient including the risks involved
- A decision between a choice of treatments is finely balanced, or
- What is proposed is likely to have serious consequences for the patient.

What does moving into, or between, care settings mean?

The IMCA service should be contacted when an NHS body or local authority is proposing to arrange accommodation (or a change of accommodation) in hospital or a care home, and

the person will stay in hospital longer than 28 days, or He/she will stay in the care home for more than 8 weeks.

'Care home' may include warden-assisted accommodation, supported living, and other arrangements made by the local authority.

What does 'lacking family or friends' mean?

People get support from an IMCA only if they lack family or friends whom the decision maker deems appropriate to consult. This may mean that the person has no living family, but it could also mean that they have little or no contact with their family or friends, or that any known family or friends are too far away to play a meaningful part in consultation.

The exception to this is in Safeguarding of adult's cases where an IMCA can be instructed even where a person has family or friends available for consultation.

IMCAs should not be involved simply because family or friends disagree with the decision maker or amongst themselves.

Involving IMCAs in Care Reviews

A responsible body should instruct an IMCA to support and represent a person who lacks capacity when:

- they have arranged accommodation for that person
- they aim to review the arrangements (as part of a care plan or otherwise), and
- there are no family or friends who it would be appropriate to consult.

Reviews should relate to decisions about accommodation:

- for someone who lacks capacity to make a decision about accommodation
- that will be provided for a continuous period of more than 12 weeks
- that are not the result of an obligation under the Mental Health Act 1983, and
- that do not relate to circumstances where sections 37 to 39 of the Act would apply.

Where the person is to be detained or required to live in accommodation under the Mental Health Act 1983, an IMCA will not be needed since the safeguards available under that Act will apply.

For more information please consult Chapter 10 of the Mental Capacity Code of Practice.

Involving IMCAs in adult protection cases

Responsible bodies have powers to instruct an IMCA to support and represent a person who lacks capacity where it is alleged that:

- the person is or has been abused or neglected by another person, or
- the person is abusing or has abused another person.

The responsible bodies can only instruct an IMCA if they propose to take, or have already taken, protective measures. This is in accordance with adult protection procedures set up under statutory guidance.

In adult protection cases (and no other cases), access to IMCAs is not restricted to people who have no-one else to support or represent them. People who lack capacity who have family and friends can still have an IMCA to support them in the adult protection procedures.

For more information please consult Chapter 10 of the Mental Capacity Code of Practice.

The Mental Capacity Code of Practice can be found via this link:

<https://www.gov.uk/government/publications/mental-capacity-act-code-of-practice>

Completing the referral form

Please answer all questions on the referral form giving as much information as possible on the **reason for referral with any relevant dates for action**.

ONside is required to report to funders on gender, ethnicity, communication skills and vulnerability. Please complete all sections as requested.

If you are completing the form and you are not the decision maker, please make it clear on the form who the decision maker will be and give their contact details. The referral will take longer if this information is not provided.

Note that the referral form contains personal and confidential information. If you are sending by email you should ensure password protection.

Comments and complaints

ONside is committed to providing a quality service and working in an open and accountable way. One of the ways in which we can continue to improve our service is by listening and responding to the views of our service users, third parties, volunteers, appropriate adults and other professionals, in particular by responding positively to complaints.

If you are unhappy about the service or the way you have been treated by anyone associated with the organisation in the first instance please contact the Advocacy Service Manager, Suzanne Watterson.

As well as wishing to know of any complaints you may have, we are always pleased to have your feedback and hear your comments and suggestions about the way we work.

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