

## When an IMCA should be involved.

### Decisions about accommodation

Where an NHS body or local authority proposes a person stay in hospital for more than 28 days (this may be as a result of a planned admission or unplanned admission) OR

Where there is a proposal for a person to stay in a care home or alternative accommodation for more than 8 weeks.

### Decisions about serious medical treatment

Serious medical treatment is defined as treatment which 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 proposed there is a fine balance between the likely benefits and the burdens to the patient and 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.

**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 safeguarding cases.



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# Mental Capacity Act Information Sheet 3

## INDEPENDENT MENTAL CAPACITY ADVOCATE (IMCA)



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The Mental Capacity Act 2005 was implemented by parliament in 2007 and is a vitally important piece of legislation for England and Wales. Aimed to all people over the age of 16 it offers the opportunity to plan ahead as to how decisions should be made about you if you ever lose the capacity to decide how you would want to be cared for or make decisions about medical treatment. It also provides a framework and a safeguard for anyone who is currently unable to make decisions for themselves for a number of reasons to ensure they are at the heart of decision making when decisions are being made on their behalf. Certain professionals are legally required to abide by it including doctors, nurses, paid carers, dentists to name a few. The Act introduced a statutory role of an Independent Mental Capacity Advocate (IMCA). The aim of this role/service is to provide independent safeguards for people that lack capacity to make certain decisions and have no-one else (other than paid staff) to support or represent them or be consulted. This information sheet is for you to understand the role of an IMCA, when they should be involved in decisions and what their rights and responsibilities are as well as the responsibilities of professionals that must engage their services.

In this leaflet:

- What is an Independent Mental Capacity Advocate
- Role and responsibilities attached to the IMCA role

For further information regarding our training courses, workshops and consultancy please contact us via one of the following methods.

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# The IMCA Service

**Independent Mental Capacity Advocacy (IMCA) is a statutory form of advocacy.** \**“Advocacy is taking action to help people say what they want, secure their rights, represent their interests and obtain services they need”.*

When the Mental Capacity Act 2005 came into force it introduced the IMCA service, a safeguard for certain people to have an advocate as well as a responsibility placed on NHS bodies and Local Authorities (known as the ‘responsible body’) to instruct one when certain decisions were being made.

## The IMCA service is required to:

- be independent of the person making the decision.
- provide support for the person who lacks capacity.
- represent the person without capacity in discussions to work out whether the proposed decision is in the persons best interests.
- provide information to help work out what is in the person’s best interests.
- raise questions or challenge decisions which appear not to be in the best interests of the person.

## The IMCA role means they:

- are instructed to support and represent people who lack capacity to make decisions on specific issues.
- have a right to meet in private the person they are supporting.
- are allowed access to relevant health and social care records.
- should get the views of professionals and paid workers providing care and treatment for the person that lacks capacity.
- should get the views of anybody else who can give information about the person’s wishes and values.
- should find out what alternative options there are.
- should consider whether getting another medical opinion would help the person who lacks capacity.
- must write a report on their findings for the local authority or NHS body.

*\*Action for Advocacy.*

# Decision Makers

- The person proposing the decision is the decision maker. This will be a representative from either the LA or the NHS. It is their responsibility to make the decision.
- It is the decision maker’s duty to make a referral to an IMCA where someone meets the criteria.
- It is the decision maker’s responsibility to decide whether someone meets the criteria.
- The decision maker must take into account any report or submission from the IMCA.

## The responsible body (all staff working within relevant NHS Trust or Local Authority) should also ensure:

- They record an IMCA’s involvement in a case and any information the IMCA provides to help decision-making.
- Record how the decision maker has taken into account the IMCA’s report and information as part of the process of working out the person’s best interests (this should include reasons for disagreeing with that advice, if relevant).
- Give access to relevant records when requested by an IMCA under section 35(6)(b) of the Act.
- The IMCA gets information about changes that may affect the support and representation the IMCA provides.
- Decision makers let all relevant people know when an IMCA is working on a person’s case, and
- Decision makers inform the IMCA of the final decision and the reason for it.

It is good practice to nominate someone within the team to instruct the IMCA and maintain communication with them.