

The Independent Mental Capacity Advocate (IMCA)

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in Care

DH South West



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- When we have capacity and a decision has to be made, our consent must be sought
 - If we are unable to consent, many of us have friends and family who would be able to assist decision makers in determining what would be in our best interests
 - For some people they have no-one to consult when a decision with potentially serious consequences has to be made



IMCA Role

- The role of the IMCA is to support and represent people who lack capacity and who have no appropriate person to support them when major, potentially life-changing decisions are being contemplated.
- The IMCA is independent.



When must an IMCA be involved?

When someone has been assessed as lacking capacity and

A NHS body is proposing

- serious medical treatment
- a stay of more than 28 days in hospital or 8 weeks in a care home
- to change a person's accommodation to another hospital for more than 28 days or more than 8 weeks in a care home

A local authority proposes

- to change or to provide residential accommodation for more than 8 weeks

and

- the person has no appropriate relative, friend, or (unpaid) carer



What is serious medical treatment?

- Treatment which involves providing, withdrawing or withholding treatment in situations where:



Serious Medical Treatment

- a) a single treatment is being proposed and there is a fine balance between its benefits to the patient and the burdens and risks it is likely to entail for her/him,
- b) there is a choice of treatments, and a decision as to which one is finely balanced, or
- c) what is proposed would be likely to involve serious consequences for the patient



Serious Medical Treatment

Some examples of Serious Medical Treatment:

- Chemotherapy/surgery for Cancer
- Electro-convulsive Therapy
- Therapeutic Sterilisation
- Major Surgical Procedures (Open heart surgery/brain surgery)
- Major Amputations
- Treatments resulting in permanent loss of hearing or sight
- Withholding/stopping Artificial Nutrition/Hydration
- Termination of Pregnancy

This list is not exhaustive and each case will be considered on its own merits by the Decision Maker



Exceptions

An IMCA would not necessarily need to be involved:

- If treatment needed to be provided to a person as a matter of urgency (e.g. to save a person's life). The decision must be recorded with the reason for the non-referral
- If a person lacking capacity would be made homeless unless admitted to a care home urgently.



When may an IMCA be involved?

Where an un-befriended person who lacks capacity;

- a) has been in accommodation for more than 12 weeks and a review is proposed
- b) Where it is proposed to take protective measures following allegations of abuse or neglect of the person, or where the person has abused another.



Who instructs an IMCA?

- It is the decision maker's responsibility to involve an IMCA when appropriate
- All areas have access to IMCA services (and have done since April 2007)



Who can be an IMCA?

- Must be approved by the Local Authority
- Has the appropriate experience and training
- Is a person of integrity and good character
- Is able to act independently of any person who instructs her/him
- Has an enhanced criminal record certificate



Functions of an IMCA

- The IMCA must determine in all the circumstances how best to represent and support the person lacking capacity.
- Verify that the instructions to act were issued by an authorised person.
- To interview, as far as practically possible, the person, using communication aids if necessary,
- Examine any of the person's records that the record holder considers relevant

cont.



The functions of an IMCA, cont.

- Consult with people involved professionally in the care and treatment of the person
- Consult with anyone else who could comment on the person's wishes, feelings, beliefs or values
- Take all practicable steps to obtain such other information about the person and the act or decision that is proposed



The functions of an IMCA, cont.

- To evaluate all the relevant information obtained to:
 - a) ascertain the amount of support provided to the person to participate
 - b) ascertain what the person's wishes etc. would be in the given situation
 - c) ascertain what alternative actions etc. are available
 - d) ascertain, where medical treatment is proposed, if there is a benefit for a further medical opinion.



Reporting

The IMCA must submit a written report to the decision maker, which may include such submissions as s/he considers appropriate in relation to the person, and/or the act or decision proposed in relation to the person.



Powers

- Interview the person in private
- The decision maker must take account of the information given by the IMCA
- The right to challenge the decision, as if s/he were a person engaged in caring for the person or interested in his welfare, which would include going to the Court of Protection for a ruling.



Responsible Bodies duties

The Responsible Bodies must ensure that :

- all relevant staff are aware of when an IMCA must be involved and how they can be accessed;
- All reasonable requests by the IMCA for information are complied with;
- Proper records are made of the involvement of the IMCA, and the advice and recommendations made;
- Proper records are made of how the IMCA's advice has been taken into account, or why it was ignored.




Examples of use of an IMCA



ACCOMMODATION


- A 50 year old autistic male had been cared for in institutions since the age of 5 and had suffered institutional abuse on many occasions.
- The man had been placed in an adult placement which had been successful for 3 years.
- Unfortunately he became unwell and required treatment in hospital.
- The care team and the carer felt that the man could not be cared for in his current home.

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- The IMCA were involved as the only carer was a paid carer and a change of accommodation was required.
 - The IMCA went through the man's files thoroughly and came across the details of a lady who had previously cared for him.
 - The lady was able to provide information about a communication strategy she had developed with him.
 - The IMCA was able to pass this information on and a way of communicating with the man has been developed.
 - He is now able to communicate his wishes and feelings and has a lot more involvement in decision making relating to his daily needs.



SERIOUS MEDICAL TREATMENT

- A 60 year old lady with a learning disability required breast cancer treatment.
- The consultant made the decision that the lady lacked capacity to decide about the treatment available to her.
- The IMCA spent considerable time with the lady discussing her views about the options and potential outcomes.
- The lady and the consultant agreed that medication would be tried to reduce the tumour and enable an operation to be carried out a few months later.

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- Unfortunately further tests revealed that the cancer had spread to other parts of the body.
 - The same IMCA continued to work with the lady ascertaining her wishes and letting others know of her feelings and fears.
 - The IMCA was able to spend time with the lady discussing her fears and attend appointments with her.
 - Without the IMCA's involvement the lady would have not attended appointments or continued with her treatment.
 - The IMCA was able to liaise with the whole care team ensuring that as the lady expressed wishes and concerns they were made aware of them.




STATEMENTS PROVIDED BY IMCA SERVICES

- “Why do I need to refer to your service, what are you going to do that’s different to me?”
- “I’ve made my decision and I’m not budging from it.”
- “There’s no need for an IMCA as there is no conflict of interest with the client, she’s in agreement with me”.
- “I hope that you are going to be a good cook and not spoil the broth”.
- “Why do we need to discuss her best interests, she doesn’t have any, she is going to die anyway”.
- “Are you are telling me that, before I can perform an emergency operation I need to obtain permission from an IMCA?”



**DO YOU KNOW HOW TO
REFER TO THE IMCA
SERVICES IN YOUR
AREA?**





For Further information on the IMCA
service, or to access the list of IMCA
services visit

www.doh.gov.uk
and search IMCA