

Independent Mental Capacity Advocate (IMCA) service

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Mental Capacity Act Principles

- Assume a person has capacity unless proved otherwise
- Do not treat people as incapable of making a decision unless you have tried all practicable steps to help them
- A person is not incapable of making a decision because their decision may seem unwise
- All acts done/decisions must be in the best interest of the person concerned
- Use the least restrictive action



Capacity Test

Does the person have an impairment that could affect capacity?

If yes then a person is unable to make **specific** decision for themselves **if** they are unable to -

- understand the information about the decision
- retain that information
- use that information to make the decision
- communicate their decision

It is the decision maker's responsibility to do the capacity test.



Best Interests

- Consider if the person may have capacity at some other time
- Must consider all relevant circumstances
- Must involve the person who lacks capacity
- Have regard for past and present wishes and feelings
- Consult with others who are involved in the care of the person
- There can be no discrimination

Legal Duty to consult an IMCA

The LA/NHS must consult the IMCA where;

- A decision is being made about either
 - 1. Serious medical treatment** or
 - 2. Long term moves**
- and the person does not have the capacity to make that decision
- and there are no family or friends 'appropriate' to consult

Serious Medical Treatment

Providing, withdrawing or withholding treatment where there is either;

- a) a fine balance between the benefits and the burdens and risks of a single treatment,
- b) a choice of treatments which are finely balanced, or
- c) what is proposed would be likely to involve serious consequences.

BUT not if provided under Part 4 MHA



Long term care moves

- if more than 28 days in to hospital/ 8 weeks in to a care home
- not respite unless it is known this will become long term
- if arranged by NHS or LA
- not if move is compulsory under Mental Health Act
- but yes if discharged under sec 117 MHA

‘Appropriate’ to consult

- It is the decision maker’s decision as to whether the client has family or friends who are ‘appropriate’ to consult with.
- ‘Appropriate’ is not defined but there is some guidance in the Code of Practice. You should speak to your manager if you are unsure.

For more info www.dh.org.uk/imca and
www.dca.gov.uk/menincap/legis.htm



Power to consult an IMCA

The LA/NHS may consult an IMCA where the person does not have the capacity to agree to the arrangements for;

- **accommodation reviews**, where there are no family or friends able to support and represent the person.
- **adult protection proceedings**, for victim or alleged perpetrator regardless of family/friend involvement.

Exempt situations and IMCA

A person is not entitled to an IMCA if they have;

- already nominated someone to be consulted
- an appropriate LPA or EPA
- an appropriate deputy appointed by the court

Or in an emergency situation.

IMCAs must have;

- completed 6 day national course
- an enhanced CRB
- experience with the client groups

IMCA : role and functions

- support and represent the person
- meet the person in private
- ascertain the person's past and present wishes, feelings, preferences and values
- evaluate information, with a right to access and copy relevant records
- ascertain alternative courses of action, including least restrictive options
- consult with others involved in the person's life

IMCA : role and functions 2

- establish if person has been supported as much as possible in decision making process
- right to seek a further medical opinion
- prepare a report, which the decision maker has a legal duty to consider
- check that the MCA principles and best interest checklist are being followed
- challenge the decision informally first, through the Court of Protection as a last resort

IMCA is a legal right

A LA or NHS decision maker **must**;

- refer all people who meet the criteria
- use the MCA principles, Best Interest checklist and code of practice
- keep the IMCA up to date with progress
- take into account the IMCA's information **before** making the decision

Get a referral pack from 08450 175 198

or www.advocacypartners.org

we will respond within 2 working days

