

Independent Mental Capacity Advocacy (IMCA) service Information for Referrers

Who should be referred to the IMCA service?

The LA/NHS decision-maker **must** refer any person who meets all the following criteria:

A decision is being made about either:

1. Serious medical treatment or
2. Long term move (more than 28 days into hospital / 8 weeks into a care home)

and it is considered that the person **does not have the capacity** to make **that** decision
and they have no family or friends 'appropriate' to consult with

We may also be able to provide an IMCA where a person lacks capacity to agree to arrangements in;

3. Care reviews where there are no family or friends able to support and represent the person.
 4. Adult protection proceedings, where the person is victim or alleged perpetrator, regardless of family and friend involvement
- You will need to check your Local Authority guidelines about when you can refer for care reviews and adult protection proceedings.
 - Please refer to additional 'Appropriate to Consult' guidance if unsure of family and friend involvement.
 - The minimum age of person referred is 16.

What is meant by serious medical treatment?

Serious medical treatment is 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

Is an IMHA required instead?

An IMHA is required when the patient is detained under the Mental Health Act 1983 **AND** the proposed medical treatment is for their mental disorder or the accommodation move is based on the conditions set by the Mental Health Tribunal on their discharge.

Who can refer people 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 or local authority staff deciding whether to take action with the treatment or care of an adult who lacks capacity e.g. a Doctor for medical treatment and a Care Manager for a long term move.

We may accept an initial referral from someone other than a decision-maker where the referrer has been unsuccessful in persuading the decision-maker to refer, and it seems likely that the person meets the criteria for an IMCA. Also, if the decision maker is not readily available to complete the referral form, we can take a referral from another professional. However, in both situations, we will need to contact the decision-maker to authorise the instruction of an IMCA before we provide a service.

What will the IMCA do?

The IMCA's role is set out in the MCA and further in IMCA Regulations and the Code of Practice:

- Support and represent the person in the decision making process
- Right to meet the person in private,

- Find out the person's past and present wishes, feelings and values
- Evaluate information including having a right to access and copy relevant social/ medical records
- Evaluate alternative courses of action
- Consult with others involved in the person's life
- Establish the support given to the person in the decision making process
- Seek a further medical opinion if necessary
- Check the Mental Capacity Act principles and best interest check list are being followed
- Prepare a report, which the decision maker has a legal duty to consider
- Challenge the decision (including capacity) if necessary, informally first and through the Court of protection as a last resort

The Mental Capacity Act 2005 (MCA)

This is a piece of legislation to empower and protect people who may be unable to make some decisions for themselves. There are five principles on the face of the MCA that you must follow;

- 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 just because their decision may seem unwise
- All acts done/decisions must be in the best interest of the person concerned
- Use the action least restrictive of the person's rights and freedoms

The person who is deciding to act on behalf of someone has the responsibility to follow the Capacity test, which is set out in the Mental Capacity Act.

Capacity Test

Does the person have an impairment that could affect their capacity? If yes, then a person is unable to make a **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

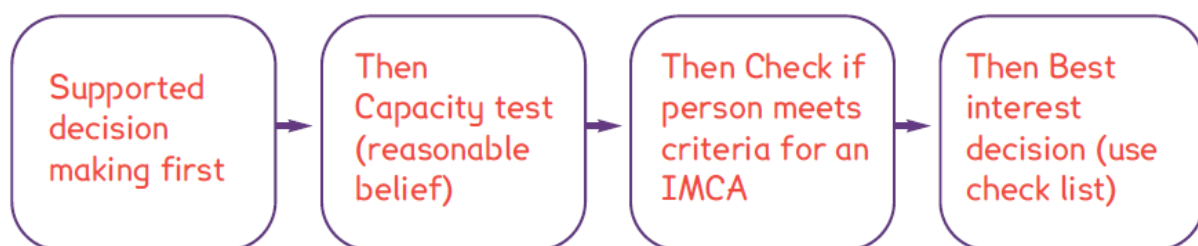
The MCA states that people must be given as much help as possible to make their own decision, for example having time to understand and process the information and access to interpreters.

Best Interests

If after using the capacity test you have a reasonable belief that the person lacks capacity to make that decision, then you must take a Best interest decision. The MCA provides a Best Interest check list that you must follow:

- Consider if the person may have capacity at some other time
- Involve the person who lacks capacity
- Have regard for their past and present wishes, feelings, beliefs, values and other factors they would consider if they were able
- Consider all relevant circumstances
- Consult with others who are involved in the care of the person
- Do not discriminate because of age, condition etc.

Remember!



For enquiries or to make a referral please contact the Total Voice Helpline:

Telephone: 0300 222 5704 Email: TVCP@voiceability.org

Post: Total Voice CP, VoiceAbility, The Old Granary, Westwick, Cambridgeshire, CB24 3AR

Who are Total Voice Cambridgeshire and Peterborough?

Total Voice is a partnership providing independent advocacy services across the area.

You can find out more on www.totalvoicecp.org or by calling 0300 222 5704.

Help us improve

Want to make a comment, complaint, suggestion or compliment? Talk to any of our team members - email us on TVCP@voiceability.org or give us a ring.