

# Independent Mental Capacity Advocates

**MPS**



Putting members **first**

Advice correct as of January 2013

The role of Independent Mental Capacity Advocates (IMCAs) is to support and represent a person who lacks capacity in making a specific decision, and who has no-one (other than paid carers) to support them. This factsheet sets out further information about IMCAs and the role they play.

## What is an IMCA?

An IMCA is independent of the person making the decision. The IMCA:

- provides support for the person who lacks capacity
- represents the person without capacity in discussions about any proposed treatment
- provides information to work out what is in a person's best interests
- questions or challenges decisions that they believe are not in the best interests of the person lacking capacity
- presents individuals' views and interests to the decision-maker.

The IMCA is not the decision-maker but you have a duty to take into account the information and views expressed by the IMCA.

## When will an IMCA be involved?

IMCAs are available to individuals who:

- lack the capacity to make a specific decision about serious medical treatment or long-term accommodation
- have no family or friends available and appropriate to support or represent them
- have not previously named someone who can help with a decision
- have not made an LPA (or, before October 2007, an EPA).

This list is not exhaustive and, if you are unsure whether or not to involve an IMCA, you should contact your responsible body (the NHS organisation arranging and funding the patient's care). Further information can also be provided by Patient Advice and Liaison Service and the Citizens Advice Bureau. The Department of Health website and the Community Councils in Wales also give further information about this.

## What decisions can an IMCA be involved in?

There are specific decisions with which an IMCA must be involved. These relate to:

- providing, withholding or stopping serious medical treatment
- moving a person into long-term care in hospital for longer than 28 days or a care home for longer than eight weeks
- moving the person to a different hospital or care home.

NHS bodies can also decide to instruct IMCAs in decisions concerning care reviews or in adult protection cases, where it is thought that someone is or has been abused or neglected by another person, or someone is abusing or has abused another person.

## What is serious medical treatment?

The definition of serious medical treatment includes the treatment of both physical and mental conditions; therefore, you should instruct an IMCA if you are:

- giving new treatment, stopping treatment or withholding treatment, in circumstances where there is a fine balance between the likely benefits, burdens and the risks of the single treatment to the patient
- deciding between treatments where the choice is not clear
- considering treatment which is likely to have serious consequences for the patient.

Serious consequences include where treatment or the decision to treat:

- causes serious and prolonged pain, distress or side-effects
- has potentially major consequences, ie, surgery or life support treatment discontinuation

- has a serious impact on the patient's future life choices.

## Emergency situations

In emergency situations, it is likely that you may not have time to instruct an IMCA. You should record any decisions you make about the treatment you give, and the reasons for them, in the patient's notes. If treatment with serious consequence follows from the emergency treatment, then you should instruct an IMCA.

You should always act in the patient's best interests while you are waiting for the IMCA's report.

## Disagreements

An IMCA has the right to challenge decisions about the assessment of capacity and about what is in their client's best interests. They may, for example, challenge a decision if they did not feel that enough attention had been paid to their report and any other relevant information.

If the IMCA disagrees with the treatment you have suggested, you should take time to explain and discuss it with them and try to come to an agreement. If an agreement cannot be reached, the IMCA may use the formal complaints system to settle the case or, in more urgent cases, may refer the decision to the Court of Protection.

## Further information

- MPS factsheets, Mental Capacity Act series – [www.medicalprotection.org/uk/factsheets](http://www.medicalprotection.org/uk/factsheets)
- Mental Capacity Act – [www.opsi.gov.uk](http://www.opsi.gov.uk)
- Safeguarding Vulnerable Groups Act 2006 – [www.opsi.gov.uk](http://www.opsi.gov.uk)
- Mental Capacity Act 2005 Code of Practice, Chapter 10 – [www.publicguardian.gov.uk/mca/code-of-practice.htm](http://www.publicguardian.gov.uk/mca/code-of-practice.htm)
- Ministry of Justice – [www.justice.gov.uk](http://www.justice.gov.uk)
- DH – [www.dh.gov.uk](http://www.dh.gov.uk)
- The Office of the Public Guardian, *Making Decisions: A Guide for People who work in Health and Social Care Booklet 3* – Mental Capacity Act 2005 – [www.publicguardian.gov.uk](http://www.publicguardian.gov.uk)

**For medicolegal advice please call us on:**

**0845 605 4000**

**or email us at: [querydoc@mps.org.uk](mailto:querydoc@mps.org.uk)**

[www.mps.org.uk](http://www.mps.org.uk)

This factsheet provides only a general overview of the topic and should not be relied upon as definitive guidance. If you are an MPS member, and you are facing an ethical or legal dilemma, call and ask to speak to a medicolegal adviser, who will give you specific advice.

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