

Q1. Who can refer to the IMCA service?

Anybody can refer to the IMCA service; however the IMCA service must also gain instruction from the “Decision Maker” involved in the case. The Decision Maker will be the main contact for the IMCA service.

Q2. Who is the Decision Maker?

The Decision Maker is the person making the decision on behalf of the person who lacks capacity. When working out what is in the best interests of the person who lacks capacity to make a decision, decision makers must take into account all relevant factors that it would be reasonable to consider, not just those that they think are important.

Q3. What is the IMCA role?

The IMCA's role is to support and represent the person who lacks capacity and to audit the decision making process from an independent perspective. For further guidance please see Chapter 10 of the Mental Capacity Act Code of Practice.

Q4. What is the two stage capacity test?

Anyone assessing someone's capacity to make a decision for themselves should use the two stage test of capacity (MCA Code of Practice, page 41).

- Does the person have an impairment of the mind or brain, or is there some sort of disturbance affecting the way their mind or brain works? (It doesn't matter whether the impairment or disturbance is temporary or permanent).
- If so, does that impairment or disturbance mean that the person is unable to make the decision in question at the time it needs to be made?

Q5. Who should assess capacity?

The person who assesses an individual's capacity to make a decision will usually be the person directly concerned with the individual at the time the decision needs to be made. This means that different people will be involved in assessing someone's capacity to make different decisions at different times (MCA Code of Practice 4.38).

For most day-to-day decisions, this will be the person caring for them at the time a decision must be made. For example, a care worker might need to assess if the person can agree to being bathed. Then a district nurse might assess if the person can consent to have a dressing changed. If a doctor or healthcare professional proposes treatment or an examination, they must assess the person's capacity to consent. In settings such as a hospital, this can involve the multi-disciplinary team (a team of people from different professional backgrounds who share responsibility for a patient). But ultimately, it is up to the professional responsible for

the person's treatment to make sure that capacity has been assessed (MCA Code of Practice 4.40).

More complex decisions are likely to need more formal assessments (see paragraph 4.54 below). A professional opinion on the person's capacity might be necessary. This could be, for example, from a psychiatrist, psychologist, a speech and language therapist, occupational therapist or social worker. But the final decision about a person's capacity must be made by the person intending to make the decision to carry out the action on behalf of the person who lacks capacity – not the professional, who is there to advise (MCA Code of Practice 4.42).

Q6. When are friends and family inappropriate to consult with?

In general terms, the IMCA service is only available to a person who lacks capacity and has no friends or family to support them. However, there are exceptions. The Act states that if friends and family are not "appropriate to consult" then the person who lacks capacity is also entitled to an IMCA. This may occur in the following situations:

- They are not available, perhaps as a result of geographical distance.
- They do not wish to be involved, perhaps as a consequence of relationship breakdown or lack of contact.
- There is tangible evidence that there may be a conflict of interest or the person is not working in the person's best interest.

Please note that where friends or family are involved, an exception cannot be made solely on the grounds that they disagree with the proposed course of action, one or more of the above criteria would also have to apply.

Q7. Which IMCA service is instructed when a person lives in one geographical area and is subject to a decision being made in another?

In respect of a person requiring Serious Medical Treatment, it is the responsible body who should instruct the IMCA service commissioned in the area where the person is being treated. In respect of Changes of Accommodation, section 10.12 of the Code of Practice states that "The organisation that must instruct the IMCA is the one that is ultimately responsible for the decision to move the person. The IMCA to be instructed is the one who works wherever the person is at the time that the person needs support and representation".

Q8. How long will it take for an IMCA to respond to a referral?

All referrals will be acknowledged when received and work will commence within 4 working days. "Urgent DoLS" will be dealt with within 7 days as required by the Act. The time scale for the completion of the work will depend on the referring issue, and the level of demand that the service is experiencing.

Q9. What happens if the client refuses the support of an IMCA?

It is a statutory requirement set out in the Mental Capacity Act 2005 that a person lacking capacity receives the support of an IMCA if they meet the criteria, therefore the IMCA's involvement will continue despite the refusal.

Q10. Can the IMCA have access to the client's information and hospital records?

Yes, under Section 35(6) of the Act relevant records can be accessed by an IMCA. This may assist the IMCA to build a picture of the person which will help them support the person through the decision making process.

Q11. What documentation does an IMCA provide to the Decision Maker?

An IMCA produces a full written report for the Decision Maker which outlines the referral information; the client's views on the decision (if gained); actions taken by the IMCA and the IMCA's overview of their research. The report must be considered by the Decision Maker.

Q12. Can the IMCA disagree with the Decision Maker?

The Mental Capacity Act Code of Practice states, "10.15 Sometimes an IMCA and staff working for the responsible body might disagree. If this happens, they should try to settle the disagreement through discussion and negotiation as soon as possible. If they cannot do this, they should then follow the responsible body's formal procedures for settling disputes or complaints (10.15 – also see paragraphs 10.34 to 10.39).

Q13. What training do IMCA's have?

IMCA's career backgrounds are varied and include experience in advocacy, social work and other relevant health and social care jobs. The National Advocacy Qualification was developed in collaboration with the Department of Health and all our IMCA's have completed or are working towards the relevant IMCA units of the Level 3 Diploma in Independent Mental Capacity Advocacy – Deprivation of Liberty Safeguards.

Q14. Where can I find out more about the IMCA service?

- Most local authorities and NHS Trusts provide local training on the Mental Capacity Act, including the IMCA service.
- The Social Care Institute for Excellence has a range of resources available online.
- We can provide awareness training on request.