

Independent Mental Capacity Advocacy | frequently asked questions



What is advocacy?

Advocacy is a way of helping people who may have difficulty communicating their preferences to express their wishes, secure their rights, have their interests fairly represented, and explore the options available to them.

What is an advocate?

An advocate supports someone on a one-to-one basis to help them put their views and feelings across when decisions are being made about their life so that their views are heard and their rights are upheld. In some situations they will speak on the person's behalf. They can give support which will enable a person to make choices.

Advocates are independent; they are not connected to the carers or services involved in supporting the person.

What is Independent Mental Capacity Advocacy?

Independent Mental Capacity Advocacy is a form of statutory advocacy introduced by the Mental Capacity Act 2005 (MCA) that gives some people who lack capacity the right to be supported by an Independent Mental Capacity Advocate (IMCA).

How does an individual get an IMCA?

An adult without appropriate family or friends to consult with have a legal right to have an IMCA represent them if they lack capacity to make a decision, for example about medical treatment or where they might live. The NHS and other responsible bodies, such as local authorities, have a duty to provide access to IMCA services through independent organisations.

Is there a cost involved in using an IMCA?

There is no cost to the individual for statutory advocacy services; the NHS and other responsible bodies commission and fund IMCA services from independent providers.

What is 'capacity'?

Capacity is the ability to make a decision for yourself about a particular matter. To have capacity a person must be able to:

- understand the information given to them about a particular decision
- retain the information long enough to be able to make the decision
- weigh up the information available to make the decision
- communicate their decision, whether by speech, sign language, or simple movements such as blinking or squeezing a hand

People are said to lack capacity when illness or injury prevents them from being able to make personal decisions, temporarily or permanently.

Who is the decision maker?

The decision maker is the person with ultimate responsibility for making a best interest decision in respect of the individuals, such as a consultant for serious medical treatment decisions, or a care manager for decisions about accommodation.

Who needs advocacy?

The IMCA service exists to support any person who has no one else to support and represent them and who is unable to make a decision or to express a view about a proposed decision that affects them such as:

a long term care move | serious medical treatment | adult protection procedures | a care review

Some adults with family and friends might also be referred for IMCA support if the decision maker feels that those people are inappropriate to support the person making a particular decision.

Many factors affect a person's capacity to make decisions; IMCA services tend to be accessed by people with learning disabilities, older people with dementia, people who have an acquired brain injury, or people with mental health problems.

What is an IMCA expected to do?

- To get to know and understand the views, feeling, wishes, beliefs and values of the individual and to ensure that these views are considered by the decision maker.
- To ask questions on behalf of the individual and to represent them, making sure their rights are upheld and that they are kept involved and at the centre of the decision-making.
- To investigate the circumstances – IMCAs will gather and evaluate information from professionals and people who know the individual well, and carry out any necessary research in respect of the decision to be made.
- To audit the decision-making process, checking that the decision maker is acting in accordance with the MCA and in the person's best interests, and to challenge the decision if necessary.
- IMCAs report directly and confidentially to the decision maker.

What is non-instructed advocacy?

When a person has such significant communication problems that they cannot instruct an advocate themselves, or are unable to express a view about a proposed decision, an advocate uses non-instructed advocacy to speak on their behalf; they will work from the basis that every individual is entitled to have a quality of life, and ask how particular aspects of a person's life might be enhanced or diminished by the decision.

IMCAs also act when people have a temporary lack of capacity because they are unconscious or barely conscious whether due to an accident, being under anaesthetic or as a result of other conditions.

Who can be an IMCA?

Individual IMCAs must have specific experience relating to people needing support to make decisions and experience of health and social care systems. They must be able to act independently, be of good character and undertake appropriate IMCA training. They will also be required to undertake enhanced Disclosure and Barring Service (DBS) checks.

The above information is drawn from the Office of the Public Guardian's publication OPG606 - Making decisions The Independent Mental Capacity Advocate (IMCA) scheme. [Click here to download the guide in full.](#)

This note is for information only and does not constitute legal advice.

The Brain Injury Group is a national network of legal and other professionals supporting individuals and families affected by brain injury. www.braininjurygroup.co.uk