

## INDEPENDENT MENTAL CAPACITY ADVOCACY – OVERVIEW



### WHAT IS INDEPENDENT MENTAL CAPACITY ADVOCACY?

Independent Mental Capacity Advocacy (IMCA) is a statutory advocacy role that was introduced in the Mental Capacity Act 2005. An advocate is someone who will speak up for you, or support you to speak up for yourself, if you don't understand what's happening to you, want to challenge a decision about your care or support, express your preferences or assert your rights.

An IMCA supports individuals who lack capacity to express their views, wishes and feelings about a particular decision. IMCAs do not make decisions themselves and they are independent of the decision makers.

IMCAs are appointed by the local authority or the local health board and anyone aged 16 or over, who is assessed as lacking capacity for certain decisions and processes is entitled to the support of an IMCA.

Some of the situations where an IMCA can help are:

-  When an NHS body wants to provide serious medical treatment to you.
-  When there are plans being made to change your accommodation, such as moving you into a care home.

In some cases, when you are deprived of your liberty and professionals apply for a standard or urgent authorisation to do this, under the deprivation of liberty safeguards.

An IMCA can support you when there is nobody willing or appropriate to be consulted with amongst your family or friends, but they are not mediators for disputes between your relatives / friends and other professionals.





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### What is meant by “mental capacity”?

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Mental capacity is a term used in the context of decision making. If you have an impairment of the functioning of your mind or brain, perhaps through illness or a brain injury, or alcohol or drug misuse, it is possible that you may find it difficult to make decisions for yourself. Your ability to make decisions can be assessed.

If you have an impairment, to be assessed as having capacity, you need to:

-  Understand the information relevant to the decision and,
-  Retain that information for long enough to make the decision and,
-  Use or weigh the information to make a decision and,
-  Communicate your decision.

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### What does “best interests” mean?

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Identifying what is in someone's best interests is not as simple as just stating your own opinion as to what you think is the best decision. Best interests in the Mental Capacity Act is a decision-making process.

To make a best interest decision for someone else, the Mental Capacity Act provides a checklist for the decision maker to follow, if someone is a decision maker for you, they must consider this checklist and also the underpinning principles of the Mental Capacity Act.

There is a separate factsheet on best interests.

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### What are the principles of the Mental Capacity Act?

There are 5 principles that underpin the Mental Capacity Act.

Principle 1 informs that you are presumed to have capacity for a decision, until it is established with a capacity test that you do not.

Principle 2 explains that all practicable steps must be taken to assist you to make a decision for yourself.

Principle 3 states that you must not be treated as unable to make a decision because you make an unwise decision.

Principle 4 instructs anyone making a decision for you to make that decision in your “best interests”, highlighted above.

Principle 5 explains that decisions made on your behalf should be made with regard to the least restrictive way of achieving the purpose of the decision. On balance, the decision should restrict your freedom of action and human rights as little as possible and when making a best interest decision, a decision maker cannot simply pick the cheapest option they have found, to the exclusion of all else.

### When must an Independent Mental Capacity Advocate (IMCA) be involved in a decision?

If the NHS is proposing serious medical treatment for you and you lack capacity for the decision, an IMCA must be instructed, if you have no one else other than the health and social care professionals linked to the decision, or paid staff, to support you.

Similarly, if the local authority or the NHS is proposing to arrange accommodation for you in hospital for more than 28 days, or a care home for over 8 weeks, an IMCA must be instructed, again, if you have no one else other than the health and social care professionals linked to the decision, or paid staff, to support you.

### What other circumstances do IMCAs support?

An IMCA can also be instructed where an individual lacks capacity in relation to decisions around their care plan and the person has nobody other than health and social care professionals linked to the decision, or paid staff to support them, in the care review.

If an individual is assessed as lacking capacity to decide about a specific protective measure in a safeguarding plan, a referral can be made to the IMCA service to represent and support the person in the safeguarding process.

In both of these cases, the decision maker has a discretionary power, rather than a statutory duty to refer to the IMCA service.

IMCAs can also work in some cases when an individual is deprived or is about to be deprived of their liberty and professionals have applied for a standard or urgent authorisation to do this, under the Deprivation of Liberty Safeguards (DoLS).



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### What do Independent Mental Capacity Advocates (IMCAs) do in their role?

An IMCA can support by:

Visiting you in a care home, hospital or other place.




If they have been appointed to support you, you should have the option to speak with them in private.

IMCAs are able to access your medical and social care records so that they are better able to represent you. This is slightly different to your right to access your own information.

IMCAs can meet with professionals and other people who are involved in your care or treatment.

IMCAs can represent your views and wishes and try to secure your rights, by challenging decisions that appear not to be in your best interests.

An IMCA will

-  Listen carefully to what you tell them about your views and feelings.
-  Support you to speak up or speak up on your behalf if needed.
-  Make sure you are involved in decisions being made about you.

### What is the Mental Capacity Act?

The Mental Capacity Act 2005, covering England and Wales, provides a statutory framework for people who lack capacity to make decisions for themselves, or who have capacity and want to make preparations for a time when they may lack capacity in the future. It sets out who can take decisions, in which situations, and how they should go about this.

### How can I make a referral?

Health and Social Care professionals have a duty to refer to the IMCA service in some circumstances and a discretionary power to refer to the service in other cases. If you are in any doubt whether a referral to the IMCA service should be made, please contact us.

Referrals to the IMCA service are usually made by Health or Social Care professionals, n-compass requires the decision maker for the proposed Best Interest decision to be identified, together with brief details of the decision that needs to be made.

## TO LEARN HOW ADVOCACY CAN HELP PLEASE GET IN TOUCH

The n-compass Digital Advocacy Hub provides free and impartial information on a range of common advocacy issues. n-compass delivers several advocacy services across the north of England.

**To find out if we deliver in your locality:-**

Website: <https://www.n-compass.org.uk/our-services/advocacy>

Sign video: <https://ncompass.signvideo.net>