

## INDEPENDENT MENTAL CAPACITY ADVOCACY – BEST INTERESTS

### 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.

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### What does 'best interests' mean?

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Making a decision in someone's best interests is making a decision for someone on their behalf when they lack the mental capacity to make that decision for themselves at the time the decision is to be made.

The best interest decision made should respect the person's rights, including their right to make what might be seen as an "unwise" decision. Making an unwise decision does not mean that the person lacks capacity for that decision.

Every best interest decision must accord with the "least restrictive" principle, one of five principles that underpin the Mental Capacity Act.

The mental capacity act does not define best interests, instead it gives a checklist to consider when making a best interest decision.

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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### Making a best interest decision

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It is important to note that best interests is not just an opinion, it is a 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.

The decision maker must not discriminate against you by making assumptions about what is in your best interests because of your age, appearance, condition or behaviour.

The decision maker must take into account all the relevant circumstances for the decision they are making. If they have a complicated decision to make, it is recommended that they use a 'balance sheet' approach, this is similar to a list of "pros and cons".

The decision maker should consider if you are going to regain capacity. If that is likely, they should delay making the decision, if they can.

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The decision maker should involve you in the decision as much as they can. They should try and find out what you want to happen and where possible you should still be involved in meetings and discussions.

The decision maker must consider your past and present views, wishes and feelings, where known, plus any beliefs and values you have that are likely to affect the decision.

The decision maker should consult with appropriate people before making their decision, this could include your carers, family, friends or advocate. The decision maker should apply a lot of weight in their list of pros and cons to any advance decisions you have made, the views or decisions made by your attorney if you have granted them a lasting power of attorney and the views of any deputy appointed or court order that is in place.

The decision made, on balance, should have the least restrictive impact on your human rights, such as your autonomy, liberty and dignity.

The decision maker should record their decision and be able to justify their decision and their reasonable belief that the decision is in your best interests. The amount of recording and analysis required increases with the size of the decision being made.

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### Who can be a best interests decision maker?

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The decision maker for the majority of best interest decisions is usually the carer responsible for day to day care. When bigger decisions need to be made about medical treatment, care arrangements or accommodation for instance, the decision maker might be a professional, such as a doctor, nurse, or social worker.



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### What is the balance sheet approach?

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The balance sheet is a way of weighing up the pros and cons of different options, when making a best interests decision. It is commonly used by judges at the Court of Protection, but it is also a method used by other decision makers such as social workers and doctors.

The balance sheet approach helps to set out the pros and cons, and also allows the decision maker to apply different weight to various factors. Your views, wishes and feelings are very important and carry a significant weight in the decision-making process.

When making a best interest decision, the decision maker cannot simply pick the cheapest option to the exclusion of all other factors.

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### What do Independent Mental Capacity Advocates (IMCAs) do?

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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.

## INDEPENDENT MENTAL CAPACITY ADVOCACY – BEST INTERESTS

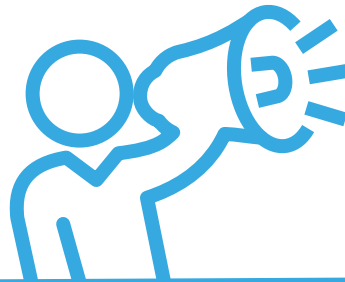
### What is the Mental Capacity Act?

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>