

INDEPENDENT MENTAL CAPACITY ADVOCACY – MENTAL CAPACITY

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.

What does 'mental capacity' mean?

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. Your ability to make decisions can be assessed, to see if you can make decisions for yourself.

It is possible to have an impairment of your mind or brain, but still have capacity to make many or all of your own decisions. An example could be if you have a diagnosed mental health condition, but your mental health condition is well managed or is in remission.

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.

How is my mental capacity assessed?

To make a decision for yourself, if you have a disturbance of the functioning of your mind or brain, you may need to show that you:

-  Understand the information relevant to the decision and,
-  Can retain that information for long enough to make the specific decision and,
-  Use or weigh the information to make the decision and,
-  Can communicate your decision.

You must be able to do all of these things, at the time the decision has to be made.

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What is an unwise decision?

Some people tend to make decisions that are risky or could be seen in other ways by others as being unwise.

For instance, you might like to go out alone in the evenings or go on remote walks in the countryside. That is your choice, but some might consider such decisions unwise.

People who care can sometimes confuse an unwise decision with a belief that you lack capacity to make the decision for yourself. It is a common mistake, often coming from a desire to protect people from potential harm.

If I lack capacity, can I still take risks?

If you are the sort of person who likes to take risks, the Mental Capacity Act can support you. The Mental Capacity Act can enable you to live your life the way you choose, or would have chosen, if you had capacity.

Carers and other professionals supporting you may make decisions with the sole aim of keeping you safe, rather than enabling your choice and independence. They may mean well, but in doing so they could be restricting you. A judge at the Court of Protection made the important point, “What good is it making someone safer if it merely makes them miserable?”

What this means in practice is that if people are making decisions for you that you lack capacity for, they still need to consider your previous views, wishes and feelings, prior to when you lost capacity for the decision, to support you to live your life the way you would wish. The Mental Capacity Act should be used to enable your autonomy and other rights, rather than being used primarily to restrict you.

If I lack capacity for a decision, who decides?

If you lack capacity to make a decision and that decision has to be made now, someone else will have to make that decision for you.

It is possible to lack capacity for some decisions, but still have capacity for many others, capacity is “decision specific”.

Your capacity to make a decision might fluctuate: you may have good days and bad, or you may be better able to make decisions when you are fully awake or have taken medication for any pain, for instance.

If someone has to make a decision for you, that is called making a decision in your “best interests”. To make a best interest decision for someone else, the Mental Capacity Act provides a checklist for the decision maker to follow and the decision maker must also consider the underpinning principles of the Mental Capacity Act.

Who can be a best interests decision maker?

The decision maker for the majority of best interest decisions is usually a care giver responsible for day to day care and support. 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.

There is a separate factsheet about best interest decision making.



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What do Independent Mental Capacity Advocates (IMCAs) do?

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>