

# The IMCA Service in Buckinghamshire

## Supporting people who lack capacity to make some decisions for themselves

The Independent Mental Capacity Advocate (IMCA) is a new type of statutory advocacy, introduced in the Mental Capacity Act 2005 for people who may lack capacity and have no family or friends able to assist them in taking important decisions.

The service is provided by organisations that are independent from the NHS and local authorities.

### The key principles of IMCA advocacy are:-

- The person has a legal right to an IMCA providing they meet the criteria.
- Staff in the NHS or local authorities, (for example doctors, care managers or social workers) all have a legal duty under the Mental Capacity Act 2005 to refer the person to the IMCA service.
- The advocacy is independent and objective.
- People who experience difficulties in communication have a right to be represented in decisions that affect their lives.
- The advocate protects the principles underpinning ordinary living, which assumes that every person has a right to a quality of life.

### What is the IMCA's role?

**The IMCA's role** is to represent and support a person who lacks capacity, so that the person is enabled as far as possible to participate in any relevant decisions about specific aspects of their care and welfare.

The IMCA role differs from other forms of advocacy in that NHS bodies and local authorities have a **legal duty** to instruct an **IMCA** :-

#### ▪ **Where serious medical treatment is proposed –**

Serious medical treatment is defined in the Act and covers a wide range of options including surgical and medical treatments, most of which are listed on the referral form.

#### ▪ **When a change in long-term accommodation is envisaged –**

Where an NHS body or local authority is proposing to arrange a stay in a local authority funded care home for more than 8 weeks, or

Where an NHS body proposes to place a patient in hospital – or move them to another hospital – for longer than 28 days.

#### **With two provisos:-**

- That the person lacks the capacity to make the specific decision; and
- There is **no appropriate** family member or friend who can be consulted, other than a paid worker.

**The local authority or NHS body have the power to instruct an IMCA in adult protection cases, accommodation care reviews and where there is a significant change proposed to a person's care plan.**

▪ **In adult protection Cases –**

An IMCA may also be instructed to support and represent a person who lacks capacity who :-

- May have been abused
- Has been neglected or
- Is alleged to be the abuser

In safeguarding cases, access to an IMCA is **not restricted** to people who have no one else to support or represent them. Therefore, in a given situation, people who lack capacity and have family and friends to speak for them can still have an IMCA to support them through the safeguarding process.

- **Local authorities or the NHS can only instruct an IMCA if they propose to take, or have already taken, protective measures.**

The point at which the IMCA should become involved in 'safeguarding adults' cases will depend on the circumstances of the case.

▪ **For accommodation care reviews –**

Providing the following requirements are met: -

- The local authority or NHS trust must have arranged the original accommodation and
- The person whose accommodation is being reviewed must lack capacity and
- There is no other appropriate person to consult.

Disputes over accommodation may also require an IMCA to be instructed. The dispute might be: -

- Between the views of family members and the perceived wishes of the service user.
- Where there is dispute between the family and the provider.
- Where there is a funding dispute between two provider authorities.

For disputes such as these the IMCA would **not** be responsible for resolving the dispute but would provide a person-centred view of the person's wishes and beliefs.

*For further guidance on local policy regarding adult protection cases and accommodation care reviews – see Bucks County Council, Mental Capacity Act 2005 Local Policy Document.*

▪ **For significant care plan changes –**

Where a **significant change** is being proposed in a person's care plan, or to a person's medication, even though a change of accommodation is not taking place, involvement of an IMCA in the discussion will ensure a person-centred view and the possibility of looking at alternative approaches.

**Who is likely to need an IMCA?**

A person with –

- A learning disability.
- Dementia.
- Acquired brain injury.
- Mental illness.
- A temporary loss of capacity – for whatever reason.

**Does the person need an IMCA?**

- Does the person have a condition, which is affecting their ability to make decisions?
- Is the person facing a decision about serious medical treatment or a long-term change in accommodation?
- Is the person subject to a care review concerning an accommodation change?
- Is a significant change being proposed in a person's care plan?
- Is the person 16 years or older?
- Does the person lack capacity to make the specific decision?
- Is there no one appropriate, other than a paid worker, who can be consulted about the decision?
- Is the person subject to adult protection/safeguarding procedures?

**Limitations to the service -**

**IMCA's do not need to be instructed if :-**

- The person has the capacity to make the decision for themselves.
- An urgent decision is needed.
- The proposed serious medical treatment, accommodation change or care review is under the terms of the 1983 Mental Health Act.
- The decision does not involve serious medical treatment, an accommodation change, adult protection, an accommodation care review or a significant change in a person's care plan.

- There is someone (other than a paid carer) willing and able to represent the person – i.e. a friend or family member.
- The person has appointed an Enduring Power of Attorney or Lasting Power of Attorney.
- The Court of Protection has appointed a deputy or nominee to act on the person's behalf.
- The decision is a financial one.

## Assessing Capacity

*Extracts from the MCA 2005 Code of Practice*

To help determine if a person lacks capacity to make particular decisions, the Mental Capacity Act sets out a two-stage test of capacity:-

### Stage 1: Does the person have an impairment of, or a disturbance in, the functioning of their mind or brain?

Stage 1 requires proof that a person has an impairment of the mind or brain, or some sort of disturbance that affects the way their mind or brain works. If a person does not have such an impairment or disturbance of the mind or brain, they will not lack capacity under the Act.

### Stage 2: Does the impairment or disturbance mean that the person is unable to make a specific decision when they need to?

For a person to lack capacity to make a decision, the Act says their impairment or disturbance must affect their ability to make the specific decision when they need to. But first people must be given all practical and appropriate support to help them make the decision for themselves. **Stage 2 can only apply if all practical and appropriate support to help the person make the decision has failed.**

A person is unable to make a decision if they cannot:-

1. Understand information about the decision to be made (the Act calls this 'relevant information')
2. Retain that information in their mind
3. Use or weigh that information as part of the decision-making process, or
4. Communicate their decision (by talking, using sign language or any other means).

*See chapter 3, MCA 2005 'Code of Practice' for guidance on ways of helping people make their own decisions.*

## The Decision-Maker

The person making the assessment and proposing to take action in relation to the care or treatment of an adult is known, in the context of the Act, as the 'decision-maker'. It is the decision-maker's responsibility to work out what would be in the best interests of the person who lacks capacity.

## Who should make the referral to the IMCA service?

If it is a **medical decision**, the appropriate NHS body will be responsible, for example, consultants or doctors. *For further information see Mental Capacity Act 2005 Code of Practice paras 10.42–10.50.*

For - **accommodation changes, adult protection cases, accommodation care reviews, or significant changes to a persons care plan** the local authority or NHS body will be responsible for making the referral. *For further information see Mental Capacity Act 2005 Code of Practice paras 10.8–10.12.*

Most importantly, a referral can only be authorised by the **professional responsible** for taking the decision on behalf of the person who lacks the capacity to make it themselves. Who that is, of course, will vary according to the nature of the decision.

### Further information on the IMCA service, Mental Capacity Act and B.C.C.

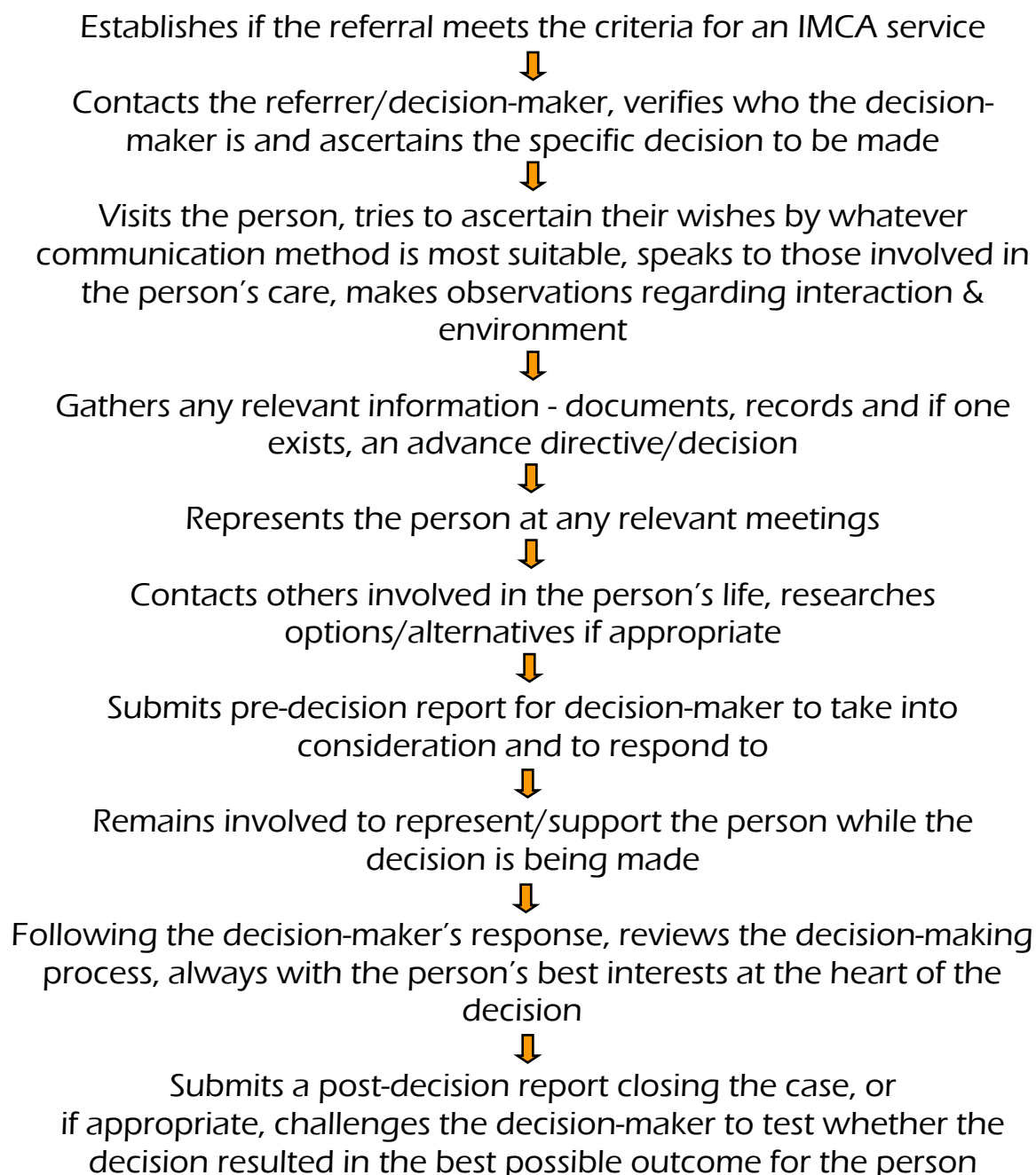
The IMCA Service:  
[www.dh.gov.uk/imca](http://www.dh.gov.uk/imca)

The Mental Capacity Act 2005 and  
The MCA 2005 Code of Practice:  
[www.dca.gov.uk/legal-policy/mental-capacity/index.htm](http://www.dca.gov.uk/legal-policy/mental-capacity/index.htm)

## How is a referral made?

To make a referral the decision-maker must fill in and return an IMCA referral form, available by email or as a paper form by contacting the IMCA service providers – details on page 5.

## What does the IMCA actually do?



## To contact the IMCA Service in Bucks:–

Telephone our dedicated landline  
**01296 397035**

For calls made out of hours a message can be  
left on the answer-phone.

Alternatively write or email to:

**Age Concern Buckinghamshire**  
145 Meadowcroft Aylesbury Bucks HP19 9HH  
Tel. 01296 397035 Fax. 01296 330783  
email: [advocacy@ageconcernbucks.org.uk](mailto:advocacy@ageconcernbucks.org.uk)  
(Charity Registration 204798)

*or*

**Aylesbury Vale Advocates**  
Pembroke Court 28 Cambridge Street  
Aylesbury Bucks HP20 1RS  
Tel. / Fax. 01296 432313  
email: [support@av-advocates.org.uk](mailto:support@av-advocates.org.uk)  
(Charity Registration 1063911)

