

IMCA – Appropriate to Consult

A guide for health and social care staff

Can I instruct an IMCA for someone who has family and/or friends?

If a person is facing a decision about a change of accommodation or serious medical treatment, has been assessed to lack the capacity to make that decision and has **no family or friends** who can be consulted about the decision then they are **definitely** eligible for IMCA.

If in the same situation described above a person does have family or friends a situation may exist where the person still needs an independent mental capacity advocate. **The term used in the Mental Capacity Act is that family or friends may not be 'appropriate to consult'.**

It is the decision maker's decision as to whether family or friends are appropriate to consult.

Who is 'Appropriate to Consult'?

In reference to MCA Code of Practice Chapter 10:

10.75: The Act does not define those 'whom it would be appropriate to consult' but consultation about a person's best interests shall include among others, anyone:

- named by the person as someone to be consulted on a relevant decision
- engaged in caring for them, or
- Interested in their welfare

10.76: The decision-maker must determine if it is possible and practical to speak to these people, and those described in paragraph 10.70 when working out whether the proposed decision is in the person's best interests. If it is not possible, practical and appropriate to consult anyone, an IMCA should be instructed.

10.77: There may be situations where a person who lacks capacity has family or friends, but it is not practical or appropriate to consult them. For example, an elderly person with dementia may have an adult child who now lives in Australia, or an older person may have relatives who very rarely visit. Or, a family member may simply refuse to be consulted. In such cases, decision-makers must instruct an IMCA – for serious medical treatment and care moves and record the reason for the decision.

10.78: The person who lacks capacity may have friends or neighbours who know their wishes and feelings but are not willing or able to help with the specific decision to be made. They may think it is too much of a responsibility. If they are elderly and frail themselves, it may be too difficult for them to attend case conferences and participate formally. In this situation, the responsible body should instruct an IMCA, and the IMCA may visit them and enable them to be involved more informally.

10.79: If a family disagrees with a decision-maker's proposed action, this is not grounds for concluding that there is nobody whose views are relevant to the decision. In adult protection proceedings the decision maker is able to bring in an IMCA even if there are family and friends available.

In summary, in the following situations a referral should be made:

- The family member or friend is not willing to be consulted about the best interest decision.
- The family member or friend is too ill or frail.
- There are reasons which make it impractical to consult with the family member or friend e.g. they live too far away.
- The person named by the client to be consulted feels that they do not know the person well enough to be involved.
- There is intense conflict within the family or with family and professionals disagreeing with the proposed course of action or with what would be in their relative's best interest to the extent that a decision cannot be made (not in Yorkshire & Nottinghamshire).
- There are allegations, suspicions or proved incidences of abuse by the family member or friend.
- The family member or friend is unwilling to involve the person whom the decision is about in the decision-making process.

If none of the above criteria apply, the person cannot be referred to the IMCA service.

Additionally:

- The decision maker should state clearly their reasons for requiring an IMCA where there is family/friend involvement on the IMCA referral form and in their own records.
- Where there are family/friends involved who are not deemed appropriate to consult with, or due to adult protection proceedings the decision maker should inform the family/friends of their decision to instruct an IMCA. The VoiceAbility 'F.A.Q's for Family and Friends' guidance should be forwarded to family and friends involved.
- Where a complaint is made about a decision to instruct the IMCA service, this should be made to the referring body i.e. the LA or NHS trust.
- Where a family/friend wishes to see the IMCA report they should approach the decision maker.

For further information or to make a referral please contact the IMCA referral line on
0300 330 5499 or email imca@voiceability.org
www.voiceability.org.

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