

Appendix 3: Example engagement protocol

1. Context

1.1 This document details the protocols agreed to by [local authority], [local health trusts] and [IMCA provider] and relates specifically and exclusively to the IMCA service.

2. Purpose

2.1 The purpose of this agreement is ensure that the IMCA service is made available to, and is effective to, those people who are eligible to receive it.

3. Instructions

3.1 The local authority/NHS will instruct IMCAs where there is a duty to do so under the MCA.

3.2 The local authority/NHS will use its discretionary powers to instruct IMCAs to ensure that people lacking mental capacity in relation to the relevant decisions have appropriate independent representation. The local authority/NHS will follow local policies for instructing IMCAs in these situations.

3.3. The decision as to whether an instruction should be made sits with the local authority/NHS and not the IMCA provider. This includes decisions about whether the person lacks capacity, the appropriateness of family and friends to represent them, and whether treatment is serious medical treatment.

3.4 Instructions must be made in writing by a person authorised to make the instruction.

3.5 On receipt of an instruction the IMCA provider must verify that it was made by an authorised person. The following details which people are authorised in relation to the different IMCA instructions.

- *Accommodation decisions and reviews*: an employee of the local authority or health trust proposing to make, or reviewing, the arrangements.
- *Serious medical treatment decisions*: an employee of the health trust which would provide the proposed treatment or a doctor with some responsibility for the decision.
- *Safeguarding adults*: the safeguarding manager, or an employee of the local authority or health trust with responsibility for taking the protective measures.
- *DoLS IMCA roles*: an employee of a health trust or local authority who holds delegated supervisory body functions.

3.6 Once the IMCA service confirms that the instruction was made by an authorised person the service must be provided. The IMCA provider will advise the instructor within 48 hours of instruction the name and contact details of the IMCA who will support and represent the individual.

3.7 If a different IMCA provider should have been instructed because of where the person is, the IMCA provider should advise the instructor of this as soon as they become aware of it, and ensure that the instruction is received and accepted by the appropriate IMCA provider.

3.8 If the IMCA provider has concerns whether an individual is eligible for an IMCA for any other reason than who made the instruction (e.g. the person having someone appropriate to consult) this may be raised at any time with the person making the instruction. A decision to withdraw an instruction sits with the instructor and not the IMCA service.

3.9 The instructor may at any time withdraw the instruction if they gain information that indicates that the person does not meet the statutory criteria.

3.10 Where instruction is withdrawn, the IMCA will cease representing the individual unless they have concerns about an aspect of the decision-making process. For example, if instruction is withdrawn because the person has been assessed as having capacity to make the decision the IMCA was originally instructed for, an IMCA might continue working with the person if they were challenging that assessment of capacity. If instruction is withdrawn, the IMCA's statutory rights of, for example, access to relevant records and meeting the person in private no longer apply.

3.11 Where the local authority/NHS instructs an IMCA and there are family or friends who are involved, it is the instructor's responsibility to advise them that an IMCA has been instructed and provide information about the IMCA service.

3.12 If [IMCA provider] receives an enquiry or referral in relation to someone who may meet the criteria for an IMCA instruction the following may occur:

- The IMCA provider will encourage the person to contact someone who would be authorised to make the instruction.
- The IMCA service may contact an authorised person directly to facilitate instruction.

3.13 If the IMCA service has a reasonable belief that an instruction was not made for an eligible person it may take formal action. This could include instigating a formal complaint to the appropriate body or making a safeguarding adult alert.

3.14 Decisions about which IMCA supports and represents an individual will be made by the IMCA provider. In line with the MCA Code of Practice IMCAs may hold multiple advocacy roles with an individual. This could include other IMCA roles and non-statutory advocacy.

4 IMCA reports

4.1 Written IMCA reports will be provided to the instructor for all instructions made.

4.2 The IMCA provider will, wherever possible, ensure that written reports (including interim reports where appropriate) are provided prior to decisions being made.

4.3 Where circumstances are such that time frames are very short (e.g. some serious medical treatment decisions), with the agreement of the decision-maker the IMCA will report verbally to the decision-maker and provide a written report after the decision has been made.

4.4 If the IMCA writing a report has not successfully completed the relevant units (305 and/or 310) of the qualification in independent advocacy, the report should identify the suitably qualified IMCA who has supervised the work.

4.5 The instructor will advise the IMCA of the outcome of the decisions within two weeks of making decisions.

4.6 The IMCA may ask for a written account of how regard was given to the IMCA's report or other representations (including verbal) in making decisions. This should be provided within one week where the IMCA provider identifies this as an urgent matter.

4.7 The IMCA will provide written confirmation to the instructor when they have ended their work with all individuals. This will include instructions where the instruction was withdrawn or the person died.

4.8 Any requests from other professionals, family members or friends to see IMCA reports should be addressed to the instructor/instructing body. They would need to make a best interests decision as to whether to share reports. IMCA reports may not be amended by the instructor. (Requests by any party for the IMCA provider to disclose personal records held under the Data Protection Act 1998 must be managed by the IMCA provider.)

5. Section 39A IMCA instructions

5.1 The supervisory body will instruct the IMCA provider within one working day of being alerted to the need for an S39A IMCA.

5.2 On receipt of an authorised instruction the IMCA provider will advise the supervisory body within one working day of the name and contact details of the IMCA who will support and represent the individual.

5.3 The supervisory body will ensure that all assessors and the IMCA are provided with contact details within one working day of that information being available.

5.4 The IMCA will contact the best interests assessor within one working day of being provided with their contact details.

5.5 An IMCA report will always be provided to the best interests assessor which must be considered by the assessor prior to completing the best interests assessment.

5.6 The IMCA may make representations to the supervisory body about the conditions, duration and selection of the person's representative if a standard authorisation is to be granted. The supervisory body will have regard to these representations when granting a standard authorisation.

6. Role of the IMCA

6.1 The IMCA service will be provided in line with the MCA 2005, its Regulations and [MCA Code of Practice](#) , and the [DoLS Code of Practice](#). Therefore the IMCA will have the following roles and functions.

6.2 The IMCAs role is to:

- support and represent the person who lacks capacity
- obtain and evaluate relevant information
- ascertain as far as possible the person's wishes and feelings
- ascertain alternative courses of action.

6.3 IMCAs have the following statutory powers:

- to meet the person in private where practical and appropriate
- to examine and take copies of relevant records (as set out in 35(6) of the MCA).
- to ask for second medical opinion.

6.4 IMCAs have the right to challenge any aspect of the decision-making process, if for example they have concerns about whether decisions comply with the MCA.

6.5 To ensure timely representation, where possible the IMCA and the instructor, decision-maker or assessor will agree initial time frames. This may include when an IMCA report needs to be submitted. Maintaining communication and negotiating changes to timescales is a joint responsibility.

7. The IMCA steering group

7.1 A steering group will meet to support the availability and effectiveness of the IMCA service.

7.2 Meetings will take place quarterly with the option of arranging additional meetings as needed.

7.3 Representations will include senior managers of the local authority, NHS trusts and IMCA provider.

7.4 Steering group members will have a role in trying to resolve disputes. Their focus will be the interests of the person who is represented by the IMCA service.

8. Agreement for resolving issues in the decision making process

8.1 Resolving any disputes is a joint responsibility of both the IMCA provider and the responsible body.

8.2 It is important that those responsible for making decisions communicate effectively, in a timely manner, taking into account each other's points.

8.3 Where the IMCA has concerns about the process or outcome of a decision:

- In the first instance the IMCA should speak to the instructor/decision-maker or assessor.
- If the IMCA still feels that the issue is unresolved they should refer it to that person's manager, or a relevant senior manager in the responsible body. The IMCA provider should provide a written account of what the concerns are.
- At this stage it may be appropriate to bring the concerns to members of the IMCA steering group. The members of the steering group will endeavour to support the timely resolving of issues and may suggest appropriate people/routes for the IMCA service to pursue issues with.
- If the IMCA still feels the issue is unresolved they can use the local complaints procedure.
- As a last resort, or where delay could go against the best interests of the person, the IMCA may seek permission to apply to the Court of Protection or judicial review.

8.4 The responsible body should make an application to the Court of Protection to decide on the matter if any of the following applies:

- There is a serious dispute between a responsible body and the IMCA provider about an aspect of the decision-making process.
- The outcome could have significant consequences for the person.
- It has not been possible to resolve using local processes, or the delay to try to do so could go against the person's best interests.

8.5 If the IMCA provider initiates or is involved in any legal action in its role of supporting and representing an individual, the responsible body will not seek an award of legal costs against the IMCA provider.

9. Confidentiality

9.1 Health and social care staff who come into contact with IMCAs need to be aware that they may share relevant information.

9.2 The IMCA provider will keep all personal information securely. This will comply with the [IMCA provider's] confidentiality policy and the Data Protection Act.

10. Complaints about the IMCA service

10.1 Where a complaint is concerned with the decision to instruct the IMCA service, this will be directed to the instructing body.

10.2 Where the complaint is concerned with the conduct or quality of the IMCA service this should be made in the first instance directly to the [IMCA provider].

10.3 The IMCA provider will advise the commissioner and steering group of any complaints raised about the service and the outcomes of these.

Acknowledgement

This example service specification is based on those developed between West Sussex and Wandsworth local authorities and Advocacy Partners.