

Independent Mental Capacity Advocate involvement in accommodation decisions and care reviews



The Social Care Institute for Excellence (SCIE) was established by Government in 2001 to improve social care services for adults and children in the United Kingdom. We achieve this by identifying good practice and helping to embed it in everyday social care provision.

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Foreword by the Association of Directors of Adult Social Services

The Association of Directors of Adult Social Services (ADASS) is the national organisation in England and Northern Ireland representing directors of social care in local social services authorities. ADASS members are responsible for providing or commissioning, through the activities of their departments, the well-being, protection and care of hundreds of thousands of people, as well as for the promotion of their well-being and protection wherever it is needed. Close formal and informal links are maintained with the NHS and with central government in helping to shape and implement policy and social care legislation.

Work on supporting the implementation of the Mental Capacity Act (MCA) 2005, including the additional Deprivation of Liberty Safeguards, is located within the ADASS Mental Health Drugs and Alcohol Network. Greg Slay (West Sussex County Council) has been our lead officer in this work since 2005, recently and ably assisted by Lindsay Smith (Halton Council) and Richard Smith (Telford and Wrekin Council).

We are pleased to be partners with the Social Care Institute for Excellence (SCIE), the Department of Health (DH), the Office of the Public Guardian (OPG) and many other organisations in improving practitioner awareness of the MCA 2005.

Moving home is a traumatic experience for most people, and the need for help and reassurance is always important. It is even more important that, where a person lacks the mental capacity to make this decision for themselves, the right support is available, both in planning the move and afterwards. We therefore commend this comprehensive guidance to those in local social services authorities or in the NHS who have a legal duty to refer to the Independent Mental Capacity Advocate (IMCA) service. We believe it will prove to be an invaluable tool to aid effective care practice at the initial involvement stage and later when care arrangements need to be reviewed.

The guidance will also be a useful reference document for the commissioners of statutory advocacy services.

Richard Webb (Sheffield Council) and Jonathan Phillips (Calderdale Council) Co-chairs,
ADASS Mental Health Drugs and Alcohol Network

Introduction

This practice guide concerning the involvement of IMCAs in accommodation decisions and care reviews is published by ADASS and SCIE. It aims to support the work of local authority and NHS staff who may need to instruct and work with IMCAs in relation to accommodation decisions and care reviews. It also sets out good practice for IMCAs.

The guidance was developed by SCIE through consultation with a wide range of stakeholders. Input was received from ADASS, NHS representatives, the DH and Action for Advocacy, in addition to a number of IMCA providers. The focus is on IMCA provision in England, although colleagues in Wales may find the document helpful.

Local authorities and NHS bodies are expected to have a policy setting out the criteria for deciding when an IMCA should be instructed to represent and support people who are having their care reviewed. Example policies for local authorities and NHS trusts based on the guidance are included in the appendices. It is suggested these are used as a starting point for the development of local policies, which should be developed in consultation with the IMCA provider and commissioning body.

Which accommodation decisions require an IMCA to be instructed?

There is a duty for local authorities or NHS bodies to instruct IMCAs for the following accommodation decisions where a person lacks capacity to make the decision themselves, and they are without family or friends who can represent them:

- admissions to any hospital that are likely to last for over 28 days
- moves to care homes that are likely to be longer than eight weeks
- moves to any other accommodation, funded by the local authority or primary care trust (PCT), that are likely to be longer than eight weeks.

IMCAs are not required for short-term or urgent moves. An example of this would be a planned respite stay lasting two weeks.

Where it appears that a short-term or urgent move could last for more than four weeks in hospital, or eight weeks for any other setting, an IMCA must be instructed. The IMCA's role here is to represent the person for the decision as to whether staying in the current accommodation represents their best interests.

The MCA Code of Practice says that IMCAs should be instructed where a person may remain living in accommodation which is deregistering as a care home (10.54). Similarly there should be IMCA instruction if the place where the person is living is registering as a care home.

It is good practice to instruct IMCAs for accommodation decisions in the following situations:

- The local authority is making or changing support arrangements which may allow a person to remain in their own home, when a move to a care home is a serious consideration.
- Moving a person to a different service on the same site. For example, a different building on an NHS campus or a different unit within an older people's care service. This is because such a move could have a similar impact for the person as a move to a different location.

Practice example

Mr Malik was admitted to hospital in an emergency admission after a brain injury caused by a road accident. After urgent treatment his condition stabilised. He was then assessed as lacking capacity to make decisions about his treatment, including whether or not to stay in hospital. Without family or friends to represent him, the ward manager instructed an IMCA. There were two separate instructions.

The first was in relation to Mr Malik's ongoing treatment. The second was for an accommodation decision as it was expected that his stay in hospital would be longer than 28 days. It was recognised that Mr Malik could regain capacity to make some decisions for himself about his treatment

If the person has a power of attorney or deputy

The MCA was amended to make IMCAs available to people who have either an attorney, created by either a lasting power of attorney or enduring power of attorney, or deputy whose decision-making powers do not cover the reason for IMCA instruction (MCA Section 40(1)).

For accommodation decisions the duty to instruct an IMCA does not apply if the person has a personal welfare lasting power of attorney or a personal welfare deputy with powers to make decisions about where the person lives. Otherwise, an IMCA should be instructed where the other eligibility criteria are met.

The most common situation instructing bodies will come across is a person having a property and affairs lasting power of attorney or deputy. This should not affect the person's eligibility for any IMCA instruction for accommodation decisions. An IMCA instructed here would need to consult with the attorney or deputy on any financial issues raised for the person by the choice of accommodation.

Exclusions for people subject to the Mental Health Act 1983

An IMCA does not need to be instructed for an accommodation decision if the person is being required to stay in the accommodation under the Mental Health Act (MHA) 1983. This includes detention in hospital under Section 2 (assessment) or Section 3 (treatment). It also includes guardianship orders which specify where a person should live.

An IMCA may be required to represent a person when they are discharged from hospital. This includes when the accommodation is made under Section 117 (aftercare arrangements), if there is no requirement for the person to live in the proposed accommodation – i.e. the person, if they had capacity, would be able to exercise a choice.

An IMCA should be instructed if it is proposed that a person will remain in hospital for more than 28 days as an informal patient, including after being discharged from a section of the MHA1983.

Accommodation decisions and the Deprivation of Liberty Safeguards

If a proposed move is subject to a request for a standard authorisation under the Deprivation of Liberty Safeguards, there is no requirement to instruct an IMCA specifically for the accommodation decision. This is because the person is entitled to a Section 39A IMCA if there is no one appropriate to consult (amended MCA Sections 38(2)A, 39(3)A).

Once formal authorisation of a deprivation of liberty is in place, any further accommodation changes where the person will be subject to a new standard authorisation will not require an IMCA to be instructed. This is because the person should be represented by their relevant person's representative (MCA Section 39A(6)).

Similarly, an IMCA is unlikely to be required for accommodation arrangements immediately after an authorisation for a deprivation of liberty ends. This is because the relevant person's representative (whether paid or otherwise) is not considered as providing care or treatment in a professional capacity (MCA Sections 38(10), 39(7)) and so is expected to provide independent representation for the subsequent accommodation decision. If there is some delay to an accommodation decision after an authorisation ends, an IMCA may need to be instructed because the representative's role ends with the authorisation.

Self-funders

The Code of Practice (10.56) says IMCAs should be instructed for people who fund all their own accommodation, if the local authority:

- carries out an assessment under Section 47 of the NHS and Community Care Act 1990, and
- decides it has a duty to the person (under either Sections 21 or 29 of the National Assistance Act 1947 or Section 117 of the MHA 1983).

Self-funders who have been assessed as lacking capacity to make decisions about their accommodation are unlikely to have capacity to make decisions about payment. Often they will have an attorney, set up by an enduring or lasting power of attorney, to manage their money. In other situations, particularly where a person recently lost capacity, or a spouse or civil partner who previously managed the finances recently died, an application may need to be made to the Court of Protection to appoint a deputy to manage the person's property and affairs. (See *If the person has a power of attorney or deputy* section, which looks at IMCA eligibility in these cases).

Which care reviews can IMCAs be instructed for?

Local authorities and NHS trusts have the power of instructing an IMCA when they are undertaking reviews for individuals staying in accommodation arranged by a local authority or NHS trust, including care homes and hospitals.

Reviews include:

- care reviews for people in accommodation arranged by the local authority
- reviews undertaken by PCTs for those people who are receiving continuing healthcare
- care plan reviews undertaken by NHS trusts for inpatients.

The requirements are:

- the person lacks capacity to make a decision about their accommodation
- there are no family and friends who are appropriate to consult
- the person has been staying, or is likely to stay, in the accommodation for a continuous period of more than 12 weeks.

This power does not apply if the person is required to live in the accommodation while detained under the MHA 1983 or if they are subject to an authorisation under the Deprivation of Liberty Safeguards.

Where a person meets the requirements for IMCA instruction in care reviews, local authorities and NHS trusts must consider in every case whether to use this power based on their assessment of the potential benefit to the person. If the power to instruct an IMCA is not used, it is good practice to record the reasons why in the care review record.

The MCA Code of Practice (10.61) expects local authorities and NHS bodies to have a policy setting out when this discretionary power to instruct IMCAs is used. The appendices provide template policies which can be adopted by local authorities and NHS bodies.

When should reviews take place?

Because needs are likely to change over time, local authorities are expected to undertake regular reviews. DH guidance says that good practice is to undertake a review within three months of a person moving to new accommodation or where there have been other major changes to the support plan. Otherwise, reviews should take place at least annually. The guidance, contained in Prioritising need in the context of

Putting People First (DH 2010a) says that 'adults lacking capacity are likely to need more frequent monitoring arrangements than other service users' (Section 146).

For people receiving continuing healthcare, the NHS continuing healthcare practice guide (DH 2010b) recommends that reviews should similarly take place by the relevant PCT within three months of the decision to provide continuing care, and then at least annually.

For hospital patients it would be appropriate for the frequency of reviews to reflect these two guidance documents. This would include a review within three months of admission to hospital.

Who should instruct the IMCA?

Local authorities and NHS trusts are accountable for compliance with the law with regard to IMCA instruction for accommodation decisions and care reviews.

Responsibility sits with:

- the local authorities if the accommodation is provided as a consequence of an assessment carried out under the NHS and Community Care Act 1990
- the NHS trust managing the hospital where an eligible person is an inpatient
- the NHS trust arranging and funding healthcare in an independent or voluntary hospital
- the NHS trust funding accommodation as part of NHS continuing healthcare.

It is a legal requirement that IMCAs check that the instruction has come from an authorised person. Local authorities and NHS organisations may authorise a wide range of people to instruct IMCAs. This helps to ensure that the legal duty to instruct an IMCA in accommodation decisions is met for all eligible individuals.

Good practice is for the following professionally qualified people to be authorised to instruct IMCAs:

- social workers
- community nurses, including community psychiatric nurses
- care managers
- admission nurses
- occupational therapists
- ward managers
- PCT commissioners.

It is possible for local authorities and NHS trusts to authorise people other than their own employees to instruct IMCAs. This may be particularly appropriate where there are joint health and social working arrangements. Examples include primary care mental health services.

The commissioning document of the IMCA service and/or local engagement protocol should specify who is authorised to give instruction. This information should be made available to all those people who can and should instruct.

The mental capacity assessment

For an IMCA to be instructed, either for an accommodation decision or care review, the person must be assessed as lacking capacity to decide about their accommodation arrangements.

Under the two-part mental capacity test, there first needs to be evidence of an impairment of, or a disturbance in, the functioning of the mind or brain. Examples of these include dementia, significant learning disabilities, brain injury and conditions associated with some forms of mental illness.

The second stage investigates whether the person is able:

- to understand information relevant to the decision
- to retain that information
- to use or weigh that information as part of the process of making the decision
- to communicate the decision.

Information relevant to decisions about accommodation arrangements is likely, at a minimum, to include having some knowledge of:

- At least one alternative to the proposed or current placement (e.g. staying in their own home, or knowing about another service which could be suitable).
- The support that is, or would be, provided in the accommodation – including why it may benefit them personally. For example: help with personal care to avoid pressure sores; support with medication to make sure it is taken regularly; or having 24-hour supervision because of a risk of harm.

For decisions to move to hospital, or reviews taking place in hospital, there needs to be some understanding of:

- the treatment being provided and why this could be of benefit
- the risks of an extended stay in hospital – for example, loss of daily living skills or increased risk of infection
- what could happen if they stayed at, or returned, home.

The MCA requires people to be given all possible support to make their own decisions. This includes making sure there is time to talk through the positives and negatives of different accommodation options.

In most cases the mental capacity assessment will be undertaken by a care manager, social worker or nurse responsible for making, or reviewing, the accommodation arrangements.

Where there are concerns about the outcome of a mental capacity assessment, good practice is to seek a more specialist assessment (e.g. from a senior practitioner or an MCA Deprivation of Liberty Safeguards best interests assessor).

Extra care needs to be taken where there are differences of opinion as to whether a person has capacity to make what might be considered an unwise decision (e.g. wanting to stay in their own home when there are concerns about self-neglect or abuse). In such situations an application may need to be made by the local authority or NHS trust for the Court of Protection to make a decision about the person's capacity.

While capacity assessments should be undertaken before instructing an IMCA, the MCA does not require IMCAs to be provided with a written copy of a mental capacity assessment before working with an individual. If an IMCA does have concerns about the persons' capacity after they have started their work, it is then appropriate to seek information about the mental capacity assessment.

When there is no one appropriate to consult

The MCA requires IMCAs to be instructed for accommodation decisions where 'there is no person, other than one engaged in providing care or treatment for P in a professional capacity or for remuneration, whom it would be appropriate for them to consult . . .'
(Sections 38(1)b, 39(1)b).

The option to involve an IMCA in care reviews has the same condition of there being 'no person . . . who it would be appropriate . . . to consult' (MCA 2005 (IMCA) (Expansion Regulations) 2006, Section 3(c)).

The MCA Code of Practice says that the IMCA safeguard is intended for 'those people who have little or no network of support, such as close family or friends, who take an interest in their welfare or no one willing or able to be formally consulted in decision-making processes' (10.74). It provides guidance about when an IMCA should be instructed in cases where a person has some contact with family or friends:

- where relatives live overseas or rarely visit (10.77)
- where friends or neighbours are unable to attend meetings or are unwilling to be included formally in the decision-making process (10.79).

Family disagreeing with proposals is not in itself a justification for instructing an IMCA (10.79). Similarly, it is not necessary for such a family member or friend to be available to attend meetings as long as they have the opportunity to contribute to them in another way – for example, by speaking to a social worker before and after a meeting.

Whose decision?

It is the decision of the local authority or NHS trust whether the person requires an IMCA because there is no one appropriate to consult. If an IMCA is instructed and it is the view of the IMCA that this should not have happened because there is a family member or friend who can represent the person, this should be discussed with the instructor (who may choose to withdraw the instruction). However, the IMCA should not refuse the instruction (this should be written into local engagement protocols – see SCIE Guide 31).

If an IMCA is instructed where there is some contact with family or friends, decision-makers should let them know about the involvement of the IMCA (MCA Code of Practice, 10.14). Their views should still be sought in relation to the decision.

Any complaints about why an IMCA has been instructed when there are family and friends involved should be directed to the person who made the instruction (see SCIE Guide 31).

Practice guide for people with limited contact

This guide suggests that the following questions should be considered by local authorities and NHS trusts to help decide if an IMCA should be instructed where there may be limited contact with family or friends.

Are there family or friends who:

- Have a good knowledge of the person through significant contact (even if a lot of this was some time ago)?
- Have the confidence to speak up about the person's needs and wishes. For example, would they be able to make a complaint?
- For accommodation decisions (other than admission to local hospitals), have the opportunity to view the proposed accommodation before a decision is made?
- For care reviews, have visited the person recently in their current accommodation?

Other advocate involvement

Local authorities and NHS trusts have the power of instructing an IMCA when they are undertaking reviews for individuals staying in accommodation arranged by a local authority or NHS trust, including care homes and hospitals.

Reviews include:

- care reviews for people in accommodation arranged by the local authority
- reviews undertaken by PCTs for those people who are receiving continuing healthcare
- care plan reviews undertaken by NHS trusts for inpatients.

The requirements are:

- the person lacks capacity to make a decision about their accommodation
- there are no family and friends who are appropriate to consult
- the person has been staying, or is likely to stay, in the accommodation for a continuous period of more than 12 weeks.

This power does not apply if the person is required to live in the accommodation while detained under the MHA 1983 or if they are subject to an authorisation under the Deprivation of Liberty Safeguards.

Where a person meets the requirements for IMCA instruction in care reviews, local authorities and NHS trusts must consider in every case whether to use this power based on their assessment of the potential benefit to the person. If the power to instruct an IMCA is not used, it is good practice to record the reasons why in the care review record.

The MCA Code of Practice (10.61) expects local authorities and NHS bodies to have a policy setting out when this discretionary power to instruct IMCAs is used. The appendices provide template policies which can be adopted by local authorities and NHS bodies.

When should reviews take place?

Because needs are likely to change over time, local authorities are expected to undertake regular reviews. DH guidance says that good practice is to undertake a review within three months of a person moving to new accommodation or where there have been other major changes to the support plan. Otherwise, reviews should take place at least annually. The guidance, contained in Prioritising need in the context of Putting People First (DH 2010a) says that 'adults lacking capacity are likely to need more frequent monitoring arrangements than other service users' (Section 146).

For people receiving continuing healthcare, the NHS continuing healthcare practice guide (DH 2010b) recommends that reviews should similarly take place by the relevant PCT within three months of the decision to provide continuing care, and then at least annually.

For hospital patients it would be appropriate for the frequency of reviews to reflect these two guidance documents. This would include a review within three months of admission to hospital.

What if there are concerns about an IMCA not having been instructed?

Anyone may come across a situation where they believe an IMCA should have been involved in either an accommodation decision or care review. There may also be times when an IMCA was involved but decisions were potentially made without adequate support and representation. The responsibility here could be with the local authority, NHS trust or the IMCA provider.

The SCIE IMCA commissioning guidance suggests that it is good practice for formal complaints to be submitted when such concerns arise (SCIE, 2009). This should be regardless of whether the outcome of the accommodation decision or care review is being disputed.

NHS continuing healthcare eligibility assessments and reviews

Assessments for NHS continuing healthcare funding must be undertaken by PCTs when ongoing health services may be needed. For example, assessments should be carried out:

- when a person is discharged from hospital
- if a person's physical or mental health deteriorates significantly
- before the NHS pays for some or all of the costs for a care home place.

NHS continuing healthcare can be provided in any setting, including registered care homes or a person's own home. Where a person is assessed as needing continuing healthcare this should be reviewed within three months of the initial decision, and then at least every year. One aspect of such reviews is to ensure the person's needs are being met. The person's eligibility for continuing healthcare may also be reassessed.

The outcome of both assessments and reviews could be a change of accommodation for the person. Therefore the statutory duty to instruct an IMCA to support and represent the person for either an assessment or review may apply.

Practice guidance published by the Department of Health (2010b) states that an IMCA should be instructed as soon as there is a preliminary view that the outcome of the assessment is that a change in accommodation is likely. It also states that the final decision should not be made until an IMCA report has been considered by the decision-maker. While it may be possible for either a local authority or PCT to instruct the IMCA, the guidance suggests good practice is for the PCT undertaking the continuing healthcare assessment to do this.

When an IMCA is instructed because there may be a change in accommodation, they should support and represent the person in relation to the accommodation decision. Their role is not to represent the person during the eligibility assessment.

If an IMCA has been unable to resolve any serious concerns about the outcome of the accommodation decision, this can be addressed through the usual routes. In some cases it may be appropriate for the IMCA to challenge the outcome of the eligibility assessment where this directly informed the accommodation decision (e.g. if the person has to move because they are no longer eligible for continuing healthcare).

Eligibility decisions are not 'best interests' decisions. Therefore it would be wrong to argue that an eligibility assessment was not in a person's best interests. Instead, the IMCA may wish to question whether adequate attention was given to a person's needs, or how the eligibility criteria were interpreted in the specific case. If disputes about eligibility cannot be resolved informally, one option is for the IMCA to ask the strategic health authority to undertake a review.

PCTs are expected to be proactive in ensuring that advocacy services are available to people who may be eligible for continuing NHS healthcare (DH 2010b). This includes using the discretionary power to instruct an IMCA when undertaking care reviews for people whose accommodation is funded by the PCT under NHS continuing healthcare. It would also include making available other advocacy services to specifically support people during eligibility assessments as this is outside the IMCA's role.

Closing and deregistering services

Closing services

People living in a service due to close may require an IMCA to be instructed for accommodation decisions. The responsible local authority or NHS trust should instruct IMCAs as soon as it becomes clear that a service may be closed, regardless of how long the closure may take. This is to allow early representation by an IMCA who may, based on their understanding of the person's needs and wishes, decide to:

- challenge a proposed closure as not representing the person's best interests
- make representations about the time before closure that the person should move, rather than, for example, assuming they will remain there until just before the closure.

Deregistering services

The Code of Practice says that IMCAs should be instructed where a person may remain living in accommodation which is deregistering as a care home (10.54). When this happens the options that need to be considered are:

- the person continuing to live in the home with it remaining registered
- the person continuing to live in the home when it is unregistered as a care home
- the person moving to other accommodation.

The IMCA will focus on the following implications for the person if the home deregisters:

- changes to how the person's needs will be met
- physical changes to the building – for example, not having an office on site
- who will be responsible for the tenancy as it is possible that the person will be unable to consent to it themselves
- changes to the staffing arrangements
- changes to the person's finances and who will manage these
- changes to the way the service will be inspected and regulated by the Care Quality Commission (CQC).

Hospital discharge

A common IMCA instruction involves patients in hospital where a decision needs to be made about where they are discharged to. There are pressures for these decisions to be taken in a timely manner. Most importantly, it will usually be in a person's best interests to leave hospital after they have been declared ready for discharge. This will, for example, reduce the risk of a hospital-acquired infection. There are also financial pressures.

IMCA instruction should happen as soon as a potential accommodation decision arises (and not wait until the person has been judged ready for discharge). It is good practice for people who may be eligible for an IMCA – for either serious medical treatment or accommodation decisions – to be identified on admission.

The Community Care (Delayed Discharges etc.) Act 2003 set out how local authorities and health trusts should work together to minimise delayed discharge. There is a responsibility for the health body to advise the local authority if someone may need community care services on discharge in advance of the decision to discharge. The health trust could at this point advise the local authority if an IMCA may need to be instructed. Local authorities are required to produce discharge plans within fixed timescales and where they do not achieve this they can be fined by the health authority.

IMCAs may need to assert that this specific act does not remove both authorities' responsibilities to comply with the MCA in regard to making best interests decisions. They should ensure that there is adequate time to explore options, paying particular attention to the possibility of the person returning to where they lived before the admission as this may be the least restrictive option. This may in turn require introducing or increasing a package of support and home adaptations. An interim move may be suggested – for example, to allow adaptations to a home to be made, or for a fuller exploration of the person's best interests.

Practice example

Peter, an IMCA, was instructed to represent Mr Hill who had been admitted to hospital following a fall. While there he was diagnosed with dementia. A decision needed to be made about where he was to be discharged to. Peter met Mr Hill twice while in hospital. Mr Hill expressed clearly that he wanted to go home. He also talked about his belief in God and how he and his wife used to sing along to Songs of Praise when it was on television. While Mr Hill responded to some questions in a limited way, he became very animated when Peter asked him about animals and talked about his love of birds.

Peter contacted Mr Hill's neighbour who had known him for over 20 years. The neighbour described the importance of Mr Hill's garden and how he fed the birds even when he was not eating himself.

A best interests meeting was held with Mr Hill on the ward, chaired by his social worker. It was decided that it wasn't in Mr Hill's best interests to return home. Two care homes were being considered. It was agreed that Peter would visit both homes and afterwards meet with Mr Hill to show him the photographs he would take.

A further best interests meeting agreed that one home was preferable because it had a ground floor bedroom available which opened onto a secure garden. The manager of this home said they could support Mr Hill to feed birds in this garden and make sure he did not miss Songs of Praise. Mr Hill was supported to visit this home before a final decision was made.

Peter recommended that an IMCA was instructed again for the care review which was scheduled two months later. He also checked that the home had a good record of Mr Hill's views and wishes recorded in the care plan.

(Example provided by Asist advocacy services in Staffordshire)

The IMCA role and personalisation

Once the IMCA has checked that they have been instructed by an authorised person, it is for them to decide the best way to support and represent the person in relation to the accommodation decision or care review. The IMCA should make sure that the person's views, needs and wishes are central to the decisions being made.

Health and social care services are being transformed by personalisation. Put simply, this means giving people as much choice as possible about and control over the support they receive. One aspect of this involves extending opportunities for personal budgets and direct payments. But it is equally about services arranged by local authorities and NHS trusts.

Direct payments are available to people lacking capacity to manage them (DH 2009). However, few people receiving the IMCA service would have someone available to be appointed as a 'suitable person' to manage them on their behalf. This means that generally IMCAs should be looking to ensure that people have as much choice and control over the services which are arranged for them as possible, so that these services are personalised to their wishes and views.

For accommodation decisions, IMCAs need to look beyond the choice of accommodation to how well the support which will be provided will be personalised. In this respect there is a huge overlap with the IMCA's role in care reviews.

The opportunity for personalised support in any setting will depend on the service being able to access information about the person's:

- relationships
- history
- interests
- religion and culture
- preferences, including diet, clothes and personal care
- financial situation.

Many people who access the IMCA service will be in a poor position to provide this vital information themselves. Where it is available from the person it might be vulnerable to memory loss. It is also unlikely that there will be family or friends who can be relied upon to provide this.

IMCAs are in a unique position to draw together this information through their contact with the person, contact with others – including staff in previous services – and access to records. Gathering this information could make a measurable positive difference to

the person's life. One approach is to attach this as an appendix to the IMCA report and to provide the appendix to the service provider. An example is provided in Appendix E.

Practice example

June, an IMCA, was instructed for an accommodation decision for Betty, a woman with dementia, where there were plans for her move to a care home which could provide a higher level of support. Although Betty had a property and affairs deputy to look after her financial affairs, the deputy legally could not make any decisions about her care arrangements.

June looked at the CQC reports about the proposed care home. She then spent time collecting information about Betty by speaking to staff in the home where Betty had been living for eight years. June learned that Betty disliked wearing trousers, would choose not to drink coffee and enjoyed going out. June subsequently provided this information in a summary report that she gave to the new care home and which is now kept with Betty's new care plan.

Betty's property and affairs deputy paid the fees for the home on Betty's behalf. June spoke to the deputy who agreed it was in Betty's best interests to pay the new home an additional fee which would provide for one-to-one support for Betty to go out at least twice a week. June also learned that a friend sent Betty a card on her birthday and occasionally visited Betty. Although June got the name they could not find any contact details. June made sure that contact details for Betty's new home were easily available for when the friend made contact again. They also suggested the old home take her details and pass them on to the new service.

Practice example

A social worker instructed an IMCA to represent a Raj, a 45-year-old man with mental health needs who was living at home alone, with some support. The social worker was proposing that he move into a care home after a number of serious incidents related to his alcoholism. These had resulted in several hospital admissions.

The IMCA visited Raj and discovered he was very clear about wanting to stay in his own home. He did however say he was lonely and bored. He also said that he didn't like the pre-packaged food that he was receiving. Raj wanted to have curries which he used to make himself until the gas supply was cut off because of unsafe use.

The IMCA met with the social worker and they discussed different ways to support Raj to remain in his own home. A revised package of

care was put together. This included a regular visitor to go out with Raj, and arranging for a local Indian restaurant to deliver lunches. The visitor supported Raj to return to playing bowls which he had always enjoyed.

(Example provided by Advocacy in Somerset)

Agreeing timescales

Elsewhere in this guide the importance of early IMCA instruction has been identified. This is to give the person the maximum opportunity to be supported and involved in the decision. After instruction the decision-maker and IMCA should agree the date by which the IMCA should make their representations. This is the same period in which the IMCA will need to submit a report before final decisions are made about the person's accommodation or the care review is completed. The date agreed should balance the following factors:

- the person having a good opportunity to be supported and represented by the IMCA
- the risk of delaying decisions having a potentially negative impact on the person (e.g. a vacancy in a suitable service going to someone else)
- the competing priorities of both the decision-maker and the IMCA service.

In some cases it will be necessary to renegotiate the agreed timescale. Timescales for report submission may be included in local IMCA engagement protocols agreed with the commissioning agency or agencies.

Access to records

IMCAs have the power to access and take copies of relevant records (MCA, Section 35(6)). This covers:

- any health record (including those held by GPs, dentists and hospitals)
- any record of, or held by, a local authority and compiled in connection with a social services function (including care assessments, eligibility decisions, care plans and safeguarding adults records)
- any record held by a person registered under Part 2 of the Care Standards Act 2000 (this includes residential and domiciliary care providers, adult placement schemes, private and voluntary healthcare providers; records could cover care plans, assessments, daily logs and shift plans).

It is for the body holding the record to decide whether a particular record is relevant to the IMCA's role.

Local authority care assessments and care plans

Section 47 of the NHS and Community Care Act 1990 imposes a duty on local authorities to carry out an assessment of need for community care services with people who appear to them to need such services. It would be unlawful for an accommodation decision (aside for urgent decisions) to be made before such an assessment has been completed. Local authority care plans record how the person's eligible needs will be met. A care plan should be completed before a final decision is made about a person's accommodation, otherwise the person could be facing a move without a clear understanding about whether and how their needs will be met. Once support is identified in the care plan there is a legal requirement for this to be provided. It cannot be withdrawn without a reassessment.

IMCAs should access and scrutinise both the assessment and care plan prior to submitting a final report for both accommodation and care reviews.

IMCAs may make representations with regard to the content of both the assessment and care plan to ensure the person's needs and wishes are appropriately addressed. Similarly, the person drawing up these documents may request the IMCA's input.

It is very important that IMCAs pay close attention to these documents for the following reasons:

- If the IMCA does not raise concerns about the assessment or care plan, the local authority may wrongly assume that the IMCA supports every aspect of the plan.
- If the IMCA formally challenges an accommodation decision, the local authority may defend its position by identifying how it meets the needs identified in the care

assessment and the care plan. In such cases the IMCA should be able to demonstrate how and when they raised concerns about these documents (e.g. emails identifying factors which may not have been considered).

- Future care reviews (which may not involve an IMCA) are likely to focus on ensuring the local authority care plan is being adhered to. Such reviews may be undertaken by someone who has no previous knowledge of the person.

Other records which may be requested by IMCAs

In addition to the local authority care assessments and care plans there are a range of other documents which may be relevant to the IMCA's work. These include:

- assessments, including specialist assessments by physiotherapists, speech and language therapists or occupational therapists
- care plans produced by the service provider which identify how it will meet the person's needs
- the information brochures provided by care providers
- daily logs which typically record the support that has been provided, which can be very useful in assisting care reviews to evidence whether what is set out in the care plan has been met.

Care Quality Commission reports

The CQC website contains assessment reports for the providers of health and social care including care homes, domiciliary care providers, hospitals and mental health units. These reports will provide a more objective picture of the quality of the home than the IMCA is likely to be able to gain from any visits.

Good practice is for IMCAs to access the most recent report for the service if involved in a care review or where the service is being considered in relation to an accommodation decision.

In addition to looking at any overall rating, the IMCA should identify if there are any particular issues raised in the report for the service which may indicate whether it would be particularly suitable or unsuitable for the person. For example, if the report raised concerns about the giving of medication and the person had complex needs in this area, then additional attention should be given to whether the care provider is able to meet these needs.

Key factors for best interests decisions

One part of the IMCA's role is to ensure that the person's views and wishes are central to best interests decisions. There are different factors which need to be balanced when making these decisions. These include the opportunity for the person to maintain important relationships, how well the person will manage any move, and the cost of different service options. The IMCA role also involves finding out what alternative options there might be.

Maintaining relationships

Accommodation decisions and care reviews should consider the person's opportunity to maintain important relationships. This includes family and friends but may also extend to other service users and paid carers.

Important relationships with staff and other service users are eligible for the protection of the right to a family life under Article 8 of the European Convention on Human Rights (see e.g. EWHC 621(Fam) (2010)). In addition to putting restrictions on statutory bodies from separating families, Article 8 also gives them obligations to actively support family life.

IMCAs will want to check the following:

- There is a good record of who is important in a person's life. Knowing who these people is essential because the person's own memory may be unreliable and changes in staff can mean that this information is lost. As well as during a person's life, this knowledge may be vital when they die.
- Services are proactive about supporting relationships, and so go beyond saying the person 'can have visitors'.
- Different ways of keeping in touch are considered. This may include the person visiting other people who, for example, may find it hard or impossible to travel themselves (they could be in hospital with a terminal illness). It may also include supporting the person to make phone calls or write birthday cards.
- Attention is given to any practical support which is necessary to maintain relationships – not only for the person but also for those people they would want to meet up with. For example, having staff available to support the contact, and meeting transport costs.

This is an area of work which may not be a high priority in all services. It is also one in which IMCAs can make a significant positive impact by, for example, making a record of who is important and making suggestions in terms of how best contact can be maintained.

How the person will manage a move

A common concern for accommodation decisions is the potential impact on the person of moving, especially when this may be avoidable. Examples of such situations include:

- a move into short-term accommodation in advance of a more permanent move when there is an option to stay in the current accommodation
- a move from a home which is assessed as providing an inadequate standard of care
- a move forced by a local authority because it is unwilling or unable to pay the level of fees set by the service
- a move from a home that is due to close when the closure could be challenged.

Research has explored what happens to people who move home, and most of these studies have considered older people. The research has attempted to measure psychological and physiological changes in addition to any changes in mortality rates. A large review of this research found that it is difficult to make general comments about what might happen because people's circumstances vary so much (Castle 2001). Common variables include:

- the type of setting a person is moving from and to
- the support and preparation a person receives for the move
- whether the person has a choice about moving
- the person's health, age and gender.

When supporting and representing people who might be moving, IMCAs should focus on the following areas:

- the person's views and wishes regarding a potential move
- whether all options have been considered, including any which may be less restrictive
- the support provided in the different settings
- the impact of the move on the person's social network – this includes family and friends, co-residents of a service and in some cases staff
- how the person could be supported before, during and after any move.

The IMCA identifying accommodation and support options

The MCA Code of Practice states that IMCAs 'should find out what alternative options there are' and 'check whether the decision-maker has considered all possible options' (10.20). This means the role goes beyond responding to just those options proposed by the decision-maker.

At times, because of their experience and knowledge of local services and community facilities, IMCAs may have ideas about possible accommodation or support. It is in the person's best interests that these are shared with decision-makers. For example, IMCAs may offer the following:

- names of care services which may meet the person's needs and wishes
- potential activities that the person may wish to be involved in
- potential changes to the person's home environment.

When making such suggestions, the IMCA should:

- present their ideas to the decision-maker as 'options for consideration' and not as 'recommendations' – nor in any other way which suggests the IMCA has decided what is in the person's best interests
- be sure to disclose any potential conflict of interest – for example, if a potential care service has a contract with the same advocacy provider.

Costs

Local authorities and NHS trusts may consider cost as a factor when making accommodation arrangements for an individual. Some local authorities set amounts that they normally pay for someone with particular assessed needs (this may include the maximum that will be paid to support them to continue living in their own home). If a more expensive service is suggested, the funding body will need clear reasons why available cheaper options could not meet that person's needs. Alternatively, the person may be expected to pay the difference.

When making best interests decisions, the cost may need to be weighed against other factors related to the person's wishes and needs. At times an IMCA may need to challenge a local authority or PCT for giving too great a weight to cost as a factor, and in so doing possibly losing sight of the person's best interests.

Visiting accommodation options

The IMCA may wish to visit accommodation options that are being seriously considered. The purpose of these visits is to explore how well the service could meet the person's needs and wishes.

Visits to potential services can provide information in addition to that contained in CQC reports and the information brochures care homes are required to provide. The IMCA may need to establish:

- The accessibility of the room which the person may move into. For example, how difficult would it be for the person to independently access other parts of the home?
- Whether there will be restrictions on the person's movement. For example, is the kitchen locked, will they be able to go out of the front door or into the garden without support from staff to release a lock?
- The physical state and size of parts of the home which may be important for the person. For example, is a proposed bedroom of a similar standard to others, and how well is the garden maintained? Are there concerns about hygiene standards?
- Any restrictions on what the person could bring to or keep at the service. For example, furniture or pets.
- Features relating to the physical location of the service which may be significant for the person. For example, the view, whether there is a lot of traffic noise, access to public transport, accessibility of shops and other facilities. While a desired facility may be close by, there may be particular challenges to get there for the person, including no, or uneven, pavements, lack of street lighting, difficulties crossing the road, or evidence of crime which may inhibit the person from going out.
- Information about compatibility with other people living in the service. For example, having similar interests, or whether the person may be at risk from other service users.
- How the person's ethnicity, gender, religion or sexuality may impact on their experience in the service. For example, are there staff who speak their language?
- Local opportunities.

Although a lot of the above information could be gained without visiting the service – for example, by talking to the manager – going there gives the IMCA an opportunity to further evidence the information. It also allows for factors to emerge which may not otherwise have been identified – for example, observing good or poor practice in the service with regard to the dignity of the people currently living there.

For practical reasons the IMCA may request a colleague or an IMCA from another service to visit a service and/or to provide feedback on how it might meet the person's specific needs and wishes. An example of this is if it is proposed for the person to move to a service in another part of the country.

Visiting with the person

Consideration should be given to the person themselves having the opportunity to visit a proposed service before the final decision is made. This may be required under the MCA because the MCA Code of Practice states that decision-makers should 'make sure that all practical means are used to enable and encourage the person to participate as fully as possible in the decision-making process' (5.23). The IMCA may wish to make representations for this to happen.

Attention should be given to the best time for the person to visit the service and who may be best to support them during the visit. This is likely to be a member of staff who knows them well, who may not necessarily be a senior member of staff or their key worker. It should not be assumed that the person will have just one visit prior to a decision being made, and/or moving. It may be the case that they will benefit from transition visits to help prepare both themselves and the receiving service for the move.

Ideally the IMCA will be able to arrange visiting a proposed service at the same time as the person does. This allows the IMCA to capture the person's responses to the service, as well as responses from other service users and staff, which could raise important issues with regard to what would be in the person's best interests. Examples include:

- interaction with other service users and staff
- observation of the person's ability to access different parts of the service (e.g. the size of their wheelchair in relation to doorways and corridors, or their ability to use any lift independently)
- their response to the physical environment
- if there are pets, and their interaction with them
- their familiarity with the locality.

IMCAs should be very careful about taking on any responsibility for the person's support if they are visiting a service together. This includes giving the person a lift in their car, accompanying them on public transport, or being available to provide support with supervision, personal care, or eating and drinking.

Generally it is not appropriate for IMCAs to take on these roles: they are the responsibility of any current care provider and the responsible body proposing the arrangements. In exceptional cases it may be acceptable for an IMCA to offer this type of support, but this should only happen with prior written agreement from either the

responsible body or the current care provider and a risk assessment should be undertaken by the IMCA provider (who would also need to check that their insurance covers such roles).

Where a person is unable to visit the service, or to support further discussions where they have been able to, the IMCA may wish to take photographs of the proposed service (or other video/audio recordings as appropriate to the needs of the person). Care must be taken not to photograph other service users unless the IMCA is confident of their informed consent.

Where an IMCA observes potential poor practice or abuse

When meeting the person or visiting services the IMCA may have concerns about care practices or abuse. This could be in regard to the person for whom they were instructed or other service users.

Where there is potential abuse the IMCA's responsibilities to make an alert are set out under safeguarding adults proceedings. What can be more difficult are situations where there is potential poor practice. Concerns could arise from the appearance of the person or the way staff are seen to interact with them. Examples include:

- a person having physical injuries
- a person wearing broken glasses
- a person wearing inappropriate, dirty or damaged clothes
- staff appearing to handle a person roughly
- staff talking inappropriately about a person in front of them.

Where the IMCA has been instructed to represent the person for whom they have concerns it is possible to follow these up as part of their role. For example, to talk to the manager of the care service or the relevant social worker. The IMCA in such situations also has the option to keep the case open until their concerns are adequately resolved, including by complaints processes.

Where the concerns relate to other service users the potential for the IMCA to follow these up is more limited. This is because it may be inappropriate to ask personal questions about people with whom they have no formal role. Good practice in these situations is for the IMCA to ensure that any concerns are brought to the attention of people who are in a position to investigate them and take action if necessary. Most often this will be the local authority or PCT funding the service. To do this requires finding out the person's name and which statutory organisation has responsibility.

Practice example

One afternoon, while waiting in the lobby to meet the manager of a care home for older people, a man walked past Terry, an IMCA, wearing just his pyjama-bottoms. The resident also had what appeared to be a black eye. When Terry met the manager a short while later he expressed his concerns about both seeing what appeared to be a resident dressed inappropriately for the time of day in such a public area, and the black eye. Alison, the manager, explained that this particular resident often chose to dress this way – and that the bruising around the eye happened when he tripped over

the previous day. Terry asked whether Alison had raised an adult safeguarding alert with the relevant local authority care manager about the injury. She said she had not done so: she didn't see it as serious enough. Terry said that he would have expected an alert to have been made. He suggested that Alison should do this. He also asked her to give him the name and contact details of the care manager.

When Terry returned to his office he rang the care manager who had been told of the black eye and was investigating it as part of the safeguarding procedures. Terry talked about his concerns regarding the alert not being made without his prompting and also the man's inappropriate dress.

Terry made a record of this situation and discussed it with his manager. Together they agreed that they did not need to take any further action but that they would cooperate with the local authority in any ongoing enquiries.

If a person could be deprived of their liberty

One of the safeguards IMCAs can provide is to be alert to the possibility of people being deprived of their liberty without the appropriate legal authority. The following situations may arise:

- involvement in a care review where restrictions in the service may amount to a deprivation of liberty
- involvement in an accommodation decision where moving the person may deprive them of their liberty.

The Deprivation of Liberty Safeguards Code of Practice sets out the action that should be taken in such situations. For example:

- alerting the managing authority which should change the care plan or make an application for an authorisation
- alerting the supervisory body to a potentially unlawful deprivation of liberty
- taking the matter to the Court of Protection.

Both IMCAs and decision-makers have a responsibility to respond to any potentially unlawful deprivation of liberty. If contact with either the managing authority or supervisory body proves unsatisfactory in resolving the concerns, an application to apply to the Court of Protection should be made by either the IMCA or the decision-maker. This includes when the deprivation of liberty may be taking place outside a care home or hospital where these specific legal safeguards do not apply.

IMCA reports

IMCAs must prepare reports for the person who instructed them (IMCA General Regulations 6(6)). The local authority or NHS body responsible for the accommodation decision or for undertaking a review must have regard to these reports as well any other representations made by the IMCA, including things they have said (MCA Sections 38(5), 39(6), IMCA Expansion Regulations 5(2)). In some cases IMCAs may need to provide more than one report.

'Reports' can take different formats. These can include:

- emails highlighting issues that need to be taken into account
- bullet points identifying the person's needs and wishes
- longer written reports which may, in addition to providing information relevant to the decision, provide details of other issues which may need attention in relation to the person's support.

The IMCA needs to identify the best way to provide reports in each case. Detailed reports will be necessary where the IMCA has concerns about the decisions being made. As identified above, after instruction the IMCA and decision-maker should agree the date by which reports need to be submitted so that they can inform the decision-making process.

Action for Advocacy (2010) has produced a guide for IMCAs on report writing.

Challenging decisions

IMCAs may need to raise the following challenges for accommodation decisions and care reviews:

- the person having capacity to make their own decisions about their accommodation arrangements
- whether an accommodation decision represents the person's best interests
- whether a review paid appropriate attention to a person's needs and wishes.

As with all IMCA roles, where there are concerns initially these should be raised informally with the decision-maker. Best interests meetings can be a useful way to address such concerns.

Where significant concerns are unresolved, the IMCA should put these in writing to the decision-maker. The decision-maker should then respond in writing to these concerns. It is suggested that this should be within one week. If things are still not resolved satisfactorily, senior managers from both organisations should be involved.

Where it is still not possible to resolve serious concerns, an application to apply to the Court of Protection should be made. If the case is not initially taken by the official solicitor the application should be made by the responsible body, which should also meet the costs associated with the application. It is likely that an urgent application will need to be made unless both the IMCA organisation and the responsible body agree that any delay would not be detrimental to the best interests of the person.

The urgency of resolving some disputes may in exceptional cases require the IMCA service to make an application to the Court of Protection, or ask for judicial review of a decision. This may need to happen before exhausting local informal and formal resolution methods.

Where there is an ongoing formal challenge to a decision about accommodation, the local authority or NHS body should avoid moving the person somewhere which would make it more difficult for the person if the challenge was sustained. For example, if the IMCA is challenging the decision to move someone from their own home, the local authority should where possible continue to support them in this location until a conclusion has been reached. Similarly, if a person is due to move from one service to another and there is a dispute about where they should move to, wherever possible the person should stay where they are currently living until the matter has been resolved.

References

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- Castle, N.G. (2001) 'Relocation of the elderly', *Medical Care Research and Review*, Vol. 58, no. 3, pp. 291–333.
- **Department of Constitutional Affairs (2007) Mental Capacity Act code of practice.**
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- **DH (Department of Health) (2010a) Prioritising need in the context of Putting People First: a whole system approach to eligibility for social care – guidance on eligibility criteria for adult social care, England 2010. London: DH.**
- **DH (Department of Health) (2010b) NHS continuing healthcare practice guide.**
- **Ministry of Justice (2008) Deprivation of Liberty Safeguards: code of practice to supplement the main Mental Capacity Act 2005 code of practice.**
- **ADASS & SCIE (2010) Good practice guidance for the commissioning and monitoring of Independent Mental Capacity Advocate (IMCA) services.**
- **The MCA 2005 (Independent Mental Capacity Advocate) (Expansion of Role) Regulations 2006**
- **The MCA 2005 (Independent Mental Capacity Advocate) (General) Regulations**

Appendix A: Example policy for the involvement of IMCAs in care reviews for local authorities

Introduction

This policy applies when the local authority has arranged the accommodation for someone who lacks capacity to make a decision about this. It sets out when an IMCA should be instructed for care reviews to support and represent the person.

What accommodation?

This policy covers people living in care homes, extra care accommodation and supported living arrangements. It does not apply to people who are living in their own homes (i.e. rented or privately-owned property which was accessed without the support of social services).

Which reviews?

The option to involve an IMCA applies to all reviews in hospitals and care homes. Reviews should be carried out within three months of the person moving to new accommodation, or another major change to their services. Otherwise reviews should take place minimally every year.

Mental capacity

The person carrying out a review should be clear whether the person has the capacity to make a decision about where they live and this should be recorded as part of the review. It is expected that the person undertaking the review will undertake the mental capacity assessment, where they have concerns about the person's capacity, using the two-stage test set out in the MCA 2005.

In many situations the person's capacity may change – for example, a person with dementia may have had capacity to decide where they lived when they moved into the accommodation but they do not have this at a subsequent review.

When an IMCA cannot be instructed

- *The person has capacity to make decisions about where they live.*
- *The person has family or friends who can represent them.* The record of the review should identify which family and friends have been consulted, and their views. *However*, some people will have family and friends who are nevertheless not in a good position to fully inform the review. This may be because they have limited information about how the person has been supported in the accommodation because of limited contact, or they lack the confidence to speak up on the person's behalf. (Where this is the case the instruction of an IMCA should be considered.)
- *The person has a lasting power of attorney, or a court-appointed deputy for health and welfare with powers to make decisions regarding their accommodation and care.* IMCAs may however be instructed where there is an attorney or deputy with powers to make decisions regarding their property and affairs.

- *The person is currently subject to an authorisation under the Deprivation of Liberty Safeguards.* The expectation is that the relevant person's representative would feed into any review.

The reason for not instructing an IMCA for the review should be recorded.

Deciding if an IMCA should be instructed

Generally an IMCA should be instructed for all eligible individuals. This should include the following situations:

- the person is communicating verbally or non-verbally that they do not want to be in the accommodation.
- there has been a significant change in the person's needs for example, reduced mobility
- there was no independent representation (i.e. family, friends or advocate) at the last review
- significant concerns have been raised regarding the support the person is receiving, including any raised by the reviewer
- significant concerns have arisen regarding the service generally for example, a poor CQC report, or safeguarding adults' alerts relating to other people living in the service
- an IMCA previously instructed for the person suggested that IMCA involvement at the next review should be considered
- a required review has been missed – i.e. within three months of moving to the accommodation or another major change of service, or within one year from the last review.

Where the reviewer decides not to instruct an IMCA for a review, the reasons why they do not believe it would be of particular benefit should be recorded as part of the review.

Examples of this include:

- The person has access to another advocate who is able to represent them as part of the review.
- There have been no significant changes in the person's needs since the last review, where they did have independent representation. Further, there have been no significant concerns raised about the service.

IMCA or other advocate?

Where a person already has an advocate, the advocate should be involved in the review process and it is unlikely that an IMCA will need to be instructed.

If the reviewer believes that the person could benefit from an IMCA, the option to involve a different (non-statutory) advocate should be considered. This may not be a choice because of the lack of availability of other advocacy services.

Where there is a choice between involving either an IMCA or non-statutory advocate, the following should guide which one is involved in the review process:

- where possible, involve an advocate who has had contact with the person previously
- where there are issues which will take some time to be addressed, involve a non-statutory advocate.

When an IMCA should be instructed

An IMCA should be instructed as soon as it is recognised that the person would benefit from their involvement. Wherever possible an IMCA should be instructed at least three weeks before being required to make representations as part of the review. The IMCA will write a report which the reviewer must consider before completing their review.

If the IMCA service has concerns about the person meeting the eligibility criteria, they should raise this with the instructor who may choose to withdraw the instruction. The IMCA service should not refuse the instruction.

The reviewer should inform the IMCA of the outcome of the review.

Appendix B: Example policy for the involvement of IMCAs in care reviews for NHS trusts

Introduction

This policy applies when an NHS trust is funding the accommodation for someone who lacks capacity to make a decision about this. This includes when a person is in hospital and where a care service placement is being funded under NHS continuing healthcare. It sets out when an IMCA should be instructed for care reviews to support and represent the person.

What accommodation?

This policy covers people in hospitals care homes, extra care accommodation and supported living arrangements which are NHS funded. It does not apply to people who are living in their own homes.

Which reviews?

The option to involve an IMCA applies to all reviews in hospitals and care homes. NHS continuing healthcare reviews should be carried out within three months of the initial decision to provide NHS continuing healthcare and then at least every year.

Mental capacity

The person carrying out a review should be clear whether the person has the capacity to make a decision about where they live and this should be recorded as part of the review. It is expected that the person undertaking the review will undertake the mental capacity assessment where they have concerns about the person's capacity, using the two-stage test set out in the MCA 2005.

In many situations the person's capacity may change – for example, a person with dementia may have had capacity to decide where they lived when they moved into the accommodation but they do not have this at a subsequent review.

When an IMCA cannot be instructed

- *The person has capacity to make decisions about where they live.*
- *The person has family or friends who can represent them.* The record of the review should identify which family and friends have been consulted, and their views. *However*, some people will have family and friends who are nevertheless not in a good position to fully inform the review. This may be because they have limited information about how the person has been supported in the accommodation because of limited contact, or they lack the confidence to speak up on the person's behalf. (Where this is the case the instruction of an IMCA *should* be considered.)
- *The person has a lasting power of attorney, or a court-appointed deputy for health and welfare with powers to make decisions regarding their accommodation and care.* IMCAs may however be instructed where there is an attorney or deputy with powers to make decisions regarding their property and affairs.

- *The person is currently subject to an authorisation under the Deprivation of Liberty Safeguards.* The expectation is that the relevant person's representative would feed into any review.

The reason for not instructing an IMCA for the review should be recorded.

When an IMCA must be instructed

If a person is eligible for an IMCA to be instructed for a review, there is a legal requirement to instruct one if the outcome of the review is a change of accommodation. The IMCA should be instructed as soon as there is a preliminary view that the outcome of the assessment is that a change in accommodation is likely.

Deciding if an IMCA should be instructed

Generally an IMCA should be instructed for all eligible individuals. This should include the following situations:

- The person is communicating verbally or non-verbally that they do not want to be in the accommodation
- There has been a significant change in the person's needs – for example, reduced mobility
- There was no independent representation (i.e. family, friends or advocate) at the last review
- Significant concerns have been raised regarding the support the person is receiving, including any raised by the reviewer
- Significant concerns have arisen regarding the service generally for example, a poor CQC report, or safeguarding adults' alerts relating to other people living in the service
- An IMCA previously instructed for the person suggested that IMCA involvement at the next review should be considered
- A required review has been missed.

Where the reviewer decides not to instruct an IMCA for a review, the reasons why they do not believe it would be of particular benefit should be recorded as part of the review. Examples of this include:

- The person has access to another advocate who was able to represent them as part of the review.
- There have been no significant changes in the person's needs since the last review, where they did have independent representation. Further, there have been no significant concerns raised about the service.

IMCA or other advocate?

Where a person already has an advocate, the advocate should be involved in the review process and it is unlikely that an IMCA will need to be instructed.

If the reviewer believes that the person could benefit from an IMCA, the option to involve a different (non-statutory) advocate should be considered. This may not be a choice because of the lack of availability of other advocacy services.

Where there is a choice between involving either an IMCA or non-statutory advocate, the following should guide which one is involved in the review process:

- where possible, involve an advocate who has had contact with the person previously
- where there are issues which will take some time to be addressed, involve a non-statutory advocate.

Who should instruct an IMCA?

Instruction can be made by anyone authorised to do so by either the local authority or PCT involved. For NHS continuing healthcare reviews this should be the PCT.

When an IMCA should be instructed

The IMCA should be instructed as soon as it is recognised that the person would benefit from their involvement. Wherever possible an IMCA should be instructed at least three weeks before being required to make representations as part of the review. The IMCA will write a report which the reviewer must consider before completing their review.

If the IMCA service has concerns about the person meeting the eligibility criteria, they should raise this with the instructor who may choose to withdraw the instruction. The IMCA service should not refuse the instruction.

The reviewer should inform the IMCA of the outcome of the review.

Appendix C: IMCA accommodation checklist

When involved in accommodation decisions an IMCA should:

- Contact the decision-maker, set time scales and clarify their role.
- Meet the client – try to discover their wishes and preferences and what is important to them.
- Explore how you and others can enable the client to be as involved as much as possible in the decision-making process.
- Consult with friends, family, carers, key staff, occupational therapists, nurses, doctors etc.
- Read the current community care assessment, care plan and nursing needs assessments and check whether they include the person's preferences.
- Access any assessment and care plans produced by the service in relation to the individual, along with general information about the service produced by the service (e.g. its brochure).
- Check whether block funding/blanket policies are restricting options.
- Check if less restrictive options, including supporting the person to remain in their home, have been fully considered.
- Visit proposed homes (if possible with the person) and read any CQC reports.
- Try to evidence that the support identified in the care plan will be provided. For example, does the care service have particular expertise, or are they providing similar support to someone with similar needs?
- Explore what alternative options exist.
- Establish whether the new service has good information about the person's history, interests and wishes. If not, consider providing a summary.

Appendix D: IMCA accommodation and care review top tips

The following may help IMCAs with their work in accommodation decisions and care reviews. The points listed draw from the experience of IMCAs.

- Focus not just on the choice of the accommodation but also the support which will be received in that accommodation.
- Check that the support will be personalised.
- Get to know provision in your area for each client group (including knowing which services are on the local authority's approved provider list).
- Find out about the local authority's eligibility criteria for adult social care.
- Find out about NHS continuing healthcare and any joint NHS/local authority funding protocols.
- Find out the local systems for making decisions regarding accommodation. For example, there may be a local authority panel where the decision to approve funding for a support package or support work is made.
- Learn about local discharge policies and identify the discharge coordinators in local hospitals.
- Familiarise yourself with the process of hospital discharge if someone is self-funding.
- Visit hospital discharge teams and be prepared to discuss the MCA in relation to the Community Care (Delayed Discharge etc.) Act 2003.
- Invest in developing relationships with key people in acute hospitals including managers responsible for older people's services and the patient advisory liaison service.
- Try to get local authority care plans to clearly identify how specific needs will be met in the care plan. This should include who will provide the support, how often and for how long (e.g. supported to walk to the paper shop seven days a week).
- Develop a photo library of care homes to support communication, including with those clients who would be unable to visit services in advance of a potential move.
- Be aware of home closures, deregistration of care homes and other accommodation developments in the area.
- Find out if there are local authority policies on how many accommodation options must be considered when making a decision and the maximum support hours that will be provided at home.

Appendix E: Example report for a care provider setting out a person's needs and wishes

Appendix to IMCA report

A summary of James McCarthy's needs and wishes

(Known to everyone as Jimmy)

Mr McCarthy was supported and represented by an Independent Mental Capacity Advocate (IMCA) for the decision to move to Ashcroft House. During their work with Mr McCarthy the IMCA found out the following which will be useful to those providing care and support.

History

Mr McCarthy was born in 1936. At the age of about 8 he was diagnosed as having learning disabilities. He only attended school until he was 12. He lived with his mother until she died in 2002. His father, Joe, died when he was just 5. His home address was Flat 32, Haven House, Shirley Garden, Barking.

His mother had always resisted the idea of her son living in a home. They had a very good relationship and spent most of their time together. Mr McCarthy still thinks and talks a lot about his mother who he calls 'Mammy'. Her name was Mary McCarthy. His mother was buried in the same grave as his father at City Cemetery. He has visited the grave with the support of staff most years on the anniversary of her death (10 March 2002).

In 2002 Mr McCarthy moved to a local group home for people with learning disabilities (73 Station Road, Barking, tel. 020 8752 1426). He knew people who lived there from the day centre and was said to have coped reasonably well with the change. Highlights of his time there were two holidays to Spain and a trip to Ireland where he saw his cousin Hugh McCarthy. Mr McCarthy moved from 73 Station Road to Ashcroft House because he was finding it very difficult to manage the stairs to get to his bedroom and the bathroom.

Relationships

The only family contact Mr McCarthy has is with his cousin (son of his father's brother), Hugh McCarthy. They spent time together as children in the East End of London. Hugh is about 75 and is unable to travel to England. Hugh's contact details are 24 Sea View, Malahide, Dublin, Tel 00 353 1845 1965, email hugh.mccarthy@telecom.ir.

Hugh sends cards at Christmas and on Mr McCarthy's birthday. He will ring about every two months. Hugh has been told about the move to Ashcroft House and has the contact details. Mr McCarthy knows a large number of people with learning disabilities living in the area, and staff from his time at the local day centre (Bush House, tel. 020 8560 2546). Mr McCarthy went to this centre for over 25 years. Particular friends are Michael Douglas, Amir Khan and Ann Johnson, who all have learning disabilities and will need support to stay in touch. Mr McCarthy stopped attending this service in 2007.

One staff member from this service keeps in touch with him. This is Susan Crisp, tel. 020 8653 0245. At Station Road Mr McCarthy had very good relationships with two other people living in this service, Harry Field (they went to the same school) and Brian Chambers. It would be good if these relationships could be supported to continue.

Mr McCarthy has also attended a local Mencap club for many years. He knows the people who go there including the staff and volunteers. This takes place every Tuesday evening between 7 and 9 pm at the Scout Hall, 3 Roman Road, Barking. Mr McCarthy had a job there helping with the tuck shop. It is very important for him to continue to attend this club.

For more information, ring Joan Peters, 020 8356 456.

Interests

Some of Mr McCarthy's interests are given below.

- As noted above, being a member of the local Mencap club is very important for Mr McCarthy. He will need to be supported to get to the club.
- Mr McCarthy has a collection of CDs and DVDs. He particularly likes Chas and Dave, and Laurel and Hardy films.
- A favourite television programme is *Coronation Street*, which he likes to watch if he is not going out. He used to watch it with his mother.
- For many years Mr McCarthy attended Barking United Reform Church with his mother every Sunday. He is well known to the congregation and Rev. Charles Clarke. While he was living at Station Road arrangements were made for Mr McCarthy to be taken to the church every Sunday morning by volunteers. The telephone number for the church is 020 8213 5648.
- Mr McCarthy is a lifetime Arsenal supporter and is keen to hear about how his team is getting on. He likes watching football matches on television.

Appearance

Mr McCarthy has always dressed very smartly. He likes to wear a shirt and smart trousers with a belt. When going out he likes to wear a suit jacket and a winter coat if it is cold. He does not like wearing jeans, T-shirts, jogging trousers or trainers. At night he likes wearing pyjamas and a dressing gown.

Important personal belongings

Mr McCarthy has a lot of family photos which are very important to him. It would be a good idea to work with Mr McCarthy to record who are the people in the pictures in case he forgets at some point in the future.

He has some things from the time he spent with his mother. Important ones are a windmill from a trip they had together to Holland and old briefcase which belonged to his father. He also has a model bull from his holiday in Spain and a model leprechaun from the time he visited his cousin Hugh.

Food

When living with his mother there was a tradition of a Chinese takeaway every Friday night. At Station Road they continued this tradition for Mr McCarthy though they had different takeaways each week.

Future IMCA involvement

It is recommended that Mr McCarthy has the support of an IMCA for future care reviews. Please remind the reviewing officer of this when they are setting dates so they can arrange it. It is likely that Mr McCarthy will need to be supported by an IMCA if a decision needs to be made as to whether he needs to move on from Ashcroft House.

Mr McCarthy must also have the support of an IMCA if serious medical decisions are being made which he is unable to make himself. This could include 'do not attempt resuscitation' (DNAR) decisions. Please advise the doctor of the possible need for an IMCA before the decision can be made.

To find out more about the IMCA service please contact Barking Advocacy.

About the development of this product

Scoping and searching

This guidance is based on legislation and government policy: no comprehensive searching was required (and was unlikely to be productive since IMCAs are a recent innovation). A brief corroborative scope on Mental Capacity Act (MCA) was conducted by the project manager in summer 2010.

Stakeholder involvement

The guide and legal interpretation was based on consultation with ADASS (Association of Directors of Adult Social Services), Independent Mental Capacity Advocate (IMCA) providers, care sector bodies, Public Guardian, Department of Health MCA policy and implementation leads, who together formed the Project Advisory Group (PAG).

Peer review and testing

The guide was peer reviewed by the Project Advisory Group. A Mental Capacity Act PAG convened by SCIE for the wider programme of work also reviewed the guide, and ADASS was closely involved.

Additional endorsement

ADASS endorsed the guidance.

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