

# 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.
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- *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.
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## 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.

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