

A guide to IMCA eligibility for referrers



IMCAs criteria

An individual over the age of 18 who:

- Is assessed to lack capacity:
 - ✓ About the specific decision
 - ✓ At the material time it is to be made
- Has no one else appropriate to be consulted about the following decisions:
 - ✓ Long term accommodation changes
 - ✓ Serious Medical Treatment
 - ✓ Section 42 Adult Safeguarding Processes
 - ✓ Care Review
 - ✓ Deprivation of Liberty Safeguards

The criteria for each of these decisions is set in the Mental Capacity Act, with more detailed information from SCIE:

Long Term Accommodation

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 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 instructions if the place where the person is living is registered as a care home.

It is good practice is 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.

Serious Medical Treatment

Regulations for England and Wales define "serious medical treatment". It involves:

- giving new treatment
- stopping treatment that has already started, or
- withholding treatment that could be offered in circumstances where:
 - if a single treatment is proposed there is a fine balance between the benefits and the burdens to the patient
 - a decision between choice of treatments is delicately balanced, or what is proposed is likely to have serious consequences for the patient

Serious consequences

Serious consequences are defined in the MCA Code of Practice as those that could have a serious impact on the patient either from the treatment itself or due to wider implications and may include treatments which:

- cause serious and prolonged pain, distress, or side-effects or
- have potentially major consequences such as stopping life sustaining treatment or amputation or major surgery or
- have a serious impact on a patient's future life choices
- A person may have numerous side effects where each one may not be considered serious; however, cumulatively they may amount to having a serious impact on the person.

A person who lacks capacity to give or refuse consent will have a right to the support and representation of an IMCA if such treatment is being considered on their behalf and there is nobody appropriate who can be consulted about the decision.

Which treatments are 'serious medical treatments?'

The MCA Code of Practice (10.45) offers some examples of treatments, which may be considered as serious medical treatment, however, it is impossible to provide a

definitive list of all serious medical treatments. It is for the clinician responsible for the person's treatment to consider the implications of what is proposed and to decide if the consequences are serious for that individual.

Examples of treatments where:

IMCAs have been involved include surgery, treatment for cancer, insertion of a PEG, amputation, dental treatment, blood tests, cataract operation, withdrawal of antibiotic treatment and Do Not Attempt Resuscitation (DNAR) orders.

A minor treatment may not in itself be considered as serious medical treatment but depending on the person's circumstances, as well as the impact on them from providing or withholding treatment, it would be SMT. Examples are minor treatment for an eye infection where the person only has one eye or prescribing laxative, which may be routine but could become SMT if it's part of initial treatment for bowel obstruction.

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 the capacity to decide 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.

Safeguarding discretionary power to instruct IMCA

In Safeguarding an IMCA may be instructed, even if there is someone appropriate to consult. If a person meets the criteria for an IMCA under safeguarding, they will also have the right to advocacy under the Care Act Advocate (see Care Act Referrals Guidance Notes). It may be beneficial to consider a referral for an IMCA through the safeguarding process where the protective measure being considered may result in a change of accommodation or serious medical treatment or a deprivation of liberty.

Please note instructing an IMCA does not supersede or replace the duty to an Independent Advocate under the Care Act