



CAPACITY, CONSENT, LIBERTY & ADVOCACY

Independent Mental Capacity Advocates

Understanding the IMCA role, when advocacy is required
and how it supports rights and participation.

The key idea

An IMCA is an independent statutory advocate for particular decisions involving a person who lacks capacity. Their role is to represent and support the person, bring their wishes and circumstances into view, and scrutinise decision-making.

What is an IMCA?

An **Independent Mental Capacity Advocate (IMCA)** is a statutory advocate created by the Mental Capacity Act 2005. The service is designed for particular decisions involving a person who has been assessed as lacking capacity to make that decision.

Independent from the decision-maker

The IMCA does not make the decision for the person. Their role is to independently **support and represent** the person and provide information that helps the decision-maker reach a lawful, properly informed decision.

The person's voice still matters

Lacking capacity for a decision does not make somebody's wishes, feelings, beliefs, values or experiences irrelevant. An IMCA should seek to understand the person as an individual and communicate information that may otherwise be missed.

Not a capacity assessor

An IMCA may examine how capacity and best interests have been considered, but they are not automatically the person responsible for carrying out the capacity assessment or making the final best-interests decision.

Who commissions IMCA services?

In England, local authorities have duties around making IMCA services available. NHS bodies and local authorities responsible for qualifying decisions have duties to instruct an IMCA when the statutory criteria are met.

Part of the MCA safeguards

IMCA sits alongside other Mental Capacity Act protections, including supported decision-making, best-interests requirements, the least-restrictive principle and routes to challenge decisions.

When must an IMCA be instructed?

For certain major decisions, an IMCA must be instructed where the person lacks capacity for the decision and meets the statutory criteria concerning available family or friends.

Serious medical treatment

An IMCA must generally be instructed where an NHS body proposes serious medical treatment for a person who lacks capacity and there is **no appropriate person other than paid staff** whom it would be appropriate to consult, subject to the statutory exceptions.

Long-term accommodation - NHS

An IMCA must generally be instructed where an NHS body proposes arranging accommodation in a hospital for **more than 28 days**, or in a care home for **more than 8 weeks**, and the qualifying criteria are met.

Long-term accommodation - local authority

An IMCA must generally be instructed where a local authority proposes arranging accommodation in a care home for **more than 8 weeks**, or certain other qualifying accommodation arrangements, where the statutory criteria are met.

What does 'no one appropriate to consult' mean?

The IMCA duty for these decisions is aimed particularly at people who would otherwise have nobody independent of paid services to consult about their best interests. The legal test is more specific than simply asking whether the person has relatives somewhere.

Family existence is not the only question

The decision-maker should consider whether there is actually somebody appropriate and available to consult. Relationships, contact, the person's wishes and the circumstances all matter.

Urgent treatment

Emergency or immediately necessary treatment should not be delayed merely to obtain an IMCA. Where the situation is not an emergency and the statutory criteria apply, the advocacy safeguard should be built into the decision-making process.

When may an IMCA be instructed?

The Mental Capacity Act framework also allows IMCA involvement in certain **care reviews** and **adult safeguarding** situations. These are different from the mandatory serious-treatment and long-term-accommodation duties.

Care reviews

An IMCA may be instructed for qualifying reviews of accommodation where the person lacks capacity and would benefit from independent representation, subject to the statutory framework.

Adult safeguarding

An IMCA may be instructed in safeguarding cases involving a person who lacks capacity. Importantly, safeguarding IMCA involvement can be appropriate **even where family or friends are available** if independent advocacy would provide particular benefit.

Why safeguarding is different

Safeguarding situations can involve conflicts of interest, allegations concerning people close to the person, disagreement about risk, or difficulty identifying what the person wants. Independent advocacy can help keep the person's rights and perspective visible.

Making Safeguarding Personal

IMCA involvement should complement person-centred safeguarding. Advocacy is not simply about attending a meeting; it can help the person participate, express preferences and understand what is happening.

Local referral pathways

Practical referral routes vary by area and provider. Health and social care professionals should use the local commissioned IMCA service and should not treat uncertainty about the referral pathway as a reason to omit a statutory safeguard.

What does an IMCA actually do?

The IMCA gathers information about the person and the proposed decision, represents the person's perspective and scrutinises the process used to reach the decision.

Meet the person

The advocate should meet the person where practicable and use appropriate ways to understand their communication, wishes, feelings, values and preferences.

Gather information

An IMCA can speak with professionals and others involved, examine relevant records and consider information about the person's history and circumstances.

Consider alternatives

The advocate can examine whether other options have been properly considered, including alternatives that may better reflect the person's wishes or restrict them less.

Scrutinise the decision

An IMCA can question whether the Mental Capacity Act process has been followed properly, including capacity, best interests and the person's involvement.

Provide a report

The IMCA can submit a report to the decision-maker. The decision-maker must take the IMCA's representations and information into account when reaching the decision.

Access to records

The statutory role gives IMCAs rights to access relevant health and social care records where the legal requirements are met. This helps the advocate form an informed view rather than relying only on a brief referral summary.

What an IMCA does not do

They do not make the decision

Responsibility for the final decision remains with the relevant decision-maker under the Mental Capacity Act framework.

They do not simply agree with services

Independence means the IMCA can question assumptions, identify missing information and challenge aspects of the process where appropriate.

They are not automatically the person's lawyer

An IMCA is a statutory advocate, not a substitute for legal representation where a court dispute or specialist legal issue requires a solicitor.

They are not there only when somebody objects

A person does not need to be actively resisting a decision for the statutory IMCA duty to apply. The safeguard is linked to the type of decision, capacity and other statutory criteria.

What if the IMCA disagrees?

The IMCA's view is not automatically binding, but it must be taken seriously. The advocate may raise concerns with the decision-maker and can use appropriate complaint or challenge routes where necessary.

Court of Protection

Where a serious unresolved dispute concerns capacity, best interests or another issue within its jurisdiction, the **Court of Protection** may need to determine the matter. Advocacy and legal representation serve different but sometimes complementary roles.

IMCA, family and other advocates

Different forms of advocacy and representation can overlap, so it is useful to understand what makes an IMCA distinct.

Family and friends

People close to the person often provide important knowledge about their history, communication and wishes. For some statutory IMCA decisions, however, IMCA eligibility specifically depends on whether there is an appropriate unpaid person to consult.

Care Act advocacy

Independent advocacy under the Care Act 2014 is a different statutory framework. It supports qualifying people who have substantial difficulty being involved in assessment, care planning, review or safeguarding processes and lack an appropriate person to support involvement.

Independent Mental Health Advocate

An **IMHA** is different again. IMHAs support qualifying people under the Mental Health Act. We will cover IMHA rights separately in the Mental Health Rights, Detention & Aftercare collection.

Can someone have more than one form of support?

Potentially, yes. Eligibility depends on the legal framework and circumstances. A person's need for an IMCA does not mean that trusted relatives, communication partners or other advocates should automatically be excluded from appropriate involvement.

Keep roles clear

A useful question is: **Which legal framework applies to this decision, what advocacy duty does it create, and who is responsible for making the referral?**

IMCA and deprivation of liberty

IMCAs also have specific roles within the Deprivation of Liberty Safeguards framework. These roles sit alongside the Relevant Person's Representative and other DoLS safeguards.

Section 39A IMCA

An IMCA can be appointed during the DoLS assessment process in specified circumstances, including where there is no suitable person to represent the individual while the authorisation is being considered.

Section 39C IMCA

An IMCA can provide representation where there is a temporary gap in the appointment of a Relevant Person's Representative.

Section 39D IMCA

An IMCA can support the person or their unpaid Relevant Person's Representative in understanding and exercising rights connected with an existing DoLS authorisation, including review or challenge.

Why this matters

A deprivation of liberty engages fundamental rights. Independent advocacy can help ensure the person understands what is happening as far as possible and can access review or challenge mechanisms rather than restrictive arrangements becoming unquestioned.

Related resource

See the dedicated **Deprivation of Liberty & DoLS** PDF in this collection for the current 2026 legal position, including the Supreme Court change to the definition of deprivation of liberty.

Practical reminders

- An IMCA is an independent statutory advocate, not the decision-maker.
- The person must lack capacity for the relevant decision before the IMCA provisions for that decision apply.
- Serious medical treatment and qualifying long-term accommodation can create a duty to instruct an IMCA where the statutory criteria are met.
- Care reviews and adult safeguarding can provide additional routes to IMCA involvement.
- In safeguarding cases, an IMCA can sometimes be instructed even when family or friends are available.
- The advocate should seek the person's wishes, feelings, beliefs and values and support meaningful participation.
- IMCAs can examine relevant records, explore alternatives and scrutinise Mental Capacity Act decision-making.
- Their report and representations must be considered by the decision-maker.
- DoLS includes specific IMCA roles linked to assessment, representation and exercising rights.

A useful starting question

Instead of asking only “**Does this person have an advocate?**”, ask: “**Does this particular decision create a statutory right to IMCA support, and has the person been given meaningful independent representation?**”

About this resource

This PDF provides general educational information about Independent Mental Capacity Advocates within the Mental Capacity Act framework in England. Individual eligibility and referral responsibilities depend on the decision and circumstances, and complex cases may require specialist advice.

Information reviewed: September 2026

References & further information

Mental Capacity Act 2005. The statutory framework establishing Independent Mental Capacity Advocates and the decisions for which advocacy duties arise.

Mental Capacity Act 2005 Code of Practice. Detailed statutory guidance on the IMCA service, serious medical treatment, accommodation decisions, care reviews and safeguarding.

GOV.UK. *Making decisions: the Independent Mental Capacity Advocate (IMCA) service.* Government guidance explaining the statutory advocacy role and referral circumstances.

Care and Support Statutory Guidance. Guidance on independent advocacy under the Care Act 2014, which is distinct from the IMCA framework.

Collection complete

Together, **The Mental Capacity Act 2005**, **Deprivation of Liberty & DoLS**, and **Independent Mental Capacity Advocates** provide an introduction to capacity, decision-making, liberty and statutory advocacy. Related topics can then be cross-referenced without repeating the same legal foundations in every resource.