

# Southwark Safeguarding Adults Partnership Board

Practice Guidance for the use of Independent Mental Capacity Advocates in Safeguarding Adults Cases.



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## **1. Introduction:**

- 1.1 The Mental Capacity Act 2005 provides the legal framework for acting and making decisions on behalf of individuals who lack the mental capacity to make particular decisions for themselves.
- 1.2 The Act sets out core principles and methods for making decisions and carrying out actions in relation to personal welfare, healthcare and financial matters affecting people who may lack capacity to make specific decisions about these issues for themselves.
- 1.3 The Act introduces several new roles, bodies and powers, all of which support the Act's provisions. One of these is the Independent Mental Capacity Advocacy (IMCA) Service, which introduces the role of the Independent Mental Capacity Advocate (IMCA).

## **2. Independent Mental Capacity Advocate (IMCA) Service:**

- 2.1 The purpose of the Independent Mental Capacity Advocacy Service is to help particularly vulnerable people who lack capacity, and who have no family and friends who would be appropriate to consult, make important decisions about serious medical treatment and changes of accommodation.
- 2.2 The role of the Independent Mental Capacity Advocate (IMCA) is to work with and support people who lack capacity, and represent their views to those who are working to determine their best interests.



- 2.2 More recently the DH extended the Act through Regulations to cover two additional circumstances:
- i. Where a safeguarding adults allegation has been made and
  - ii. In care reviews.
- 2.4 This Southwark Safeguarding Adults Partnership Practice Guidance focuses on the first circumstance and provides guidance on which eligible individuals under safeguarding adults measures would benefit from having the involvement of an IMCA, and ensures that the available resources are targeted to those in most need.
- 2.5 This Practice Guidance should be read in conjunction with Southwark Safeguarding Adults Partnership Safeguarding Adults Policy and Procedures and the Mental Capacity Act Code of Practice published by the DH.

### 3. Who is Eligible?

- 3.1 In relation to safeguarding adults cases, the Regulations specify that Local Authorities and the NHS have powers to instruct an IMCA if the following requirements are met:
- i. Where safeguarding measures are being put in place in relation to the protection of vulnerable adults from abuse
  - ii. Where the person lacks capacity
- 3.2 The Local Authority or NHS body may instruct an IMCA to represent the person concerned if it is satisfied that it would be of benefit for the person to do so.



- 3.3 In safeguarding adults cases access to an IMCA is not restricted to people who have no one else to support or represent them. Therefore, people who lack capacity who have family and friends can still have an IMCA to support them through the safeguarding process.
- 3.4 The regulations equally apply to a person:
- i. Who may have been abused
  - ii. Who has been neglected
  - iii. Who is alleged to be the abuser
- 3.5 Where the qualifying criteria are met, it would be unlawful for the Local Authority or the NHS **not** to consider the exercise of their power to instruct an IMCA for safeguarding adults cases.

#### 4. Assessing Capacity in relation to Safeguarding Adults Issues:

- 4.1 Someone is said to lack capacity if they are unable to make a particular decision at a specific time. This inability must be caused by an impediment or disturbance of the mind or brain, whether temporary or permanent. (Two Stage Test see Section 4.4 of the Mental Capacity Act Code of Practice)
- 4.2 In order to make a decision, the person needs to be able to:
- i. To understand the information relevant to the decision
  - ii. To retain the information relevant to the decision
  - iii. To weigh and use the information
  - iv. To communicate that decision (by any means)

(Four Stage Assessment see Section 4.14 to 4.25 of the Mental Capacity Act Code of Practice)



- 4.3 All decisions about capacity should be time and issue specific. For example:

*A person may not be able to absorb and weigh up the pros and cons of continuing to live with an abusive family member, but is perfectly able to decide on a day-to-day basis what he or she wishes to wear.*

## **5. At what point in the process should an IMCA become involved?**

- 5.1 Consideration should be given to the most appropriate time to instruct an IMCA in safeguarding adults cases. This will be dependent on the decisions to be made and the risks to those involved. However, an IMCA should only be instructed if it is proposed to take, or protective measures have already been taken. In some cases it will be appropriate to involve an IMCA at the Strategy Discussion/Meeting stage. This would need to happen for cases where the wishes/decisions made by the individual would have a significant impact on the investigative process or where immediate actions need to be taken to safeguard the individual prior to further investigation taking place.
- 5.2 In other cases, it may be more appropriate for an IMCA to become involved at the case conference/safeguarding planning stage so that they can provide input into the safeguarding plan. This would be more appropriate in cases where decisions need to be made as a result of findings of the investigation.
- 5.3 Where an IMCA has been involved at any stage of the safeguarding process, they should be invited to attend Safeguarding Adults Meetings, as appropriate, including any subsequent reviews. The involvement of the IMCA should be reviewed once the specific decisions that prompted the referral have been resolved.
- 5.4 In some situations, a case may start out as a safeguarding adults case, where consideration is given whether or not to involve an IMCA under the set criteria – but this subsequently becomes a case where the



allegations or evidence give rise to the question of whether the person should be moved in their best interests. The case then becomes one where an IMCA **must** be involved **if there is no one else** appropriate to support and represent the person in this decision.

- 5.5 In those cases involving Lasting Powers of Attorney, where there is reasonable belief that the person holding the LPA is not acting in the best interests of the person lacking capacity, an application should be made to the Court of Protection for either a best interest decision, or to displace the LPA, **before** an IMCA is considered.

## 6. What are the criteria for referring someone to the IMCA Service?

- 6.1 In order to ensure that the IMCA Service is targeted to those in most need referrals to the IMCA Service should be made in cases where one of the following applies:

- 6.2 For someone who may have been abused or neglected:

- i. Where there is a serious exposure to risk:
  - a. Risk of death
  - b. Risk of serious physical injury or illness
  - c. Risk of serious deterioration in physical or mental health
  - d. Risk of serious emotional distress
- ii. Where family or friends are alleged to be the abusers
- iii. Where a life-changing decision is involved and consulting family or friends is compromised by the reasonable belief that they would not have the person's best interests at heart
- ii. Where there is a conflict of views between the decision makers regarding the best interests of the person  
(note: The IMCA is not a mediator, but rather ensures the person's wishes are represented, that the Best Interest Checklist has been followed and the principles of the Mental Capacity Act upheld)



### 6.3. For someone who is alleged to be the abuser:

- i. Where a life-changing decision is involved and consulting family or friends is compromised by the reasonable belief that they would not have the person's best interests at heart
- ii. Where there is a conflict of views between the decision makers regarding the best interests of the person

## 7. Traditional Advocacy Services:

7.1 When the person is already supported by an approved advocacy service, there may be no need to involve the IMCA Service. In many cases a person will be best served by receiving support from an advocate by whom he or she is already known who can receive support and advice from the IMCA when required.

## 8. Recording Decisions:

- 8.1 All decisions regarding a person's mental capacity and the involvement of an IMCA in a safeguarding adults process should be properly recorded in case notes and on AP 1, 2, or 3 forms.
- 8.2 See the MCA Code of Practice Section 4.61 and The Southwark Safeguarding Adults Partnership Safeguarding Adults Policy and Procedures Appendices 1-3



## 9. IMCA Contact Details:

9.1 The Southwark IMCA is Vicki Cowin. The contact details of the Southwark IMCA service are:

Cambridge House,  
131 Camberwell Road, London SE5 0HF

Fax: 020 7703 2903  
Phone: 020 7703 5025

Cambridge House Web Address:  
<http://www.cambridgehouseandtalbot.org.uk/>

Email Address: [victoria.cowin@cambridgehouseandtalbot.org.uk](mailto:victoria.cowin@cambridgehouseandtalbot.org.uk)

## 10. IMCA Referral Form:



IMCA Referral Form

Please click on the above icon to access a Word version of the IMCA Referral Form, or please see the details on the following two pages:



**INDEPENDENT MENTAL CAPACITY ADVOCACY  
REFERRAL FORM – Page 1 of 2**

<b>Date of Referral:</b>	<b>Client ID Number:</b>
<b>Client Name:</b>	<b>Source of referral:</b> (please tick relevant box) Kings College: ..... Guys and St Thomas: ..... SLAM: ..... Social services: ..... Southwark PCT: ..... Other: ..... Details:.....
<b>Type of referral:</b> (please tick relevant box)  Serious Medical Treatment: .....  Change of Residence: .....	
<b>Client address:</b>    <b>Postcode:</b>	<b>Decision Maker Information:</b>  Key person..... Telephone.....
<b>Client Telephone Number/s:</b>	
<b>Contact details of other professionals if relevant:</b> Names:                      Telephone:                      Role:	
<b>Date of Birth:</b>	
<b>Details of decision to be made:</b>	
<b>Outcome of Referral:</b> <ul style="list-style-type: none"> <li>• Allocated to advocate ..... (Date and time)</li> <li>• Signposted to ..... (Date)</li> <li>• Not eligible to access service ..... (Reason)</li> <li>..... (Time spent on ref)</li> </ul>	
Signature of person completing form <b>Name</b> ..... <b>Signature</b> .....	



**INDEPENDENT MENTAL CAPACITY ADVOCACY  
REFERRAL FORM – Page 2 of 2**

**Monitoring Information**

Please note the following information is used anonymously to monitor the standards and accessibility of the service. Data will be included in statistics provided to our funders. You can choose to withhold this information.

	<b>F</b>	<b>M</b>
African		
African/Caribbean		
Bangladeshi		
Black British		
Chinese		
Indian		
Irish		
Pakistani		
White British		
White Other		
Other		
Mixed		
Withheld		

**Client Need:** (please tick relevant box)

Mental Health

Learning Disability

Dementia

Acquired Brain Injury

Other .....

**Religion**

Christian

Muslim

Jewish

Hindu

Sikh

Buddhist

Other

Please state:

**MHA Status:** (please tick relevant box)

Informal

Section 2

Section 3

Section 37

Other .....

Please return form to: **131 Camberwell Road, London SE5 0HF Fax: 020 7703 2903  
Phone: 020 7703 5025**