

Kirklees and Wakefield Independent Mental Capacity Advocacy Service

Information for referrers

A service run by the national mental-health charity Together, working in partnership with Kirklees and Wakefield Councils. This leaflet contains information for those wishing to refer someone to the Service.

The Service is based at:
21 King Street
Wakefield
WF1 2SR
Tel 01924 361050

Email kirkleeswakefieldimca@together-uk.org
Manager

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Who is the Service for?

This Service covers the whole of the Kirklees and Wakefield local authority areas. The remit of services of this type is set out in the code of practice to the Mental Capacity Act 2005. Independent Mental Capacity (IMC) Advocates can work with people who – for reasons such as learning disability, dementia, mental health problems or brain injury – are unable to make specific decisions about the following areas:

- serious medical treatment
- accommodation changes that are for more than 28 days in hospital or eight weeks in a care home
- accommodation reviews
- adult protection.

(These issues are defined in more detail over the page.) The Mental Capacity Act 2005 code of practice also describes a two-stage test that should be carried out before an IMC Advocate is consulted, to show that the individual is unable to make the specific decision for themselves:

1. Firstly the lack of capacity must be for reasons including, but not limited to, a learning disability, dementia, mental health needs or acquired brain injury.
2. Secondly, the person must be *unable* to do one or more of the following in relation to the specific decision in question:
 - understand information given to them
 - retain that information long enough to be able to make the decision
 - weigh up the information available to make the decision
 - communicate their decision.

So before a referral is made to the IMCA Service, the decision-maker (ie the doctor or social worker making relevant decisions) or another competent person must determine whether or not the person has capacity to make the decision in question. Only if the person lacks capacity to make the specific decision should the IMCA Service be involved. If, in the course of their advocacy, the IMC Advocate believes that the person in fact has capacity for the decision in question, they may request a re-assessment.

An IMC Advocate should usually only be involved if there are no family or friends that can appropriately represent the person. The exception is adult-protection issues when an IMC

Advocate may be consulted regardless of whether or not there are family members or friends.

An IMC Advocate *cannot* be involved if there is:

- someone else to consult about decisions who was previously 'named' by the person who now lacks capacity and who is able and willing to help
- a deputy appointed by the court of protection
- a lasting power of attorney or an enduring power of attorney (unless they have been appointed only to deal with the person's property and affairs).

The full Mental Capacity Act code of practice can be found at www.dca.gov.uk/menincap/legis.htm#codeofpractice.

What kinds of issue can the Service help people with?

As we have said, the Mental Capacity Act says that IMC Advocates can provide advocacy for people around the following issues.

Serious medical treatment

The Mental Capacity Act regulations define 'serious medical treatment' as follows:

Treatment which involves providing, withdrawing or withholding treatment in circumstances where:

- *a single treatment is being proposed and there is a fine balance between its benefits to the patient and the burdens and risks it is likely to entail for him*
- *a choice of treatments is available and the choice between them is finely balanced; or*
- *what is proposed would be likely to involve serious consequences for the patient.*

People who are receiving treatment that is regulated under sections of the Mental Health Act 1983 do *not* qualify for the services of an IMC Advocate.

Changes in accommodation

The Service can help with any changes in someone's accommodation that will involve a stay of 28 days or more in hospital or eight weeks or more in a care home*. You should contact the Service whether the person is going into a care

home or hospital for the first time or moving from one care home or hospital to another.

However, if the change in accommodation is regulated under the Mental Health Act 1983 an IMC Advocate should *not* be involved.

People who fund, or will fund, their own residential care are eligible for the support of the IMCA Service if the local authority has assessed them and decided it has a duty to them. This includes placements made under Section 117 of the Mental Health Act 1983 and Section 47 of the NHS and Community Care Act

* The term 'care home' is not restricted to registered care homes. It covers a number of types of accommodation including nursing homes, care homes, ordinary housing, sheltered housing, housing association or registered social housing, hostel accommodation or private-sector housing provided by the local authority. See section 10.11 of the Mental Capacity Act code of practice for more information.

Care reviews

An IMC Advocate should be contacted about a care review if the person whose situation is being reviewed lacks capacity; there is no other appropriate person to represent them; the decision-maker is satisfied that this would be of benefit to the person; they have been in the accommodation for more than 12 weeks; and the local authority or NHS arranged the original accommodation.

Adult protection

The IMCA Service should be contacted if protective measures are being put into place in relation to the protection of a vulnerable adult from abuse, if the person lacks capacity; and the decision-maker is satisfied that it would be of benefit to the person to do so.

The regulations apply equally to:

1. a person who has been abused
2. a person who has been neglected; and
3. a person who is alleged to be the abuser.

The role of the IMC Advocate

The IMC Advocate's role is to give an independent report on the person's current or past wishes, culture, beliefs and known

needs, in order to help the professionals making the decision to ensure that they are working in the person's best interests.

The Advocate *does not make the decision*; the decision remains with the decision maker eg the doctor or social worker. But the Advocate will gather information about the person's wishes, values and circumstances, as well as identifying possible alternative courses of action, in order to inform the final decision. The Advocate will then present a report that must be taken into consideration by the decision maker.

IMC Advocates are entitled to:

1. see the person they are representing in private
2. access to the person's medical and health records, and to take copies from these
3. request further medical opinions.

These powers are explained in more detail below.

1 Access to service-users

Our Advocates are entitled to see the person they are representing in private. This means that they should be able to talk with the person in a private room where their conversation cannot be overheard or monitored. A bed on a ward with others around would *not* normally be acceptable. The only exceptions to this would be where:

- the individual refuses the option of going to a private room to talk
- it is not possible for the patient to leave their bed.

2 Access to medical and social-care records

IMC Advocates are entitled to see and, if necessary take copies from, the records of individuals they are representing, so long as the record-holder considers the information requested is relevant to the decision concerned.

When an Advocate needs to access individual records, they will usually make this request to the decision-maker.

3 Obtaining further medical opinions

IMC Advocates are entitled to request further medical opinions if they believe this will help them to gain a clearer understanding of a patient's needs or of the treatments or outcomes that may be available.

Advocates requesting further medical opinion will make their request to the senior doctor responsible for the person's care. The request may be verbal initially but will be followed up in writing.

Making a referral to the Service

Referrals for individuals who meet the criteria should be made by the relevant decision-maker (though they may delegate the task). In the case of serious medical treatment, this will usually be the senior doctor responsible for the patient's treatment. In the case of a change of accommodation decision, it will usually be the responsible social worker.

Referral forms and leaflets about the Service can be obtained direct from the Service or downloaded from www.together-uk.org/imca.

Response time

People who need an IMC Advocate are likely to be facing a crisis. Our Advocates will therefore work as quickly as possible to establish the wishes and needs of the person and the views of those who care for them. Our referral form asks for timescales for decisions, please be as accurate as possible with these so that we can prioritise our response appropriately.

We aim to respond to all appropriate referrals as soon as possible. We will confirm receipt of your referral by email or post. We would expect to begin working on a referral within three working days.

Confidentiality

Please note:

- Information relating to people who use the Service will be treated in the strictest confidence and discussed only within the remit of the work of the IMCA Service with the appropriate members of staff.
- Information about staff will be treated in the strictest confidence and discussed only with other senior staff or line manager.

This list is not exhaustive and amendments and additions may be required in line with future policy changes.

Comments and complaints

Together welcomes feedback about the Service. To get in touch, or make a complaint about the Service, please contact the Service Manager at:

Kirklees and Wakefield IMCA Service
21 King Street
Wakefield
WF1 2SR
Tel 01924 361050
Email kirkleeswakefieldimca@together-uk.org

You can contact the Together Area Manager for this Service at:

Together
23 Queens Road
Barnsley
South Yorkshire
S71 1AN
Tel 01226 770895
Email am-kirkleeswakefieldimca@together-uk.org

You can also make a complaint about the Service through the relevant council's complaints procedure.