

Mental Capacity Act Principles

- ✓ A person is assumed to have capacity until it is proved otherwise;
- ✓ A person cannot be treated as lacking capacity until all practical steps have been taken to help the person to make the decision;
- ✓ Any decision made on behalf of someone lacking capacity must be in the person's best interests;
- ✓ Consideration must be given to finding the least restrictive option;
- ✓ An unwise decision does not indicate lack of capacity.

Two - Stage Test of Capacity

- ✓ Is there an impairment of, or disturbance in the functioning of, the person's mind or brain? If so,
- ✓ Is that impairment or disturbance sufficient to make the person unable to make the decision in question at the time it has to be made?

Deprivation of Liberty Safeguards (DoLS)

The IMCA role was extended in 2009 to include safeguards for individuals deprived of their liberty. A person lacking capacity can be deprived of their liberty for care and treatment if it is deemed in their best interests following an assessment process.

If the person has no one to represent them, an IMCA is appointed to support and represent them during the assessment and whilst they are subject to a DoLS.

KAG also provides Paid Representative for individuals during the authorisation period, when required.

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Independent
Mental
Capacity
Advocate

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IMCA Service

The Mental Capacity Act 2005 has created this new **statutory** service. It is provided by organisations that are **independent** of the NHS and local authorities.

The aim of the IMCA service is to provide additional **safeguards** for **people who lack the capacity** to make certain important decisions at the time the decision needs to be made, and who have no families and friends appropriate to consult.

An IMCA will

- ✓ Be independent of the authority making the decision;
- ✓ Provide support for the person who lacks capacity;
- ✓ Represent the person's wishes, feelings, values and beliefs and ensure that these are considered in the decision that has to be made.

An IMCA must

Be appointed for someone who lacks capacity, **for the particular decision that has to be made** if that person has **no one** (other than paid staff) **with whom it is appropriate to consult** whenever:

- ✓ An NHS body is proposing serious medical treatment *;
- ✓ An NHS body or local authority is proposing to arrange or change accommodation in a hospital, care home or other long term accommodation and,
 - the person will stay in a hospital for more than 28 days or
 - the person will stay in the care home for more than 8 weeks

An IMCA may also be appointed for someone who lacks capacity in Safeguarding Adults cases or in care/ accommodation reviews.

* 'Serious medical treatment' includes providing, withdrawing, withholding treatment in circumstances where there is a fine balance between benefits and burdens, where there is a balance between the choice of treatments and where what is proposed would be likely to have serious consequences for the person.

An IMCA will

- See the person in private, if possible;
- ✓ Have access to care and health records relevant to the decision;
- ✓ Consult with professionals and others who know the person;
- ✓ Ascertain the person's likes and dislikes, wishes, beliefs and value;
- ✓ Find out what has been done to help the person make the decision;
- ✓ Consider alternative options;
- ✓ Write a report on their findings to the decision maker.

An IMCA may

- ✓ Challenge the judgments of the decision maker;
- ✓ In case of proposed serious treatment, seek a second medical opinion.