

**ADULT PROTECTION, CARE REVIEWS AND IMCAs:
GUIDANCE ON INTERPRETING THE REGULATIONS EXTENDING THE
IMCA ROLE**

Summary:

The MCA Regulations extend the powers of LAs and the NHS to instruct IMCAs in certain cases of accommodation reviews and adult protection cases. LAs and the NHS have a duty to decide in which cases would IMCAs most benefit their clients. The most effective way to do this is for LAs and the NHS to prepare local guidance for their staff, to assist them in identifying those would most benefit. It would be unlawful not to consider the exercise of these powers to instruct IMCAs for accommodation reviews and adult protection where the qualifying criteria are met.

Introduction

1. The Department of Health consulted publicly on the role of the IMCA and asked whether IMCAs should be involved in situations beyond the two specified in the Act: in serious medical treatment and in accommodation moves. We received a large number of responses indicating that the IMCA role should cover two additional circumstances a) where an adult protection allegation has been made and b) in care reviews. The Department responded to these comments by extending the Act through Regulations to take account of these two new situations. The Regulations have been debated and approved by Parliament.

Review of arrangements as to accommodation – ‘care reviews’.

2. The regulations specify that local authorities and the NHS have the power to instruct an IMCA in accommodation reviews if the following [three] requirements are met:

- the LA or the NHS must have arranged the original accommodation; and

- the person whose accommodation is being reviewed must lack capacity; and
- there is no other person appropriate to consult.

In these circumstances the LA or NHS body may instruct an IMCA to represent the person concerned if it is satisfied that it would be of particular benefit to the person to do so.

3. Having the power to instruct an IMCA means that the LA or NHS needs to consider for each individual who meets the qualifying criteria whether an IMCA should be instructed. The most practical way of applying this consideration for each individual is for the LA or NHS to draw up a policy statement outlining the criteria to be applied when deciding for each eligible individual having an accommodation review whether there would be a benefit from having the safeguard of an IMCA. This policy statement should be made widely available, so that all relevant staff in the local authority or NHS are aware of the criteria to be applied, thus ensuring consistency in decision-making in these cases.

Where an IMCA is appointed the LA or NHS body must take into account any information provided, or submission made, by the IMCA when making any decision about the accommodation review in respect of the person concerned.

4. Where the qualifying criteria are met, it would be unlawful for the LA or the NHS not to consider the exercise of their power to instruct IMCAs for accommodation reviews.

Adult protection

5. The Regulations specify that LAs and the NHS have powers to instruct an IMCA if the following two requirements are met:

- where protective measures are being put in place in relation to the protection of vulnerable adults from abuse; and
- where the person lacks capacity.

In these circumstances the LA or NHS body may instruct an IMCA to represent the person concerned if it is satisfied that it would be of benefit to the person to do so.

6. The regulations do not require the person in an adult protection situation to have no friends or family to consult.

7. The regulations apply equally to:

- a) a person who has been abused,
- b) who has been neglected and
- c) a person who is alleged to be the abuser.

8. Having the power to instruct an IMCA in adult protection cases means that the LA or NHS needs to consider for each individual who meets the qualifying criteria, whether an IMCA should be instructed. The most practical way of applying this consideration for each individual, is for the LA or NHS to draw up a policy statement

outlining which eligible individual receiving adult protection measures would most benefit from having the safeguard of an IMCA. This policy statement should be made widely available, so that all relevant staff in the local authority or NHS are aware of the criteria to be applied, thus ensuring consistency in decision-making in these discretionary cases.

9. Where an IMCA is appointed the LA or NHS body must take into account any information provided, or submission made, by the IMCA when making any decision about the protective measures in respect of the person concerned.

10. Where the qualifying criteria are met, it would be unlawful for the LA or the NHS not to consider the exercise of their power to instruct IMCAs for adult protection.

The following tables were put together with the help of adult protection co-ordinators in Sheffield and Wakefield and with the pilot IMCA organisations. They illustrate some of the issues to consider in drawing up a useful policy.

Quotes from a number of Adult Protection Coordinators:

“The trick in writing a local policy will be to establish thresholds which keep the IMCA service targeted on the most difficult cases, and that will require some careful thought and some calculation of numbers and costs”.

“It is about seriousness, impact and risk of repetition...”

“We felt that the policy might refer to conflicts of interest involving family members. or conflict with or between professionals.”

“We discussed the degree of risk and possible consequences for the person or other vulnerable people – a possible criteria might be ‘a life changing decision or serious exposure to risk’.”

“Perhaps we should have IMCAs where there are no effective key-workers involved? And involved would mean they are not involved in the incident and not involved as key-worker to another client also involved in the incident..”

“I think what we're looking for is circumstances where the non-IMCA arrangements are not robust enough to support the decision-making needed, and an external (IMCA) opinion will give a more defensible and more appropriate outcome. I can think of three obvious "adult protection" IMCA scenarios:

1. There are family or friends, but consulting with them is compromised by the

reasonable belief that they will not have the person's best interests at heart.

2. The protection plan arrived at by the adult protection case conference involves a life changing decision or serious exposure to risk (in the case of accommodation decisions, of course, the IMCA duty would already be there, but if the decision is not to move the person, it would not be), and should not be agreed without consulting someone whose role in advocating on behalf of the person is uncompromised.

3. The decision that the responsible body needs to take involves a potential conflict of interest between the responsible body and the person.

In all these cases, the instruction of an IMCA is arguably appropriate and beneficial to the person, and should help reduce the number of cases going to the Court of Protection for direction.”

Abusers

“ all cases where a person without mental capacity is alleged to be an abuser should automatically have an IMCA as they would benefit from an additional safeguard., ”

Care reviews:

a) a narrow role: a role for an IMCA in care reviews where a decision is made to change a care package with implications for quality of life.

b) a wider role: all care reviews which are not just about confirming the existing situation. IMCAs might help us to look for creative alternatives.

Quotes from IMCAs about the IMCA role in adult protection:

“Sometimes we are instructed before the strategy/ safeguarding meeting, and sometimes after. We are always at the case conferences. In the good LAs we also represent our clients at the end when the LA reviews the protection plans.”

“It would be good if all LA had an ‘Adult protection + IMCA’ document – but they have to have some experience of the IMCA role before it can be a good document”.

“In one of the authorities I work in we sat down with the adult protection co-ordinator and he explained in great deal how the local multi-agency arrangements operate and I explained how non-instructed advocacy works and that was the foundation for a good working relationship.”

“One POVA lead told me I needed to represent my client without discussing the abuse to avoid the investigation being contaminated. That was fine”.

“The big issue for me has been the length of the role – how long do we stay involved in each case?”

“For me the big issue was when the LA was not following its own POVA procedures”

“I get referrals the day before the strategy meeting and then the LA expects my report the day after. Expectations need to be better negotiated.”

“We have been involved in lots of different kinds of cases: financial abuse, sexual abuse, neglect, historical abuse, abuse by mothers and fathers, landlords and care workers.”

“I see adult protection leading to change of accommodation as two separate instructions.”

“Sometimes I feel I am the person ensuring that this client is safe.. it should be the local authority’s role”.

“What is my role? I represent my client. I alert the multi-agency team to my findings. I ensure that the whole protection process is followed properly. I sometimes have to hold people accountable for what they are meant to be doing”.

“When the multi-agency process is going well, then I am a small part of it. When however it is not going well, I sometimes end up steering it back on track.

“It is about balancing clients’ wishes with their safety”.

“We need to be clear about the assessment of lack of capacity in adult protection – the regulations state it is the capacity to agree to one or more of the measures. Agreement means consent means understanding and weighing up the options”.