An independent mental capacity advocate (IMCA) is a specific type of advocate whose role is to provide representation and support for particularly vulnerable people (aged 16 or over) who lack capacity and who are facing important decisions about certain serious life-changing events without a supportive network of family or friends. An IMCA is not the decision-maker (although decision-makers have a duty to take into account information they provide).

The main general benefits of the independent mental capacity service are:

- having an independent person to review significant decisions being made
- having an advocate who is articulate and knowledgeable not just about the Act but also a person’s rights, health and social care systems and community care law
- receiving support from a person who is skilled at helping people who have difficulties with communication to make their views known.

Change: the IMCA service is a new statutory service. It does not replace other existing forms of independent advocacy but its role differs from these in a number of ways, e.g.

1. The IMCA is decision- specific: it concerns decisions around serious medical treatment and changes of accommodation as well as discretionary adult protection cases and care reviews
2. The IMCA role has time constraints: IMCAs need to complete their work and submit their reports within the time available to make decisions
3. NHS bodies have a legal duty to instruct and consult IMCAs

When must an IMCA be appointed?
An IMCA must be appointed when:

1. the person (aged over 16) lacks capacity, and
2. there is no-one (other than a person providing treatment in a professional capacity or for remuneration) who can be consulted about their best interests, and.
3. the decision being made is about either one of the 3 sets of circumstances noted below, i.e.

a. Serious medical treatment (s.37) being proposed by an NHS body (or by another organisation on behalf of the NHS, see Box 1), or
b. Long-term NHS accommodation (s.38)
An IMCA is required when a NHS body proposes to: a) place a person who lacks capacity in a hospital – or move them to another hospital or –for a stay likely to last longer than 28 days, or b) place them in a care home – or move them to another care home for a stay likely to last longer than 8 weeks.

c. Long-term local authority accommodation (s.39)
An IMCA is required when a local authority proposes in relation to a person who lacks capacity to: a) provide residential accommodation in a care home (or its equivalent) for a period which is likely to be longer than 8 weeks, or b) move the person to another care home (or its equivalent) for a period which is likely to be longer than 8 weeks.

Box 1 ‘Serious medical treatment’
Defined in s. 37 as
- giving new treatment
- stopping treatment that has already started
- withholding treatment that could be offered

And where there is either:
- a fine balance between benefits and the burdens and risks of a single treatment
- a choice of treatments that are finely balanced
- what is involved is likely to involve serious consequences

Serious consequences’
Defined as those which could have a serious impact on the patient either from the effect of the treatment itself or its wider implications.

Examples include treatment which:
1. causes serious and prolonged pain distress or side effects
2. has potentially major consequences for the patient (e.g. stopping life-sustaining treatment or having major surgery such as heart surgery
3. has a serious impact on the patient’s future life choices (e.g. interventions for ovarian cancer

The Code (10.45) provides the following non-exhaustive list of treatments (for both mental and physical conditions) that would be considered ‘serious’:
- chemotherapy
- major surgery (e.g. open-heart or brain/neuro surgery)
- therapeutic sterilisation
- electro-convulsive therapy
- major amputations (e.g. loss of arm/leg)
- treatment which result in permanent loss of hearing or sight
- withholding or stopping artificial nutrition/hydration
- termination of pregnancy

NB:
1. In an emergency when urgent treatment (e.g. to save a person’s life) is needed there is no legal obligation to instruct an IMCA
2. An IMCA cannot be involved if the proposed treatment (despite being ‘serious’ is authorized under the Mental Health Act 1983
**When may an IMCA be appointed?**

An IMCA can also be appointed (but there is no legal duty to do so) in 3 further situations.

These are:

1) **Adult protection cases:** this applies to those who lacks capacity and, a) have been or are alleged to be a victim of abuse or neglect, or b) have been alleged or proven to be an abuser.

**NB.** An IMCA may be appointed in adult protection cases regardless of family involvement. In other words even if the person has friends of family who are involved/interested in their care and welfare.

2) **Care reviews:** this applies to those who have been placed in accommodation by the NHS or local authority (for 12 weeks or longer), and whose accommodations arrangement are being reviewed.

3) Where a person has no family or friends to represent them, but does have an attorney or deputy who has been appointed solely to deal with their property and affairs the Code of Practice (10.71) states that they should not be denied access to an IMCA (if they lack the capacity to make decisions relating to e.g. serious medical treatment).

**When does an IMCA not have a role?**

The Act states (s.40) that an IMCA cannot be involved if:

- the person lacking capacity has appointed in advance (in whatever manner) someone who is to be consulted about his care and treatment
- has appointed an LPA
- the court has appointed a deputy to deal with the act in question.

**Who has a duty to instruct an IMCA?**

For serious medical treatment, NHS staff, e.g. doctors or other healthcare professional who is proposing to take an action in relation to the care or treatment of an adult who lacks capacity (or who is contemplating making a decision on behalf of that person) will usually be the person responsible for instructing an IMCA.

**What is the role and functions of an IMCA?**

The role and functions of an IMCA are defined in the Act, regulations and the Code of Practice. To facilitate understanding the approach taken here will be to identify (in Box2) what the Act says about the IMCA’s role and (in Box 3) how that role should/can be carried out. Box 4 provides a summary of the IMCA’s work.
Box 2 Duties of IMCA

s.36 (2) imposes the following duties:

- providing support to the person who lacks capacity so that he can participate
- as fully as possible in the decision
- obtain and evaluate relevant information
- ascertain the person’s wishes and feelings, beliefs and values
- ascertain alternative courses of action
- obtain further medical opinion where necessary

In addition the IMCA must

- prepare a written report of his findings for the NHS body.
- follow the principles in the Act (i.e. the 5 statutory

Box 3 How IMCAs should carry out their duties

According to Regulations and the Code of Practice (chapter 10) an IMCA

- must confirm that the person instructing them has the authority to do so
- must find out what support the person has had to enable him make the decision
- must try to find what the person’s wishes, feelings, beliefs and values would be likely to influence him if he had capacity
- should consider the person’s religion and any cultural factors
- should interview or meet in private the person who lacks capacity
- should get the views of professionals and paid workers providing care and treatment
- should get the views of anybody else who can give information about the person’s wishes, feelings beliefs or values

In addition an IMCA may

- examine any relevant records (e.g. health records)
- challenge the decision-maker (e.g. about their assessment of capacity or whether the decision is in the persons best interests
When does the IMCA’s work end?

The IMCA will stop being involved in a case once the decision has been finalised and they are aware that the proposed treatment has been carried out. The IMCA cannot provide on-going advocacy support to the patient. If it is felt that a patient needs advocacy support after the IMCA has withdrawn, it may be necessary to make a referral to a local advocacy organisation.

Implications for health professionals
Although an IMCA does not make the decision about what is in the best interests of a patient their involvement nevertheless has important implications for health professionals. These are divided into section A and B (note that both sections are subject to any local processes or procedures that state otherwise)

Section A
The following checks should be made before providing treatment:

1. Should an IMCA be appointed?
An IMCA must be appointed if:

1. the decision involves ‘serious medical treatment’ (as defined in Box 1)
2. the patient lacks capacity to make that particular decision
3. the patient is over 16 years old
4. there is nobody (other than paid staff providing care or professionals) who is willing and able to be consulted about the decision. This may arise because

- the family member or friend is not willing to be consulted
- the family member or friend is too ill or frail
- there are reasons which make it inappropriate or impracticable to consult with the family member or friend, for example, they live too far away
- a family member or friend may refuse to be consulted
- there is abuse by the family member or friend.

2. Whether an LPA or deputy has been appointed?
If serious medical treatment is proposed for a patient (who lacks capacity and who has no friends or family to represent them), but who does have an attorney or deputy appointed solely to deal with their property and affairs, then the Code of Practice (10.70) recommends that an IMCA should be appointed.

3. Is the ‘serious medical treatment’ urgent?
The only situation in which the duty to instruct an IMCA need not be followed is if an urgent decision is needed, for example, to save a person’s life. However, if further serious treatment follows an emergency situation, an IMCA must be instructed.

NB. If treatment is ‘urgent’ the decision must be recorded together with the reason for the non-referral to an IMCA.

Section B
To ensure effective collaboration between an IMCA and health professionals the following actions may need to be taken:

4. Provide access to patient’s records
An IMCA has the right s. at all reasonable times (when practicable and appropriate), to examine and take copies of any health records that the IMCA thinks are relevant to their investigation, for example, clinical records, care plans and social care assessments. 35(6)

5. Facilitate the IMCA’s interview with the patient
An IMCA has the right to have an interview the patient in private (when it is practicable and appropriate). Given the range of legal duties imposed on IMCAs by the Act to provide support to the patient and ascertain what their wishes and feelings would be likely to be, and the values and beliefs that would be likely to influence them, health professionals are likely to be asked to help facilitate an interview (or more than one, if necessary).

6. Take into account information provided by IMCA
The Act) imposes a legal duty on the decision-makers to take into account any information given, or submissions made, by the IMCA. s.37 (5) All health professionals
involved in the person’s treatment will therefore need to be aware of this duty (if they have, for example, been given information by the IMCA relevant to the decision in question).

Information from the IMCA may be given verbally or in a written report (which the IMCA has a legal duty to submit). Either way the intention is to make sure that decisions are based on a full understanding of the patient’s past and present wishes (Code. 10.21).

7. **Record the role of the IMCA in the case**
The IMCA’s role should be recorded (Code of Practice 10.14). This record should include:
- the extent of the IMCA’s involvement
- any information provided by the IMCA to help decision-making
- how the decision-maker has taken into account the IMCA’s written report
- any reasons for disagreeing with the IMCA’s advice.

8. **Inform the IMCA of the final decision**
Although it is unlikely that at this stage the IMCA is unaware of the decision that has been made the Code of Practice (10.14) nevertheless recommends that she or he be informed by the decision-maker(s) of any decision and the reason for it.