

## Assessing Capacity

The Mental Capacity Act states that a person lacks capacity if they are unable to make a decision because of an impairment of, or disturbance in the functioning of, the mind or brain.

A person can be deemed to lack capacity to make a decision if:

- He/she is unable to understand the information;
- He/she is unable to retain the information;
- He/she is unable to use or weigh the information relevant to the decision as part of the process of making the decision; or
- He/she is unable to communicate the decision (by talking, sign language, or other means).

Assessment of capacity must be decision and time specific and must optimise the person's ability to make the decision themselves.

## How to make a referral

POhWER offices are open 9am-5pm Monday to Friday and calls will be taken by a duty IMCA.

For further information about the IMCA service and to download an IMCA referral form please visit our website.

[www.pohwer.net](http://www.pohwer.net)

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Registered Charity No. 1061543  
Published 11/07

**imca**  
Independent mental  
capacity advocacy

**POhWER IMCA advocates  
provide a free, confidential and  
independent service to support  
people who lack capacity to  
make certain decisions.**



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## What is IMCA?

The Mental Capacity Act 2005 in 2007 introduces the new statutory role of the **Independent Mental Capacity Advocate (IMCA)** to support people who lack capacity to make certain decisions. **IMCAs** are vetted, nationally trained and comply with the Code of Practice.

An **IMCA** must be instructed by the NHS and Social Services, where there is a decision to be made regarding either **serious medical treatment** or **change of accommodation**.

### AND

The person has no close family or friends to represent their views

### AND

The person has been deemed by the Decision Maker not to have capacity to make that decision in accordance with the Act.

### This can include:

- People with dementia or mental ill health
- People with learning disabilities and physical disabilities
- People who have had a stroke
- People with acquired brain injuries, who are unconscious or in a coma.

**IMCAs** may also be instructed in issues of **safeguarding vulnerable adults procedures** and **care reviews**. Please see our website for further details on this for your area.

## Definitions

**Serious medical treatment (SMT)** applies where an NHS body proposes to provide, or secure the provision of treatment including providing, withdrawing or withholding treatment in circumstances where:

- In a case where a single treatment is being proposed, there is a fine balance between the benefits to the patient and the burdens and risks it is likely to entail for him/her
- In a case where there is a choice of treatments, a decision as to which one to use is finely balanced, or
- What is proposed would be likely to involve serious consequences for the patient.

### Change of accommodation

applies where an NHS body or Local Authority proposes a move for the person to hospital for more than 28 days or to alternative accommodation for more than 8 weeks.

## How does it work?

An **IMCA** can:

- Represent and support the person who lacks capacity to participate, and ascertain their wishes and feelings
- Obtain and evaluate information, including relevant client records and options
- Discuss options with decision makers and professionals
- Obtain a further medical opinion, if necessary
- Make a complaint on behalf of the person or apply to the Court of Protection, if necessary.

**IMCAs** submit a report to the decision maker to be used by them in accordance with the statutory best interests checklist, before making a final decision.

**To make a referral, please use the contact details overleaf.**