



Advocacy, IMCA and Safeguarding Policy

Introduction

The purpose of this policy is to set out agreed responsibilities in relation to advocacy representation of vulnerable adults under Safeguarding Adult procedures.

Advocacy is a process of supporting and enabling people to:

- Express their views and concerns
- Access information and services
- Protect and promote their rights and responsibilities
- Explore options and choices

As such, advocacy for some people will be a valuable support when they are involved with issues of safeguarding.

For those people who are in need of safeguarding but who lack the capacity to consent to the protective measures being discussed, advocacy representation may be particularly valuable and in some circumstances required by this policy.

Throughout the rest of this policy advocates are referred to as either 'non-statutory advocates' or 'Independent Mental Capacity Advocates' reflecting the distinction that the role of the latter is set out in Mental Capacity Act legislation.

The Mental Capacity Act 2005 provides the principles and legal framework for making decisions and carrying out actions in relation to personal welfare, healthcare and financial matters of people who may lack capacity to make specific decisions about such issues for themselves.

The Mental Capacity Act 2005 (Independent Mental Capacity Act Advocates) (Expansion of Role) Regulations 2006 states that NHS bodies and local authorities have the discretion to instruct an Independent Mental Capacity Advocate (IMCA) where 'protective measures' are required under Safeguarding Adult procedures for those who lack capacity to agree to one or more protective measures.

Although the power to instruct an IMCA in safeguarding scenarios is discretionary in legislation, the decision of Leeds Commissioning bodies is that an IMCA must be instructed where the criteria within this policy has been met.

This policy recognises that both 'non-statutory advocates' and IMCAs fulfill an important role within Safeguarding Adult procedures. This policy sets out agreed roles and responsibilities and should be read in conjunction with the Leeds Multi-Agency Safeguarding Adult Partnership Procedures (www.leedssafeguardingadults.org.uk)

Advocacy, IMCA and Safeguarding Policy 15.12.09

The Role of The Safeguarding Coordinator

The responsibility for instructing a non-statutory advocate / IMCA for a vulnerable adult without the capacity to consent to safeguarding measures lies with the 'Safeguarding Coordinator' as defined within Leeds Multi-Agency Safeguarding Adult Partnership procedures. It is then the responsibility of the Safeguarding Coordinator to notify relevant parties that a non-statutory advocate / IMCA has been appointed.

In addition the safeguarding coordinator has a responsibility to advise vulnerable adults with capacity in relation to protective measures of non-statutory advocacy services where they believe the person may need such support to self advocate.

Non-Statutory Advocates For Those With Mental Capacity

Where a person has the mental capacity to be make decisions about safeguarding measures they are not entitled to an IMCA. A person must be assumed to have capacity unless it is established that they lack capacity. The test for capacity is included in the next section of this policy but would not be undertaken unless there was reason to believe that the person might lack capacity in relation to the decision.

Usually a person with capacity will not need or benefit from having a non-statutory advocate. However, where a person is without support of family or friends and needs support to self-advocate they may benefit from the involvement of a non-statutory advocate. The need for this support may apply equally to a person who has been allegedly abused or neglected or who is alleged to be the abuser.

Where the Safeguarding Coordinator has reason to believe that the alleged victim or alleged perpetrator does not have the support of friends or family to support them and would appear to benefit from the support of a non-statutory advocate, then information regarding non-statutory advocacy services should be provided. If the person wishes to pursue this course of action they should be provided with the necessary support to access these services. Details of advice given or action taken should be recorded.

See Flow Chart in Appendix 1.

Subsequent sections within this policy refer to the representation of vulnerable adults without mental capacity to consent to protective measures under safeguarding adult procedures.

IMCA and Non-Statutory Advocates For Those Without Mental Capacity

See Flow Chart in Appendix 2.

If the following 3 criteria apply a referral will be needed for either an IMCA or Non-Statutory Advocate. These criteria apply equally to a person who has been abused, neglected or is alleged to be the perpetrator.

The subsequent section provides guidance as to whether the referral should be for an IMCA or Non-Statutory Advocate.

1. Safeguarding Adult Procedures are being implemented.

Safeguarding Adult Procedures are those defined within the Leeds Multi-Agency Safeguarding Adult Partnership (www.leedssafeguardingadults.org.uk)

Advocacy, IMCA and Safeguarding Policy 15.12.09

2. The person lacks capacity to make a decision in relation to one or more protective measures proposed or taken under Safeguarding Adult Procedures.

Examples of protective measures may include (but are not limited to):

- Restrictions on contact with certain people
- Temporary or permanent moves
- The police interviewing the person or collecting forensic evidence which may support a prosecution
- Increased support or supervision
- An application to the court of protection
- Restrictions on accessing specific services / places
- Access to counseling or psychology with the aim of reducing the risk of further abuse

Assessments of Capacity and Decision making are that defined within the Mental Capacity Act 2005 and Code of Practice repeated here.

Anyone assessing someone's capacity to make a decision for themselves should use the two-stage test of capacity.

- Does the person have a temporary or permanent impairment of the mind or brain, or is there some sort of disturbance affecting the way their mind or brain works?
- If so, does that impairment or disturbance mean that the person is unable to make the decision in question at the time it needs to be made?

A person is unable to make a decision if they cannot:

- Understand the information relevant to the decision
- Retain that information (for as long as required to make the decision).
- Use or weigh that information as part of the process of making the decision, or
- Communicate their decision (whether by talking, using sign language or any other means).

3. Where a person without capacity has no family or friends to represent them under Safeguarding procedures or where:

- a life-changing decision is involved and consulting family is compromised by the reasonable belief that they would not have the person's best interests at heart.
- there is a conflict of views between the decision-makers regarding the best interests of the person.
- there is a risk that protective measures or the investigation process could be undermined or obstructed by a conflict of views between the decision makers and family representatives.
- the additional statutory powers of an IMCA may be required for the person's best interests to be safeguarded, even though there are

Advocacy, IMCA and Safeguarding Policy 15.12.09

supportive family members or friends. For example, right of access to records.

Determining The Need For IMCA or 'Non-Statutory Advocacy'

If the 3 criteria within the previous section have been met then a referral for either an IMCA or Non-Statutory Advocate is required. This section provides guidance as to whether the referral to be made is for an IMCA or Non-Statutory Advocate.

Independent Mental Capacity Advocates have statutory powers that non-statutory advocates do not have:

- IMCAs have a right of access to relevant records
- IMCAs have a right to see the vulnerable adult in privacy
- IMCAs have a right to seek a second opinion about medical decisions
- IMCAs authority in challenging decisions they do not believe to be in the person's best interests or have not adhered to the principles and requirements of the Mental Capacity Act.

The IMCA service however is a limited resource and should focus on cases where other arrangements are not robust enough to support the necessary decision making for the individual. In determining whether an IMCA is required as opposed to a 'non-statutory advocate' the following guidance should be adhered to:

Type 1 and Type 2 Investigations

Where an incident or series of incidents has resulted in a Type 1 or Type 2 Investigations and the vulnerable adult's needs are already being served by an existing non-statutory advocate, there will usually be no need to involve the IMCA service. Similarly, where there is no existing advocacy provision (and no one other than a paid carer that it is appropriate to consult) it will usually be appropriate to engage the support of a non-statutory advocate rather than an IMCA. This will be particularly helpful where the vulnerable adult has a range of support needs and those not solely confined to protective measures, for example in a review of needs and care provided.

However, an IMCA should be instructed if there is:

- Serious exposure to risk of death
- Serious exposure to risk of serious physical injury or illness
- Serious exposure to risk of serious deterioration in physical or mental health
- Serious exposure to risk of serious emotional distress
- A risk of financial abuse which could have a serious impact on the person at risk's welfare. For example, where the loss of money would mean that they would be unable to afford to live in their current accommodation, or to pay for valued opportunities.

An IMCA should also be instructed if there is reason to believe:

- That the additional powers of an IMCA compared with a 'non-statutory' advocate is of 'particular benefit' to the vulnerable adult.

In addition to the need to consider an IMCA referral under safeguarding procedures, there are also statutory requirements to involve an IMCA in respect of:

Advocacy, IMCA and Safeguarding Policy 15.12.09

1. An accommodation move arranged by a local authority or NHS body (which is likely to be for longer than eight weeks and or placement in hospital for a period that is likely to exceed 28 days and there is no one other than a paid carer that it would be appropriate to consult)
2. Protective measures that may amount to a possible deprivation of liberty

See Section 'Relationship Between Safeguarding IMCA Referrals And Other IMCA Provision'.

Type 3 and Type 4 Investigations

Where an incident or series of incidents has resulted in a Type 3 or Type 4 Investigation then an IMCA referral should be made even if there is already non-statutory advocacy provision in place. The need for a Type 3 and Type 4 Investigation indicates more serious or complex safeguarding issues and the need for more significant and / or carefully considered protective measures. In such circumstances referral to a specialist advocate (IMCA) is appropriate.

The appointment of an IMCA does not in itself end any existing advocacy provision. However, advocacy responsibilities within the context of Safeguarding Adult procedures will be met by the IMCA.

Relationship Between Safeguarding IMCA Referrals And Other IMCA Provision

See Flow Chart in Appendix 2.

Safeguarding IMCA referrals should be made only where the issue of protective measures cannot be addressed through other forms of IMCA provision. For example:

- If the only proposed protective measures may constitute a deprivation of liberty, the IMCA referral should be in relation to deprivation of liberty.
- If the only proposed protective measure is an accommodation move arranged by a local authority or NHS which is likely to be for longer than eight weeks and or placement in hospital for a period that is likely to exceed 28 days and there is no one (other than a paid carer) that it would be appropriate to consult. The IMCA referral should be in relation to changes in accommodation.

If however, in the examples above, additional protective measures are being considered a safeguarding IMCA referral will be required in addition to the referrals for changes of accommodation or deprivation of liberty.

Alternatively, if the protective measures do not concern changes of accommodation of this nature or deprivation of liberty then the referral should be for an IMCA for safeguarding.

Advocacy, IMCA and Safeguarding Policy 15.12.09

At What Stage Should An Advocate be Instructed

The Safeguarding Coordinator should give due consideration to the need for an advocate to be appointed as soon as the protective measures are identified for a vulnerable adult who is unable to consent to these arrangements. It may also be necessary to involve an IMCA in a decision to not implement protective measures where risk remains. Strategy meetings/discussion and case conferences should consider/review the need for IMCA instruction..

However, the process of instructing an IMCA or non-statutory advocate should not delay the implementation of protective measures required to safeguard the best interests of the vulnerable adult.

Wherever possible a mental capacity assessment should be completed prior to the instruction of an IMCA. There may be occasions when it has not been possible to undertake a formal test of capacity, for example, where carrying out an assessment with a vulnerable adult could potentially interfere with evidential police interview; or where the service user is not consenting to the assessment.

In such circumstances it is appropriate to instruct an advocate where there is a reasonable belief that the person lacks capacity (MCA CoP Section 5.59). An assessment of capacity should be undertaken subsequently as soon as it is practical to do so. If such an assessment indicates that the vulnerable adult has capacity regarding safeguarding measures proposed then the IMCA service should be withdrawn.

Once appointed the advocate should be invited to Strategy Meetings and Case Conferences in relation to the vulnerable adult.

Role Of The Advocate Within Safeguarding Adult Procedures

The role of the IMCA / non-statutory advocate is not to act as the decision maker regarding the best interests of the vulnerable adult nor should they be involved in any investigation of the alleged abuse.

Instead the IMCA / non-statutory advocate has a responsibility to represent the vulnerable adult, to help ensure that the decision making process adheres to statutory principles and requirements of the Mental Capacity Act and that the outcomes support the best interests of the service user. This will include, but is not confined to:

- Ensuring that the person's feelings and wishes are represented in best interests discussions concerning the protective measures
- Checking that the vulnerable adult is given as much support as possible to participate in the decision making process.
- Checking that the decision maker has given due consideration to all possible protective measures.
- Checking that the proposed outcomes can be effectively achieved in a way that is least restrictive of the person's rights and freedom of action

In order to fulfill their function, an advocate will usually need to:

- Interview or meet the person if possible

Advocacy, IMCA and Safeguarding Policy 15.12.09

- Talk to professionals; paid carers and other people who can give information about the person's wishes and feelings, beliefs and values

Local Authorities and NHS bodies which instruct an IMCA are legally required to have regard to any representations made by the IMCA when making decisions about protective measures.

Regulations allow IMCA's to make representations on any matter they feel is relevant to decisions concerning protective measures.

Advocacy Contacts

The IMCA / advocacy referral should clarify if there are specific persons that the advocate should not contact for risk of prejudicing the enquiry or if there are environments or issues that could place the advocate at risk in the course of fulfilling their role.

In particular:

- IMCAs should get the support of the safeguarding coordinator before meeting the vulnerable adult. Their agreement should be put in writing and set out any limits on the discussion the IMCA can have with the person.
- An advocate should always get explicit agreement from the Safeguarding Coordinator and their own line manager if they are seeking to have contact with an alleged perpetrator who is not their client.
- IMCA's should not contact anyone beyond those involved in the safeguarding meetings without confirmation from the Safeguarding Coordinator that it is appropriate to do so.

Access To Information

IMCAs have an additional right to see, and take copies of, relevant records. This covers all health records, any record of, or held by the by the local authority and compiled in connection with a social services function, and any record held by a person registered under Part 2 of the Care Standards Act 2000 (MCA Section 35(6)). It is for the person who holds the records to determine whether it may be relevant to the IMCAs role.

For safeguarding adult instructions the IMCA will ordinarily expect to be provided with copies of the Referral Form, Strategy Meeting minutes and reports produced as part of the safeguarding proceedings.

Non-statutory advocates will not have this right of access to records.

IMCA Report

IMCAs are required to produce a report for the Safeguarding Coordinator who instructed them. This should include representations regarding the proposed protective measures and any matters the IMCA feels are relevant.

Advocacy, IMCA and Safeguarding Policy 15.12.09

In the course of their work IMCAs may have other concerns not directly related to compliance with the Mental Capacity Act in making decisions about protective measures. Examples may include:

- Concerns about the person at risk's support and care
- Concerns about the process of police involvement
- Concerns about a failure of specific individuals or bodies to follow the safeguarding adult procedures.

Good practice is for the IMCA to include any such concerns in their report.

The need to produce a report does not apply to a non-statutory advocate, however their views should be made known to relevant parties as appropriate.

Ideally an IMCA report is provided before decisions are made about protective measures. However in some cases the IMCA may have had opportunity to write a report before decisions are made. The need to undertake safeguarding measures should not be delayed by the need to instruct an IMCA. In such scenarios the IMCA report should be provided within one week of the decision relating to protective measures being made.

The IMCA works to specific instruction around the safeguarding issue and once key decisions have been reached will need to review whether they can remain involved. The IMCA should formally write to the Safeguarding Coordinator advising them that they have ended work with the vulnerable adult.

Resolving Disagreements

Where a non-statutory advocate / IMCA has significant concerns about the process of decision making regarding protective measures or the outcomes for the vulnerable adult they should as soon as possible bring their concerns to the attention of the Safeguarding Coordinator. If this cannot be resolved verbally a report should be submitted to the Safeguarding Coordinator setting out the concerns which should be responded to in writing within one week.

The resolution of disagreements should be seen as a joint responsibility between the Safeguarding Coordinator and the IMCA / non-statutory advocate. If the issue remains unresolved at this stage, then both a senior manager of the advocacy/IMCA service and the Safeguarding Coordinator's Operational Line Manager should be involved to support the resolution process.

Where it is still not possible to resolve serious concerns regarding a person's capacity or safety an application for adjudication by the Court of Protection may be required.

Advocacy, IMCA and Safeguarding Policy 15.12.09

Additional Guidance

- SCIE. Practice Guidance On The Involvement Of Independent Mental Capacity Advocates (IMCAs) In Safeguarding Adults (SCIE GUIDE 32) – November 2009
- The Mental Capacity Act 2005 (Independent Mental Capacity Advocates) (Expansion of Role) Regulations 2006. London: The Stationery Office.
- The Mental Capacity Act 2005 (Independent Mental Capacity Advocates) (General) Regulations 2006. London: The Stationery Office.
- The Mental Capacity Act: Code of Practice. London. The Stationery Office.
- The Mental Capacity Act 2005. London. The Stationery Office
- Mental Capacity, Independent Mental Capacity Advocacy (IMCA) Service Engagement Protocol for Leeds

Appendix 1: Non-Statutory Advocacy Representation / Safeguarding



