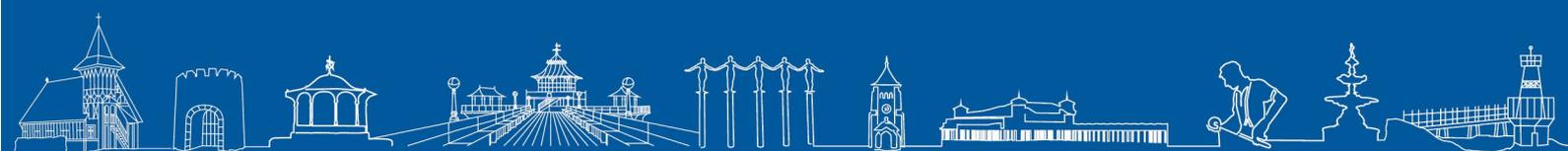


North Somerset Council

Adult Social Services and Housing

Independent Mental Capacity Advocacy Policy



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2. Aim and audience for this policy

Under the [Mental Capacity Act \(MCA\) \(2005\)](#) there are certain circumstances under which North Somerset Council must provide people with access to an Independent Mental Capacity Advocate (IMCA). The aim of this policy is to inform practitioners in adult social services and housing of the eligibility criteria for instructing an IMCA, when the duty does not apply, and the standards and expectations regarding the delivery of high-quality Independent Mental Capacity Advocacy.

This policy will also inform people drawing on care and support, and their carers, of North Somerset Councils' duty under the [Mental Capacity Act \(2005\)](#) to instruct an IMCA, and the circumstances under which an IMCA must/should be instructed to represent their views, wishes, experiences, and rights.

3. What is Independent Mental Capacity Advocacy (IMCA)?

The IMCA role is a statutory role introduced by [the Mental Capacity Act \(2005\)](#). The IMCA role, and its parameters, are defined in the [Mental Capacity Act Code of Practice](#).

IMCAs work independently of North Somerset Council. The role of the IMCA is to provide independent safeguards for people who lack capacity to make certain important decisions and, at the time such decisions need to be made, have no-one else (other than paid staff) who is appropriate to support and represent them or to consult with. IMCAs can only work with an individual once they have been instructed by a responsible body.

When the need for an IMCA is identified a referral must be made to the current commissioned statutory adults advocacy service.

Referrals for an IMCA can only be made by a health or social care professional from a responsible body. IMCA referrals that relate to a Deprivation of Liberty Safeguards (DoLS) are made and managed by the DoLS team, usually on the recommendation of the Best Interests Assessor (BIA).

What does an IMCA do?

North Somerset Council will support IMCAs to conduct their roles, unhindered, in accordance with the Mental Capacity Act and the code of practice. It is important for practitioners to be aware of what the IMCA's responsibilities are when working alongside people drawing on care and support. An IMCA will:

- Meet and talk to the person they are representing/supporting (in private where practicable).

- Act in accordance with the principles of the Mental Capacity Act and take account of the [Code of Practice](#).
- Examine relevant health and social care records.
- Gather the views of professionals and paid workers.
- Gather the views of anybody else who can give information about the wishes and feelings, beliefs, or values of the person.
- Gather other information which may be relevant to the decision.
- Check that the person has been supported to be involved in making the decision.
- Ascertain, as far as reasonably practicable, what the person's wishes and feelings would be if they had capacity to make the decision and what values and beliefs would influence this.
- Make sure that different options have been considered.
- Decide whether to ask for a second medical opinion where a decision about serious medical treatment is under consideration.
- Write a report on their findings for the decision maker to consider.

An IMCA will seek to explore whether the decision-maker has considered all possible options and that the proposed option is the least restrictive of the person's future choices or would allow them the most freedom. The IMCA may suggest alternatives where there is evidence that these are more consistent with the wishes and feelings of the person. This must be taken into account by the decision-maker.

4. Legal context

The responsible bodies

The Mental Capacity Act (2005) imposes similar duties upon NHS bodies and local authorities who are responsible for long-term accommodation decisions for a person who lacks the capacity to decide where they live for the purposes of receiving care and treatment. The instructing organisation are called the responsible body.

Who is responsible for instructing an IMCA?

For decisions about serious medical treatment, the responsible body will be the NHS organisation providing the person's healthcare or treatment. If the person is in an independent or voluntary sector hospital, the responsible body will be the NHS organisation arranging and funding the person's care.

For decisions about admission to accommodation in hospital for 28 days or more, the responsible body will be the NHS body that manages the hospital. For admission to an independent or voluntary sector hospital for 28 days or more, the responsible body will be the NHS organisation arranging and funding the person's care.

For decisions about moves into long-term accommodation (for eight weeks or longer), or about a change of accommodation, the responsible body will be either the NHS body that proposes the move or change of accommodation (e.g. a nursing home), or the local authority that has carried out an assessment of the person under the Care Act (2014) and decided the move may be necessary. This may be accommodation in a care home, nursing home, ordinary and sheltered housing, housing association or other registered social housing or in private sector housing provided by a local authority, or in hostel accommodation. Sometimes NHS organisations and local authorities will make decisions together about supporting a person to move into long-term care. In these cases, the organisation that must instruct the IMCA is the one that is ultimately responsible for the decision to move the person.

For safeguarding enquiries or Safeguarding Adult Reviews (SAR) the responsible body is either the local authority or NHS body that may need to take protective measures in relation to the person at risk. Therefore, the instruction may be made by the local authority with responsibility for instigating safeguarding adult proceedings, the local authority responsible for the person at risk's care, or an NHS body with responsibility for the person at risk's care (e.g. the hospital where they are an inpatient).

When North Somerset Council decides that a person is eligible for an IMCA, practitioners will provide the person with information about the advocacy role in an accessible and positive way. This will support the person to understand the benefits of an IMCA in their situation and what to expect from their involvement. This will reduce the risk that the person will choose not to engage with the IMCA and ensure their involvement in the care and support process is maximised.

When must an IMCA be instructed?

As a responsible body North Somerset Council, where relevant, has a duty under the Mental Capacity Act (2005) to instruct an IMCA where the eligibility criteria are met. The eligibility criteria includes people who fund all, or part, of their care and support.

An IMCA **must be** instructed for people in the following circumstances:

- the person is aged 16 or over, and
- a decision needs to be made about
 - providing, withholding, or stopping serious medical treatment provided by the NHS ([excluding treatment regulated under Part 4 of the Mental Health Act 1983](#)), or
 - arrangements for accommodation (or a change of accommodation) in hospital or a care home, and
 - the person will stay in hospital longer than 28 days, or

- the person will stay in the care home, or in other accommodations previously referenced, for more than eight weeks, and
- the person has been assessed as lacking capacity to make decisions related to the above, and
- there is no one independent of services who is “appropriate to consult”. This applies where:
 - there is no network of support, such as close family or friends, who take an interest in the persons welfare, or
 - no family or friends are willing to be consulted about the best interest’s decision, or
 - family members or friends are too ill or frail to engage in the process, or
 - circumstances make it impractical to consult with the family members or friends, or
 - the family member or friend are under suspicion of perpetrating violence or abuse against the person.

Other circumstances an IMCA may be instructed.

An IMCA **may also** be instructed to support someone who lacks capacity to make decisions concerning:

- care reviews, where no-one else is available to be consulted, and
- adult protection cases, whether or not family, friends or others are available to be consulted.

IMCA referrals under these circumstances are discretionary and have been superseded by the Care Act. North Somerset Council has a duty to appoint an Independent Care Act Advocate if certain conditions are met. Please refer to the [Independent Care Act Advocacy Policy](#) for more information.

An IMCA may be instructed for care reviews

A responsible body can instruct an IMCA to support and represent a person who lacks capacity to participate in a care review when:

- accommodation has been arranged for that person
- the accommodation arrangements are being reviewed (as part of a care plan or otherwise)
- there are no family or friends who it would be appropriate to consult
- the responsible body, under the [MCA – IMCA regulations \(2006\)](#) “are satisfied that it would be of particular benefit to the person to be so represented by an IMCA.”

An individual decision on whether to instruct an IMCA must be made in each case that meets the above criteria.

If a person does not meet the above criteria, and has substantial difficulty being fully involved in the care and support review process without support, they will be eligible for an advocate under the statutory duties in the Care Act (2014). Please see the [Independent Care Act Advocacy](#) Policy for more information and guidance.

An IMCA may be instructed when there is an adult safeguarding concern

There is a requirement under the Mental Capacity Act for responsible bodies to consider whether an IMCA should be instructed in safeguarding enquiries or Safeguarding Adult Reviews (SAR). It is important to note that where a person at risk is already supported by an advocate (e.g., Independent Care Act Advocate) it is unlikely that an IMCA will be required. However, the following point could help decide whether an IMCA should be instructed for safeguarding enquiries or Safeguarding Adult Reviews (SAR).

- The person could benefit from IMCA support for issues in addition to those related to safeguarding adults (i.e. such as a proposed change in accommodation to mitigate risk).

If at any time during the safeguarding adults process the person at risk meets the criteria for an IMCA to represent them regarding accommodation decisions, this instruction must be made regardless of whether another advocate has already been instructed to support with the safeguarding processes. If an IMCA has already been instructed, good practice would be for the same IMCA to undertake both roles.

For further information on IMCA practice in Adult Safeguarding please consult the [Practice guidance on the involvement of Independent Mental Capacity Advocates \(IMCAs\) in safeguarding adults.](#)

If a person does not meet the above criteria, and has substantial difficulty being fully involved in the safeguarding enquiry or Safeguarding Adult Review (SAR) without support, they will be eligible for Independent Care Act Advocacy under the Care Act (2014). Please see the [Independent Care Act Advocacy](#) Policy for more information and guidance.

IMCA and people who are in prison

IMCAs should be available to people who are in prison and meet the criteria for IMCA support outlined [above](#).

IMCA and DoLs

IMCAs must also be instructed for people who are being assessed as to whether they are currently being, or should be deprived of their liberty, where there is no-one appropriate to consult.

There are several different IMCA roles involved in supporting and representing people who may be subject to the Deprivation of Liberty Safeguards legal framework. These are set out in Section 39 of the [amended Mental Capacity Act \(2005\)](#). It is important to be clear which role an IMCA is taking, as they are instructed for different reasons and have different roles. These roles are summarised below.

- [Section 39A IMCAs](#) are instructed when a standard authorisation is requested and there is no one to consult with in relation to it.
- [Section 39C IMCAs](#) cover the role of the relevant person's representative when there is a gap between appointments.
- [Section 39D IMCAs](#) support the person, or their relevant person's representative, when a standard authorisation is in place.

Supervisory bodies are responsible for making all these instructions, using [Form 11](#). Where there is a request for a DoLS authorisation, supervisory bodies should provide any 39A, 39C or 39D IMCA involved with:

- a copy of the request for the standard authorisation ([form 1](#))
- relevant DoLS assessment, where applicable.

When IMCA's cannot not be instructed by a responsible body?

An IMCA cannot be instructed if the person who lacks capacity:

- Requires immediate serious medical intervention, for example in life-threatening circumstances. However, if further serious treatment follows an emergency situation, there will be a need to instruct an IMCA.
- Is undergoing treatment which is regulated by Part 4 of the Mental Health Act (1983),
 - This includes detention in hospital under Section 2 (assessment) or Section 3 (treatment).
 - It also includes guardianship orders which specify where a person should live. However;
 - An IMCA may be required to represent a person when they are discharged from hospital. This includes when the accommodation is made under Section 117 (aftercare arrangements), if there is no requirement for the person to live in the proposed accommodation – i.e. the person, if they had capacity, would be able to exercise a choice.
 - An IMCA should be instructed if it is proposed that a person will remain in hospital for more than 28 days as an informal patient, including after being discharged from a section of the MHA1983
- Requires accommodation urgently. If the placement or move is urgent, an IMCA does not need to be immediately instructed. However, an IMCA must be

instructed as soon as possible if the person is likely to stay in hospital longer than 28 days or longer than eight weeks in other accommodation.

- Has restrictions placed on their accommodation under the Mental Health Act.
- Had previously named a person that should be consulted about decisions that affect them, and that person is available and willing to help.
- Has appointed an attorney, either under a [Lasting Power of Attorney or an Enduring Power of Attorney](#) (Health and Welfare only) and the attorney continues to manage the person's affairs.
- Has a Court of Protection appointed deputy, who continues to act on the person's behalf. A responsible body can still instruct an IMCA if the Court of Protection is deciding on a deputy, but none is in place when a decision needs to be made.
- Has any other person (not in a paid capacity) who is willing and able to support and represent appropriately the person who lacks capacity.

The IMCA will stop supporting a person once the decision has been finalised and they are aware that the proposed action has been carried out. They will not be able to provide on-going advocacy support to the person.

5. How will North Somerset Council implement the Independent Mental Capacity Advocacy Policy?

The standards expected for delivering high-quality Independent Mental Capacity Advocacy

The implementation of the IMCA policy involves ensuring people have access to high quality IMCA's. The publication [Making decisions: The Independent Mental Capacity Advocate \(IMCA\) service](#) sets out clear requirements in relation to the role and function of any IMCA's appointed by the Local Authority. IMCA's must perform their functions to the requirements outlined in this publication.

In all cases an IMCA must determine how best to represent and support the person and must act with a view to promoting their best interests and well-being.

Individual IMCAs must:

- have specific experience (related to working with people who need support with making decisions, advocacy experience and experience of health and social care systems); and
- have IMCA training; and
- have integrity and a good character; and
- be able to act independently.

All IMCAs must complete the IMCA training and have enhanced checks with the Disclosure and Barring Service that show no areas of concern.

IMCAs must be independent. People cannot act as IMCAs if they:

- care for or treat (in a paid or professional capacity) the person they will be representing (this does not apply if they are an existing advocate acting for that person), or
- have links to the person instructing them, to the decision-maker or to other individuals involved in the person's care or treatment that may affect their independence.

How we work alongside Independent Mental Capacity Advocates

Where North Somerset Council has arranged for an IMCA to support a person under the Mental Capacity Act practitioners must:

- Let all relevant people know when an IMCA is working alongside a person.
- Take into account any representations the IMCA makes on behalf of the person in relation to their best interests.
- Take reasonable steps to assist the IMCA to fulfil their role, represent, and support the person (for example by referring early, setting timeframes that allows the advocate time to consult with the person and others, and/or providing records requested by the advocate).
- Ensure that the IMCA is invited to, and involved in, appropriate care planning/review meetings, adult protection meetings and Best Interest meetings to enable them to gather information and submit their findings.
- Keep the IMCA informed of any developments and of the outcome of any assessments carried out.
- Keep the IMCA informed of the final decision taken and the reason for it.
- Provide the IMCA with a timely written response to any report they have prepared that raises concerns about the care and support being delivered by North Somerset Council.

Where North Somerset has cause, it may make reasonable requests for information from the IMCA in relation to their performance and the functions they have carried out in relation to a particular person. The IMCA and the Advocacy People must comply with such requests. There may be instances whereby IMCAs and representatives of North Somerset Council might disagree. For example, there may sometimes be cases when an IMCA thinks that a decision-maker has not paid enough attention to their report and other relevant information and is particularly concerned about the decision made. An IMCA has the same rights to challenge a decision as any other person caring for the person or interested in their welfare. The

right of challenge applies both to decisions about lack of capacity and a person's best interests. If this happens, disagreements should be settled through discussion and negotiation as soon as possible. North Somerset Council will discuss, with the IMCA, the areas they disagree about – particularly those that might have a serious impact on the person drawing on care and support. North Somerset Council will make time to listen to the IMCA's views to try to understand the reason for the differences with a view to settling the disagreement.

In particularly serious or urgent cases, an IMCA may seek permission to refer a case to the Court of Protection for a decision. The Court will decide in the best interests of the person who lacks capacity.

If a person is not happy with the support they are receiving/have received from an IMCA and wishes to provide feedback they should contact the advocacy service provider.

If a practitioner has a concern about the practice of an IMCA, they should speak to their supervisor in the first instance.

6. Further information

The following documents are available alongside this guidance.

- [IMCA referral form](#)
- North Somerset Council easy read summary
- North Somerset Council Fact sheet
- [Further easy read information, an accessible video, and a factsheet, is available from the Advocacy People](#)
- [Making decisions The Independent Mental Capacity Advocate \(IMCA\) service](#)
- [Mental Capacity Act 2005 Code of Practice](#)

7. Accessible information

Council documents can be made available in large print, audio, easy read and other formats. Documents on our website can also be emailed to you as plain text files. Help is also available for people who require council information in languages other than English. Please email asshsstrategyandpolicyteam@n-somerset.gov.uk or ring 01934 888 888.