

Policy and Procedures

Use of the Independent Mental Capacity Advocate Service for care reviews of accommodation placements



The local social services authorities and the NHS in Sussex working with POhWER, the Sussex-wide IMCA Service provider



Effective: 1st December 2012

Version: 5

Review date: June 2014

Status

This policy and procedures document was originally agreed by the pan-Sussex IMCA Service Reference Group on 13th March 2007. The Reference Group includes representation from the three local social services authorities in Sussex, from the NHS, and from POhWER. The Reference Group has kept this policy and procedures under review. This latest version (version 5) replaces that previously issued on 28th April 2010.

This policy and procedures document was signed off on behalf of the pan-Sussex IMCA Service Reference Group by Bev Hone (East Sussex County Council) and Greg Slay (West Sussex County Council - and also, at the request of Judith Cooper, Contracts Manager, by him on behalf of Brighton and Hove City Council).

This policy and procedures document, and its impact, will next be formally reviewed in **June 2014** by the pan-Sussex IMCA Service Reference Group.

Policy

1. Introduction

1.1 The Mental Capacity Act 2005 provides the legal framework for acting and making decisions on behalf of individuals who lack the mental capacity to make particular decisions for themselves.

1.2 The Act sets out core principles and methods for making decisions and carrying out actions in relation to personal welfare, healthcare and financial matters affecting people who may lack capacity to make specific decisions about these issues for themselves.

1.3 The Act introduced several new roles, bodies and powers, all of which support the Act's provisions. One of these is the Independent Mental Capacity Advocate (IMCA) Service.

1.4 Additional arrangements were introduced in April 2009 whereby the IMCA Service may also become involved in Deprivation of Liberty Safeguards under the Mental Capacity Act.

1.5 The IMCA Service across the three local social services authorities in Sussex is provided by POhWER. POhWER has a 3-year Service and Funding Agreement with Brighton and Hove City

Council, from April 2010, on behalf of these local social services authorities and their Primary Care Trust partners. A 1-year extension to this contract was agreed in September 2012 and this means that the contract with POhWER will now end on 31st March 2014. The IMCA Service in Sussex originally became operational in April 2007.

1.6 A pan-Sussex Reference Group oversees the operation of the IMCA Service in Sussex. The members of the Reference Group are service commissioners from the local social services authorities, the NHS in Sussex, and POhWER itself.

2. Assessing mental incapacity

2.1 One of the five statutory principles set out in Section 1 Mental Capacity Act 2005 is the presumption of capacity. Everyone, over the age of 16 years, is presumed to have capacity to make decisions for themselves.

2.2 A person can however be considered to lack capacity if he or she is unable to make a particular decision at a particular point in time. This inability must be caused by *an impairment or disturbance of the mind or brain, whether temporary or permanent*. In order to be considered as lacking in the capacity to make a decision, the person also needs to be unable to:

- Absorb basic information about the pros and cons of an issue;
- Retain the information for long enough to process it;
- Weigh up the pros and cons against their own value system and arrive at a decision; and
- Communicate that decision.

2.3 Mental *incapacity* is time and decision-specific. The Act introduced a functional test for the assessment of capacity and the Mental Capacity Act's 2007 Code of Practice (chapter 4) provides more detailed guidance.

3. Purpose of the IMCA Service

3.1 The IMCA Service exists to support and represent vulnerable people who lack capacity to make particular decisions for themselves. These relate only to decisions about serious medical treatment and/or long-term changes of accommodation. In addition, there must be no family or friends present that it would be appropriate to consult. This includes any person who has the

authority of a Lasting Power of Attorney, or who is representing or acting on behalf of the Court of Protection.

3.2 The role of the IMCA Service is to work with and support people who lack capacity, and represent their views to the person identified as the 'decision-maker' – the person responsible for determining or arranging treatment or services that meet the best interests of the person lacking capacity.

3.3 The role of the IMCA Service was extended through Regulations to cover two additional circumstances: a) where a safeguarding adults allegation has been made and b) in care reviews.

3.4 The decision-maker will ensure that all times s/he works with the IMCA Service advocate in line with the *Engagement Protocol* that has been developed for use across Sussex with the NHS and the three local social services authorities. The Protocol is available online from POHWER (visit: pohwer.net).

3.5 This policy provides guidance in relation to **the use of IMCAs in care reviews relating to the provision of accommodation**. It draws on work undertaken by the Department of Health and issued in a Guidance Note ('Department of Health, 2007: Adult Protection, Care Reviews and IMCAs: Guidance on Interpreting the Regulations Extending the IMCA Role').

4. The statutory Regulations

4.1 In relation to accommodation care reviews the statutory Regulations specify that local social services authorities and the NHS have *discretionary* powers to instruct an IMCA if the following requirements are met:

- Where the local authority or the NHS arranged the original accommodation; **and**
- Where the person whose accommodation needs reviewing lacks capacity; **and**
- There is no other unpaid person appropriate to consult.

4.2 The Regulations go on to suggest that the interpretation and application of these specifications is a matter for local decision, and that the commissioners of the IMCA Service at a local level must formulate the policy that will operate in their geographical area.

Procedures

5. Interpretation of the Regulations in Sussex

5.1 The pan-Sussex IMCA Reference Group has determined that a **referral to the IMCA Service in relation to accommodation reviews must take place:**

- Where the local authority or the NHS arranged the original accommodation; **and**
- Where the person whose accommodation is to be reviewed lacks capacity *at the time of the review*; **and**
- There is no other unpaid person appropriate to consult; **and**
- A *proposed change in the accommodation*, or the *status* of the accommodation, is scheduled for discussion at the review meeting.

5.2 In addition, the decision-maker – based either in a local social services authority or an NHS body - **must also make a referral where:**

- The IMCA Service was involved in the original decision about the accommodation move, and the IMCA Service recommended its involvement in any subsequent review; **and/or**
- There is a professionals' dispute about how the best interests of the person lacking capacity are served by the accommodation under review.

5.3 The decision-maker will ensure that the referral to the IMCA Service is made in a timely manner in order to enable the advocate to initiate the investigative work required before the review meeting takes place.

5.4 The decision-maker will ensure that any ongoing involvement of the IMCA Service is reviewed once the specific issue that prompted this referral has been resolved.

6. Change in accommodation following review

6.1 Moving to new long-term accommodation is one of the statutory criteria under which an IMCA **must** always be instructed.

6.2 Where there is to be a change in the accommodation provided under the auspices of S.21 or S.29 National Assistance Act 1948 or S.117 Mental Health Act or S.47 NHS & Community Care Act 1990,

the decision-maker will be in the local social services authority, and it will be this person who initiates the referral to POhWER.

6.3 Where there is to be a change in the accommodation provided under the auspices of the NHS – including through continuing health care – then the decision-maker will be an NHS decision-maker, and it will be this person who initiates the referral to POhWER.

6.4 The involvement of the IMCA Service in care reviews is a *discretionary* activity, not a mandatory activity, according to the Regulations. It is however recognised and promoted as good practice across Sussex.

7. Adult safeguarding issues

7.1 The policy on the use of the IMCA Service in Sussex in relation to Safeguarding Adults was originally agreed in May 2007, and has been revised and updated subsequently. The current revision is version number 6, effective from December 2012. The policy has been circulated widely across Sussex and forms part of the pan-Sussex Safeguarding Adults' policy and procedures (revised 2012). A copy is available for inspection on the POhWER website.

8. Contacting the IMCA Service in Sussex

8.1 **The IMCA Service is a limited resource and it is important that the use of it is focused where the need is greatest and/or where the statutory responsibilities are clearly defined.** Where a person is already supported by an existing advocacy service, there should be a discussion with POhWER as to how best to ensure that the views of the person lacking capacity are provided to the decision-maker.

8.2 The POhWER website includes a number of pages dedicated to the IMCA Service. A referral form can be downloaded from the website or obtained by telephoning **0300 456 2370** during office hours, Monday – Friday.

8.3 POhWER has experience of working with customers from ethnic minorities as well as with people who do not have English as their first language, and/or who need specialist communication tools. However it is for the referring agency to ensure that satisfactory arrangements are made to facilitate access to interpretation or translation services or other arrangements where required. The referring agency will also be responsible for funding such arrangements.

8. Sources of further information

Department of Health (2007). 'Adult Protection, Care Reviews and IMCAs: guidance on interpreting the Regulations extending the IMCA role.' London, Department of Health. Available to download from: dh.gov.uk

Social Care Institute for Excellence (2010). 'Independent Mental Capacity Advocate involvement in accommodation and care reviews.' SCIE Guide 39. Available to download from: scie.org.uk

Action for Advocacy (2010). 'IMCA instruction: best practice guidance.' Available to download from: actionforadvocacy.org.uk

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