

Practice guidance on the involvement of Independent Mental Capacity Advocates (IMCAs) in safeguarding adults



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Contents

Foreword by the Association of Directors of Adult Social Services	4
About this document	5
Who can be represented by an IMCA?	6
Who can instruct an IMCA?	8
Deciding whether an IMCA should be instructed	9
When an IMCA should be instructed	13
The role of the IMCA	14
The IMCA's contact with the person at risk	17
Information sharing	20
The IMCA's contact with alleged perpetrators	21
The IMCA's contact with family, friends and others	22
Access to information	24
The appropriate adult role	24
IMCAs challenging decisions	25
When the IMCA will stop working with the person	27
References	28
Organisations	29
Appendix: Example policy for IMCA instruction in safeguarding adults	30

Foreword by the Association of Directors of Adult Social Services

The Association of Directors of Adult Social Services (ADASS) is the national organisation in England and Northern Ireland representing directors of social care in local social services authorities. ADASS members are responsible for providing or commissioning, through the activities of their departments, the well-being, protection and care of hundreds of thousands of elderly and disabled people, as well as for the promotion of that well-being and protection wherever it is needed. Close formal and informal links are maintained with colleagues in the NHS, children's services departments and in the independent provision of day and residential services to older people. The organisation works closely with government in helping to shape and implement policy and social care legislation.

Within ADASS the work on supporting the implementation of the Mental Capacity Act (MCA) 2005, and the additional Deprivation of Liberty Safeguards from April 2009, has been located within our Mental Health Drugs and Alcohol Network since 2005. The Network is very grateful to all who have assisted in the development of this practice guidance, at various stages in its development. Our Network has peer reviewed this document; it has also been discussed by our adult safeguarding policy group and by the coordinators of adult safeguarding work in local social services authorities.

We are pleased to work in partnership with the Social Care Institute for Excellence (SCIE), Action for Elder Abuse and other organisations in improving practitioner awareness of the Mental Capacity Act 2005. Together we commend this guidance to practitioners and managers.

Jenny Goodall and Richard Webb
Co-chairs, ADASS Mental Health Drugs and Alcohol Network

About this document

This practice guidance concerning **the involvement of Independent Mental Capacity Advocates (IMCAs) in safeguarding adults** is jointly published by the ADASS and SCIE. It replaces the *Practice guidance criteria for the use of IMCAs in safeguarding adults* published by ADASS in 2007.

Advocacy Partners was originally commissioned by the Department of Health (DH) and SCIE to develop guidance in this area. The first draft was written by Teresa Gorczynska, head of IMCA and Mental Health Advocacy, drawing on the lessons from research undertaken by Redley *et al.* (2008) on the involvement of IMCAs in adult protection procedures in England. This draft was amended by SCIE after a wide consultation. Input was received from members of ADASS and other local authority representatives, the DH, Action for Advocacy, Action on Elder Abuse, the Ann Craft Trust and the Office of the Public Guardian (OPG), in addition to a number of IMCA providers.

Local authorities and NHS bodies are expected to have a policy setting out the criteria for deciding whether an IMCA should be instructed to represent and support a person involved in safeguarding adults proceedings. An example policy based on the guidance is included in the Appendix.

Terminology

Safeguarding adults is used in this document where *adult protection* was used in the Mental Capacity Act Code of Practice. *Safeguarding adults* is defined as ‘all work which enables an adult “who is or may be eligible for community care services” to retain independence, well-being and choice and to access their human right to live a life that is free from abuse and neglect” (ADASS 2005). It covers both the prevention of abuse and responses to situations where abuse might be taking place.

The terms for the different stages of safeguarding adult proceedings reflect those used by ADASS (2005). Similarly, *safeguarding manager* is used here for the person responsible for managing the ‘safeguarding adults’ process in relation to a specific safeguarding referral. This is likely to be a local authority manager but the role could be designated to a professional from another organisation.

The *person at risk* refers to the person who is the focus of the safeguarding adult proceedings: this may be someone who is either alleged to have been abused or to have perpetrated abuse.

Who this document is for

This good practice guide is primarily aimed at professionals who have responsibilities in relation to safeguarding adults and may be involved in safeguarding adults proceedings. This includes local authorities, IMCA providers, safeguarding managers, the police and other safeguarding adults partners.

Who can be represented by an IMCA?

The regulations state that IMCAs may be instructed where local authorities or NHS bodies 'propose to take or have taken, protective measures in relation to a person ("P") who lacks capacity to agree to one or more of the measures' and where safeguarding adults proceedings have been instigated. People at risk may be supported by an IMCA regardless of any involvement of family or friends.

Under the two-stage capacity test in the MCA, the first requirement is that the person has an impairment or disturbance of the mind or brain. The second requirement is that the impairment or disturbance means that the person is unable to make the decision in question at the time it needs to be made.

Before making an instruction for safeguarding adults, it is necessary to assess the person as lacking capacity for at least one protective measure which is either being considered or has been put in place. 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 counselling or psychology with the aim of reducing the risk of further abuse.

Protective measures may constitute a deprivation of the person at risk's liberty. Where this is possibly the case, the requirements of the Deprivation of Liberty Safeguards need to be followed.

There is no statutory requirement for the IMCA service to have access to a copy of a mental capacity assessment before acting on the instruction.

Subsequent to the IMCA instruction there may be a need to undertake further mental capacity assessments. This could be because of concern about the original assessment, potentially fluctuating capacity, or protective measures being considered for which capacity has not previously been assessed.

If subsequently the person at risk is found to have capacity with regard to all the protective measures which are actively being considered, the IMCA instruction should be withdrawn. The statutory IMCA role would normally end at this point. In some cases though, where the IMCA is concerned about the decision-making process, they may still need to challenge an aspect of this. The right of challenge applies both to decisions about a lack of capacity and best interests decisions (see 'When the IMCA will stop working with the person', below).

Example 1

A safeguarding alert has been raised because a home support worker is concerned that Edna, a 90-year-old woman in the early stages of dementia, is being financially abused by her nephew who until recently had had no contact with her. Because of the size of Edna's savings she pays for her own services. The safeguarding manager arranges for Mark, a social worker, to visit Edna as part of the safeguarding assessment. Edna tells Mark that she has given her nephew money because his wife is sick. She is unable to remember how much this was or what exactly it was for. Mark then undertakes an assessment with regard to Edna's capacity to manage decisions about her money. He concludes that she does not have the capacity to manage the money she is currently paying for her support costs. Because of the concerns surrounding the nephew, and knowing that otherwise Edna is very isolated, the safeguarding manager instructs an IMCA to represent Edna. They identify that a potential protective measure is to ask the Court of Protection to appoint a property and affairs deputy.

Example 2

A safeguarding adult alert has been raised regarding Lei by her GP who treated some bruising. Lei refused to tell the GP how her injuries had happened. The GP suspected domestic violence and explained to Lei why they wanted to tell social services about their concerns. Despite Lei's resistance the GP shared the information on a best interests basis after assessing Lei as not having capacity to make the decision herself.

Lei has learning disabilities and her boyfriend Glen moved into her flat about six months ago. Glen is himself known to social services and does not have learning disabilities. Lei currently receives two hours support a week to help her with shopping and budgeting. Because Glen is known to have a history of violence this support is no longer provided in their home.

The safeguarding manager discusses options with the local police. Subsequently they arrange for Joan, her social worker, to visit Lei together with the support worker as part of the safeguarding strategy. Joan asks Lei about the bruising and she responds by saying she didn't want to get into trouble with Glen. Lei then tells them both to get out of her flat before he comes back. Joan is very concerned by this visit and believes that Lei is frightened of her partner. She is also surprised by the very unhygienic conditions she found in the flat which was not an issue prior to Glen moving in.

Joan reports her visit to the safeguarding manager. She also suggests that an IMCA should be involved as she knows that Lei has a very strained relationship with her family and there are no other suitable advocacy services available locally. The safeguarding manager explains that the criteria to instruct an IMCA have not been met since there has not been a mental capacity assessment with regard to any proposed protective measures.

The safeguarding manager identifies that instigating proceedings to evict Glen from the flat needs to be considered as well as taking more urgent action. Lei holds the tenancy for the flat and one of the conditions is that no one else should live there unless this is approved by the housing association – which has not happened. They ask Joan to go back and assess Lei's capacity to understand that she has the power to ask Glen to leave and if she does whether she wants him to. This time Joan arranges to meet Lei away from the flat which provides a much better opportunity to undertake the assessment. Joan concludes that Lei does lack capacity to decide whether Glen lives in the flat. An IMCA is subsequently instructed.

Good practice points

Before instructing an IMCA, potential protective measures should be identified.

The person's incapacity to agree to at least one of the proposed protective measures needs to be established prior to the instruction of an IMCA.

There is no statutory requirement for the IMCA service to have access to a copy of a mental capacity assessment before acting on the instruction.

Subsequent to the IMCA instruction there may be a need to undertake further mental capacity assessments.

If the person is subsequently found to have capacity with regard to all protective measures being actively considered, the IMCA instruction should be withdrawn.

Who can instruct an IMCA?

For safeguarding adults the instruction must be made by either a 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:

1. The local authority with responsibility for instigating safeguarding adult proceedings.
2. The local authority responsible for the person at risk's care which may be different to 1 (e.g. out of borough placements). This could be a care manager or social worker.
3. An NHS body with responsibility for the person at risk's care (e.g. the hospital where they are an inpatient or a primary care trust (PCT) which is funding a placement).

It is recommended here that if anyone other than the safeguarding manager is considering instructing an IMCA, they should discuss this first with the safeguarding manager.

On receipt of an instruction, the IMCA service is required to verify that it was issued by an authorised representative of one of the above (IMCA General Regulations

6(4)(a)). IMCAs are advised here to establish at this point who the safeguarding manager is, i.e. the person with designated responsibility for managing the safeguarding adults process in relation to the person at risk.

Section 10.12 of the MCA code of practice says that the IMCA service to be instructed is the one which 'works wherever the person is at the time that the person needs support and representation'. In most cases this will be the IMCA service which covers the local authority responsible for coordinating the safeguarding adults process (i.e. where the abuse is alleged to have occurred). The only exceptions will be if the person at risk is residing in a different local authority at the time the IMCA is instructed.

Good practice points

The safeguarding manager should make a decision about whether to instruct an IMCA. Where other professions who have the authority to instruct an IMCA are considering doing so they should discuss this first with the safeguarding manager.

When instructed, IMCAs should find out who the safeguarding manager is.

Deciding whether an IMCA should be instructed

Under the regulations responsible bodies are required to consider whether instructing an IMCA for adults at risk would be of 'particular benefit' to the individual. The MCA code of practice expects responsible bodies to develop a local policy to support decision-making in this area (10.61, see example in the Appendix).

If the person at risk lacks capacity to consent to one or more of the protective measures being considered (or interim measures put in place), this guidance recommends that an IMCA should be instructed if one of the following applies:

1. Where there is a serious exposure to risk:
 - risk of death
 - risk of serious physical injury or illness
 - risk of serious deterioration in physical or mental health
 - risk of serious emotional distress.
2. Where a life-changing decision is involved and consulting family or friends is compromised by the reasonable belief that they would not have the person's best interests at heart.
3. Where there is a conflict of views between the decision-makers regarding the best interests of the person.
4. Where there is 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.

In some situations both the alleged perpetrator and alleged victim of abuse could benefit from the support of an IMCA. It should not be the same IMCA who represents both. A conflict of interest could arise where two IMCAs are involved from the same organisation. Where two instructions are being considered the safeguarding manager should discuss this with the local IMCA provider. They should identify how the conflict of interest could be managed.

Example 3

An adult protection alert has been raised after it is suspected that a female staff member has been stealing Raj's money. The allegation is that while shopping for him, she made purchases for herself. Raj is in the advanced stages of dementia and his benefits are managed by an appointee. While Raj has very limited contact with family or friends the safeguarding manager decides not to instruct an IMCA. This is because the main focus of the safeguarding adults process will be the potential action to be taken against the staff member.

Other advocacy support

Where a person at risk is already supported by an advocate it is unlikely that an IMCA will be needed.

Depending on what other advocacy services are provided locally, there may be a choice between instructing an IMCA and involving another advocate.

The following points could help decide whether an IMCA should be instructed where other advocacy support is available.

- Whether the person could benefit from advocacy support for issues other than those related to safeguarding adults. The IMCA role would be focused on the protective measures being considered and is likely to end when decisions have been made regarding these.
- Whether the IMCA's right of access to relevant records would make a significant difference for the person.
- Whether the IMCA service or other advocacy service has good availability to support the person during the safeguarding adults process.

Example 4

A safeguarding alert has been raised for Jenny, a woman with severe learning disabilities, regarding potential neglect in a supported living service. This alert was raised by her volunteer advocate who has known her for over two years. A potential protective measure to be considered is whether the support provider should be changed. The safeguarding manager speaks to Jenny's care manager who says that Jenny would not have the capacity to decide who provides her support. As part of the consideration of whether an IMCA should be instructed, the safeguarding

manager contacts Martha, the volunteer advocate's coordinator. Martha says that while the volunteer advocate would find it difficult to attend meetings during the day, she herself knows Jenny and could cover any meetings the volunteer advocate could not make. The safeguarding manager is confident that Jenny would have independent representation through the safeguarding process and so an IMCA is not instructed.

How an IMCA instruction for safeguarding adults fits with other IMCA instructions

The consideration as to whether an IMCA should be instructed for safeguarding adults should be informed by whether an IMCA has been, or should be, instructed for any other matter (i.e. a serious medical treatment or accommodation decision, a care review, or for one of the IMCA roles related to the Deprivation of Liberty Safeguards).

Where an IMCA is in place for another matter their focus will be on the specific reason for instruction – which may or may not be related to the safeguarding adults issues. For example, an IMCA instructed for a serious medical treatment decision would not be representing the person in relation to potential financial abuse. Conversely, if an IMCA has been instructed for an accommodation decision to potentially move a person from an abusive situation, their representations will be relevant to the safeguarding adults' process.

The expansion regulations support IMCA instructions for safeguarding adults in addition to other instructions. Where the safeguarding decisions go beyond, or are different to, the reason for the other IMCA instruction, consideration should be given to a further IMCA instruction. This may or may not be undertaken by the same IMCA.

Example 5

A safeguarding alert has been raised after John, an 86-year-old man with dementia, is seen assaulting Gladys, another resident of the care home. After a discussion with the local police, the safeguarding manager asks Khan, a duty social worker, to visit the home to talk to the people involved.

The home manager tells Khan that it is likely they will have to give notice to John to leave. There has been a formal complaint from Gladys' sister. Khan meets John and finds it very difficult to establish any communication with him. Khan confirms the manager's understanding that John does not have the capacity to make decisions regarding where he lives. John's only contact with family is through birthday and Christmas cards.

Khan reports back to the safeguarding manager. Because the only proposed protective measure is an accommodation move, John has to be provided with an IMCA under Section 39 of the MCA and not as a result of the local authority's discretionary powers. The safeguarding manager contacts John's care manager who

works for a different authority and ensures they make the accommodation instruction. The IMCA is invited to the safeguarding meetings that focus on John.

Note: were any additional protective measures to be proposed then the local authority could use its discretionary powers to instruct an IMCA for those matters.

What if moving the person is being considered?

A possible protective measure is moving the person at risk, including temporarily. Where this is being considered (or takes place) there is a need to check whether there is a duty to instruct an IMCA for an accommodation decision. The following conditions would need to be met for this instruction:

- the possible move will or could extend beyond 28 days for hospitals and eight weeks for care homes
- the person has no one with whom it is 'appropriate to consult'.

If at any time during the safeguarding adults proceedings, the person at risk meets the criteria for an IMCA to represent them for an accommodation decision, this instruction must be made regardless of whether an IMCA was previously instructed. If an IMCA had already been instructed, good practice would be for the same IMCA to undertake both roles.

Example 6

A safeguarding alert has been raised after Phillip, a man with autism who has been in hospital for inpatient treatment, goes missing and is found some hours later in the local town in his pyjamas. An IMCA is currently representing Phillip in relation to serious medical treatment decisions. The safeguarding manager chooses to use the discretionary powers because the protective measures being considered go beyond the restrictions which may be required for Phillip to access the proposed treatment. The safeguarding adult instruction is allocated to the same IMCA by the IMCA provider.

The safeguarding plan sets out restrictions which could amount to a deprivation of liberty, requiring the hospital to make an application for a standard authorisation. This leads to the instruction of a 39A IMCA which is again undertaken by the same IMCA.

Good practice points

The safeguarding manager should consider whether an IMCA should be instructed for all persons at risk. Local procedures should make it clear that the safeguarding manager will hold this statutory responsibility.

IMCA services should ensure that where there is more than one current IMCA instruction for any person, these roles should be undertaken by the same IMCA.

Where both the alleged perpetrator and victim of abuse could benefit from an IMCA they should not be represented by the same IMCA. The safeguarding manager needs to agree with the local IMCA provider how any conflict of interest will be managed if two instructions are made to the same organisation for the same case.

When an IMCA should be instructed

Consideration should be given to the most appropriate time to instruct an IMCA in the safeguarding adults process:

In some cases it will be appropriate to involve an IMCA at the strategy discussion/meeting stage. This would need to happen for cases where the wishes/decisions made by the individual would have a significant impact on the investigative process or where immediate actions need to be taken to safeguard the individual prior to further investigation taking place.

In other cases, it may be more appropriate for an IMCA to become involved at the case conference/safeguarding planning stage so that they can provide input into the safeguarding plan. This would be more appropriate in cases where decisions need to be made as a result of findings of the investigation

There are a number of potential benefits of involving IMCAs early on in proceedings. The most important of these is to avoid decisions being taken without the person having had independent representation – for example, where a person at risk is moved against their wishes out of a potentially abusive environment before an IMCA is instructed. Other benefits include the IMCA having a greater opportunity to identify the person at risk's wishes and providing an additional safeguard if the outcome of the process is that no protective measures are put in place.

Attendance at safeguarding adults meetings is a key way for IMCAs to support and represent the person at risk. After instruction it is recommended that IMCAs should be invited to all safeguarding adults meetings.

Good practice points

As well as considering *whether* to instruct, the safeguarding manager should also consider the most appropriate *time* to instruct an IMCA. The instruction of an IMCA should not be delayed if protective measures which will have a direct impact on the person at risk are to be taken on a best interests basis, or abuse has been established.

Local procedures should identify the safeguarding manager's responsibility to make a decision with regard to the instruction of an IMCA, both at the strategy discussion/meeting and the case conference/safeguarding planning stages.

Once an IMCA has been instructed they should be invited to all safeguarding adults meetings.

The role of the IMCA

The primary foci of IMCAs in safeguarding adults proceedings are the decisions concerning protective measures (including decisions *not* to take protective measures). IMCAs have a statutory role to represent and support the person at risk in relation to these decisions which must comply with the MCA.

IMCAs have a particular responsibility to ensure that the person's feelings and wishes are represented in discussions concerning the protective measures. To do this they will need to:

- interview or meet the person if possible (see 'The IMCA's contact with the person at risk')
- talk to professionals— paid carers and other people who can give information about the person's wishes and feelings, beliefs and values (see 'The IMCAs contact with family, friends and others').
- access relevant records (see 'Access to information').

IMCAs will seek to establish that all possible protective measures have been considered and that consideration has been given as to whether the proposed measures are the least restrictive of the person's rights.

IMCAs should find out whether the person at risk has been given as much support as possible to participate in the decision-making process. This could include asking whether the person at risk has been invited to and supported to participate in safeguarding meetings as appropriate.

Local authorities and NHS bodies which instruct an IMCA for adults at risk are legally required to have regard to any representations made by the IMCA when making decisions concerning protective measures.

Making decisions about protective measures in relation to the person at risk is just one of a number of the functions of the safeguarding adults process. Others include:

- coordinating the safeguarding assessment
- where abuse has taken place, active consideration in consultation with the police and legal services of the potential use of relevant legislation (including Section 44 of the MCA)
- identifying whether other people may be at risk and taking appropriate action
- where staff members are alleged perpetrators to consider referring them to the Independent Safeguarding Authority or a registration body (e.g. General Social Care Council (GSCC), British Medical Association (BMA))
- providing information to the Care Quality Commission (CQC)
- minimising any risks to witnesses and 'whistleblowers'.

Regulations allow IMCAs to make representations on any matter they feel is relevant to decisions concerning protective measures. For example, an IMCA may raise concerns about the investigation process or the involvement of the police.

Example 7

An IMCA has been instructed at the safeguarding planning stage after it was alleged that Arthur had sexually assaulted two women with learning disabilities at an employment scheme for people with learning disabilities. Prior to the involvement of the IMCA, the police had interviewed Arthur and said that it was very unlikely the Crown Prosecution Service would recommend a prosecution. A protective measure being considered was making his temporary exclusion from the employment scheme permanent. Arthur has been assessed as lacking capacity to make an informed decision about his use of the employment scheme on the basis that he shows little understanding of the seriousness of the assaults.

When the IMCA is invited to a safeguarding planning meeting they ask the safeguarding manager whether Arthur himself has been invited. This has not happened and after some discussion the safeguarding manager agrees that it is one way of involving Arthur as much as possible in the decision-making process. The IMCA also confirms with the safeguarding manager that it is appropriate to meet with Arthur at this stage of the safeguarding process.

Prior to the meeting the IMCA meets with Arthur who is very upset about the prospect of not returning to the employment project. At the safeguarding planning meeting the IMCA supports Arthur to express this. The IMCA also asks the question as to what other options have been considered which may be less restrictive. The safeguarding manager requests Arthur's social worker to investigate what other options there might be, including increased supervision with the employment project before meeting again. The IMCA makes representations that the next meeting should be scheduled as soon as possible because of the continued anxiety Arthur is experiencing. It is also suggested that Arthur meet with a psychologist to help him understand the seriousness of the sexual assaults. The safeguarding manager makes time for Arthur to understand what this would involve. In response Arthur communicates a willingness to go along with this if it will help him go back to the employment project.

Example 8

A safeguarding alert is raised by a staff member working in a residential care home when they find Vera, a 90-year-old woman, in a state that suggests she has been in bed for over 24 hours without any personal care being provided, including not changing her incontinence pad and not supporting her to eat and drink.

The investigation confirms this is the case and the manager of the home says they will take action to ensure it does not happen again. Vera's son is her Lasting Power of Attorney for property and affairs (her financial decisions). While he is concerned about what took place, he is against any suggestion that Vera should move from what is considered by the local authority to be a poor quality service. The local authority's concerns are supported by what is contained in published CQC reports and by the fact that Vera shares a room with someone she does not know.

The safeguarding manager wants to explore the option of Vera moving as part of the safeguarding plan. After the care manager has assessed Vera as lacking capacity to make decisions about where she lives, an IMCA is instructed by the safeguarding manager

The IMCA confirms with the safeguarding manager that it is appropriate to meet Vera at this stage of the safeguarding adults process. The IMCA arranges to do this prior to a scheduled safeguarding planning meeting. They meet Vera alone in a small lounge. Previously the IMCA had spoken to the manager of the home who said that Vera's speech was difficult to understand as a consequence of a stroke, but she clearly could communicate yes and no. The IMCA spends over an hour with Vera and finds her to be very alert and giving consistent answers to the questions asked. Vera clearly communicates that she is not happy sharing a room or with the support provided by the home.

The IMCA provides a report to the safeguarding manager prior to the meeting in which they identify the wishes and feelings that Vera has communicated. They also raise a number of concerns in the report, the central one being that Vera appears to demonstrate significant understanding of her living situation, and suggest that further capacity tests should be undertaken.

The IMCA report

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

Where the person who instructed the IMCA is not the safeguarding manager, it is recommended that the report is at the same time provided to the safeguarding manager. Good practice is for the safeguarding manager to decide on the distribution of the report and not the IMCA. If the IMCA is asked for copies of the report they should direct the person to the safeguarding manager.

Ideally an IMCA report is provided before decisions are made about protective measures. It is also good practice for the IMCA to provide written reports for all safeguarding planning meetings. In some cases the IMCA may have had little opportunity to write a report before decisions are made. Delaying making decisions while waiting for a written IMCA report may go against the person's best interests.

Where decisions are made about protective measures before an IMCA report is received there is still a statutory requirement to have had regard to any representations the IMCA has already made (including verbally at safeguarding adults meetings). The IMCA report in these circumstances should be provided as soon as possible after decisions are made to ensure timely and appropriate representation. It is suggested here that this is within one week.

To facilitate the IMCA role it is recommended that safeguarding managers receive a briefing or training on the IMCA role. Also, IMCAs should undertake training on the local safeguarding adults procedures.

Good practice points

The primary role for IMCAs in safeguarding adults is to represent and support the person at risk in relation to best interests decisions concerning protective measures. This includes any decision not to take protective measures.

IMCAs may make representations on any matter relating to the safeguarding adults proceedings.

IMCAs should wherever possible produce written reports for safeguarding planning meetings.

IMCAs' reports should be submitted to the safeguarding manager who should take responsibility for deciding who they should be circulated to. Any requests made to the IMCA to see the report should be directed to the safeguarding manager.

If not already produced, IMCA reports must be submitted within one week of decisions about protective measures being made as part of the safeguarding plan.

Safeguarding managers should receive a briefing or training on the IMCA role.

IMCAs should receive training on local safeguarding adults procedures.

The IMCA's contact with the person at risk

One of the statutory rights of IMCAs is to meet the person where 'practical and appropriate'. When instructed for a person at risk there are a number of reasons why it may not be practical or appropriate to meet the person. These include:

- meeting the person could jeopardise any criminal investigations
- access to the person at risk may be denied by those people accused of abusing or neglecting them
- the IMCA may be putting himself or herself at risk by entering what may be an abusive environment.

The possibility of undermining criminal proceedings (or other investigation processes) should be considered seriously in each case regardless of whether the person at risk is an alleged victim or perpetrator. IMCAs should be aware that talking to a person before a criminal trial has the potential to affect the reliability (actual or perceived) of evidence. The person could become aware of gaps or inconsistencies in their evidence. Pre-trial discussions may lead to allegations of coaching and, ultimately, the failure of the criminal case.

While an IMCA may commit to not talking about the alleged abuse with the person, it may be very difficult to ensure this. For example, the person could reasonably want to know why the IMCA is involved or assume their involvement relates to the alleged abuse. Similarly, it would be difficult to explore the person's views in relation to any protective measures without talking about why they are being proposed.

Because the safeguarding manager has responsibility for coordinating the safeguarding process, good practice is for the IMCA to discuss the possibility of meeting the person with them in advance of doing so and for this to be included in the *strategy plan*. Meetings should only go ahead with the safeguarding manager's support. Their agreement should be put in writing (e.g. in safeguarding minutes) and include any limits on the discussion the IMCA can have with the person at risk.

The safeguarding manager should only put restrictions on the IMCA's contact with the person at risk where there is the possibility of an ongoing police investigation. Restrictions should be removed when it becomes apparent that there is no real likelihood of a prosecution.

IMCAs have the option of challenging the safeguarding manager if they believe they are unreasonably denying them access to the person at risk. One option is through the local authority's complaints process.

At the start of representing and supporting some people, instead of seeking to meet the person, the IMCA may be making representations to try to ensure an appropriate criminal investigation.

IMCAs can have a significant role in safeguarding adults regardless of whether they have had the opportunity to meet the person.

When IMCAs are arranging to meet the person at risk, careful attention needs to be given to any risks for either the IMCA or the person. This will need to cover the possibility of entering an abusive environment and the risk of being abused by the person at risk (particularly when they are an alleged perpetrator). The responsibility for risk assessment lies with the IMCA provider.

Because of the complex issues involved in meeting a person at risk identified above, good practice is for IMCAs to also discuss this with their manager and get their support before any meeting goes ahead.

When meeting the person at risk, good practice is for the IMCA to make notes during the meeting, or as soon as possible afterwards (within a maximum of 24 hours).

If the person at risk makes contact with the IMCA (outside of any agreements made by the safeguarding manager) the IMCA should avoid any discussion and end the contact.

Example 9

An IMCA is instructed at the safeguarding assessment stage to represent and support Seema, a 27-year-old woman with learning disabilities whom it is alleged was sexually assaulted by a male staff member. The alert was raised by a support worker to whom Seema had communicated that she had shared the staff member's bed. Seema has been assessed as lacking capacity to make decisions regarding whether the police should be involved and whether the staff member should continue working with her or not.

A female IMCA is selected by the IMCA provider, whose first action is to contact the safeguarding manager to identify at what stage the investigation is at, and whether it is appropriate to meet Seema. The safeguarding manager advises that the staff member has been suspended. Seema had not yet been interviewed by the police, though the safeguarding manager is not sure why there is a delay. The safeguarding manager confirms that it would not be appropriate for the IMCA to meet with Seema at this stage. It is, however, agreed that it would be appropriate for the IMCA to have contact with the manager of the service to start to build a picture of Seema's feelings and wishes.

The IMCA is invited to a safeguarding strategy meeting the following day where it is expected there will be police representation. Before this meeting the IMCA has the opportunity to talk to the manager of the home. The home manager explains that since the staff member has been suspended Seema has seemed upset about not seeing him and has repeatedly asked where her 'boyfriend' is. The manager also tells the IMCA that Seema has a significant fear of anything connected with medical treatment.

At the strategy meeting the home manager reports that their own investigations have identified that Seema has previously talked about other male staff members as her 'boyfriend'. Further, while they could not be sure that Seema had not visited the male staff members' home, it was very unlikely because the expectation is that she is always supervised by female staff when out.

The police talk about the possibility of Seema having a medical examination. The IMCA encourages the home manager to talk about Seema's fears regarding medical treatment. It is decided that it is not in Seema's best interests to have a medical examination at this stage, particularly because it appears extremely unlikely that there would be recent forensic evidence. Arrangements are instead made for Seema to be interviewed the following day by the police accompanied by the support worker to whom she made the initial disclosure.

The safeguarding manager confirms at the meeting that the IMCA can meet Seema after the police interview.

Good practice points

IMCAs should get the support of the safeguarding manager before meeting the person at risk. Their agreement should be put in writing and set out any limits on the discussion the IMCA can have with the person.

IMCAs should get agreement from their manager before meeting a person at risk.

IMCA organisations need to ensure there is a robust risk assessment of any meetings between the IMCA and the person at risk.

IMCAs should make a record of any meeting with a person at risk as soon as possible after the meeting and at the latest within 24 hours.

Information sharing

Through contact with the person at risk the IMCA may gain information relating to the alleged abuse or what might be other abusive situations. Similarly, the IMCA could gain this information from consultation with other people. In general the IMCA will want to pass any such information to the safeguarding manager (with the possibility of making further safeguarding adults alerts). However, before sharing any information the IMCA needs to consider the following points.

- A decision by the IMCA to pass on concerns about abuse or neglect nearly always involves sharing information about an individual that is both personal and sensitive and is subject to the Data Protection Act 1998.
- Where a person at risk has capacity to decide whether information they provided should be shared, their decision should be respected. The IMCA is however allowed to make an exception if there is an overriding duty such as a danger to life or limb, or risk to others (see Data Protection Act 1998 and DH 1997).
- Where a person lacks capacity to decide whether information should be shared, consideration should be given to the person's best interests. In most cases it will be in the person's best interests for this to be shared to inform the safeguarding adults process.

There is a significant responsibility for IMCAs associated with not sharing specific information relating to potential abuse. This is the case both if the IMCA understands that the person has capacity to decide that it is not shared, or they believe it is not in their best interests. It is recommended here that if either is the case the IMCA discusses this urgently with their line manager.

Example 10

An IMCA is instructed after it is confirmed that Paul is being financially and emotionally abused by a neighbour. The police are involved but the conclusion is that there is not enough evidence to prosecute. Paul has an acquired brain injury and lives alone. A protective measure being considered is increasing the support provided to Paul as it suspected that loneliness makes him susceptible to the abuse. Paul is assessed as lacking capacity to make decisions regarding the level of support provided, particularly because of his lack of insight into the abuse that he has experienced.

The IMCA meets with Paul in his home after a risk assessment. Paul speaks about what the neighbour did to him but appears to be most concerned that they do not visit him any more. Then Paul talks about another 'friend' who he says buys him chips for £20 every Friday night. The IMCA is very worried by this and checks with Paul what he has said. The IMCA tries his best to explain that chips don't cost that much and the 'friend' is taking lots of his money. Paul gets upset, saying it is his friend and he doesn't want him to go away too. The IMCA says he may have to tell someone about this. This is clearly not Paul's wish.

Immediately after the meeting, the IMCA writes down what was said. He also contacts his own manager for advice about what to do. The manager asks the IMCA about Paul's capacity to make a decision about the information being passed on. The IMCA says he believes that Paul does not have capacity to make this decision, explaining the reasons for this. It is agreed that the information should be shared on a best interests basis. The IMCA subsequently makes a new safeguarding adult alert and advises the safeguarding manager of this.

Good practice points

IMCAs should be aware of their responsibilities in relation to sharing personal and sensitive information.

If an IMCA believes that any information they have about potential abuse should not be shared as part of the safeguarding adults process they should discuss this urgently with their line manager.

The IMCA's contact with alleged perpetrators

It is very unlikely that the IMCA will need to meet, or talk on the phone to the alleged perpetrator (when this is not their client). If an IMCA believes they have justification for seeking contact, it is recommended that this is agreed in advance by both their line manager and the safeguarding manager. Any contact should be carefully risk assessed and recorded.

If the alleged perpetrator makes contact with the IMCA (outside of any agreements made with the safeguarding manager which are supported by their manager) the IMCA should avoid any discussion and end the contact.

The views of the alleged perpetrator will at times be critical to informing decisions regarding the person at risk. A common example is where the safeguarding adult alert is concerned with a relative's ability to provide the person at risk with adequate support and care. The IMCA will need to ensure that their views are represented. Where there is no likelihood of a criminal prosecution, it may be appropriate for the IMCA to arrange to meet them.

Example 11

An IMCA is instructed at the safeguarding planning stage to represent and support Donald after it is established that he has physically assaulted another person who attended his day centre for people with learning disabilities. A protective measure being considered is excluding Donald permanently from the day centre. The IMCA gets confirmation from the safeguarding manager that it is appropriate to meet with Donald. The IMCA shares the risk assessment they have undertaken for meeting Donald with their line manager prior to arranging contact. This specifies not meeting him alone but with a support worker in Donald's home.

Good practice points

IMCAs should get explicit agreement from their line manager and the safeguarding manager if they are seeking to have contact with an alleged perpetrator who is not their client.

The IMCA's contact with family, friends and others

The IMCA will want to speak to people who are not part of the safeguarding adults meetings to help identify what the person's views and wishes might be. This includes any family and friends, but also health and social care workers and other professionals.

The MCA code of practice gives the responsibility of informing relevant people that an IMCA has been instructed to decision-makers. Good practice is for the safeguarding manager to communicate to anyone who needs to be aware of the safeguarding adults proceedings that an IMCA has been instructed to independently represent the person at risk. This may include family or friends.

IMCAs must be very careful not to disclose confidential information to the people they consult. For example, if the IMCA is looking to speak to a family member to help understand what the person's wishes might be, they must not assume that they will know about the alleged abuse. Just saying that they have been instructed because safeguarding adult proceedings have been instigated could be a breach of confidentiality.

It is strongly recommended here that before speaking to anyone outside of the safeguarding adults meeting that the IMCA confirms with a member of the meeting that the person has been advised of the adult protection proceedings and the instruction of the IMCA. They should also find out whether any specific information relating to the alleged abuse has been shared with the person.

There is the possibility that to help establish the person at risk's views, the IMCA may want to provide the person they are consulting with further information about the alleged abuse. To avoid a breach of confidentiality the IMCA should first get explicit permission to do so from the safeguarding manager.

Example 12

An IMCA is instructed to represent and support Jean, an 83-year-old woman with dementia, whom it is alleged has been and continues to be emotionally abused by her daughter. The allegation was raised by a neighbour who heard Jean's daughter, Elizabeth, shouting at her in a very abusive way on a number of occasions. A range of protective measures are being considered including exploring whether Jean's sister needs more support as her carer, and a potential move. Jean has been assessed as lacking capacity to decide where she lives.

The daughter, when advised of the safeguarding alert, says that it was no one else's business what happened and that if she shouted at Jean it was only because she gets stressed looking after her. The IMCA does not seek to contact the daughter directly to help establish Jean's wishes and views.

After checking with the safeguarding manager, the IMCA meets Jean at the day centre she attends one morning a week. This is facilitated by the day centre manager who attended the safeguarding strategy meeting. As a way of getting to know Jean the IMCA asks about her children. While a lot of what Jean says is unclear she says she misses her daughter Victoria. The IMCA was not aware that Jean had another daughter and after the meeting asks the manager of the day centre about Victoria. The manager explains that Victoria often used to bring Jean to the centre about two years ago but they had not seen her recently and didn't know why that was the case. The manager provides the IMCA with Victoria's contact details.

The IMCA phones the safeguarding manager concerning the need for Victoria to have the opportunity to feed into the decision-making process. The safeguarding manager similarly had not been made aware that Jean has another daughter living locally. The safeguarding manager says she will contact Victoria directly to advise her of the safeguarding concerns after which she suggests the IMCA makes contact to explore her understanding of Jean's feelings and wishes.

Good practice points

The safeguarding manager should advise all relevant people, including any family and friends where appropriate, that an IMCA has been instructed.

IMCAs should not contact anyone outside the safeguarding adults meeting without first confirming that they have been advised of the safeguarding adults proceedings and the instruction of the IMCA. The IMCA should also find out what they have been told about the alleged abuse.

IMCAs must not share any information about the alleged abuse which may be unknown to the person they are consulting. If an IMCA wishes to do this they should get explicit permission to do so from the safeguarding manager.

Access to information

IMCAs have a right to see, and take copies of, relevant records. This covers all health records, any record of, or held by, a 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 they may be relevant to the IMCAs role.

For safeguarding adults instructions the IMCA will expect to be provided with copies of the alert form, strategy meeting minutes and reports produced as part of the safeguarding adults proceedings.

The appropriate adult role

The appropriate adult role is to ensure that people detained by the police, who are mentally vulnerable, understand what is happening to them and why. Where a person at risk is an alleged perpetrator they may have a right of access to an appropriate adult when they are, for example, questioned by the police.

This appropriate adult role is a very different role to the IMCA role for a person at risk. There is a significant risk of a conflict of interest if the IMCA takes this role. For example, it may go against the person's best interests to be supported in any way to understand the police's questions as this could lead them to disclose something which they might not have otherwise. It is strongly recommended here that IMCAs instructed for a person at risk are not asked, or do not offer to undertake, the appropriate adult role in relation to their clients.

Good practice point

An IMCA instructed for a person at risk should not undertake the appropriate adult role for that person.

IMCAs challenging decisions

Compliance with the MCA

On occasion the IMCA may be concerned that decisions about protective measures do not comply with the MCA. The concerns may focus on:

- the person's capacity to make their own decisions regarding their safety
- whether the person is appropriately protected
- whether less restrictive protective measures have been adequately considered
- whether delays in making decisions about, or putting in place, protective measures go against the person's best interests.

Where an IMCA has significant concerns regarding the process of making decisions about protective measures or the outcomes, they should as soon as possible bring their concerns to the attention of the safeguarding manager. Unless the safeguarding manager is able to resolve the concerns verbally, an IMCA report should be submitted to the safeguarding manager setting out the concerns. It is recommended here that the report is submitted within one week of the concerns being raised and that the safeguarding manager has a maximum of one week to respond to the specific concerns set out in the IMCA report.

If the IMCA is not satisfied with the safeguarding manager's written response (including one not being provided within the time limit) they should communicate this clearly to them. Good practice in resolving serious concerns should be seen as a joint responsibility between the local authority and the IMCA service rather than, for example, the local authority only responding if a formal complaint is submitted.

At this stage it is recommended that a senior manager from the IMCA service and another senior manager from the local authority become directly involved. They should meet to try to resolve the concerns.

Where it is still not possible to resolve serious concerns regarding a person's capacity or safety, an application to apply to the Court of Protection should be made. If the case is not initially taken by the official solicitor the application should be made by the responsible body who should also meet the costs associated with the application. It is likely that an urgent application should be made unless both the IMCA organisation and responsible body agree that any delay would not be detrimental to the best interests of the person.

The urgency of resolving some disputes may in exceptional cases require the IMCA service to make an application to the Court of Protection, or ask for judicial review of a decision. This may need to happen before exhausting local informal and formal resolution methods.

Other concerns

In the course of their work IMCAs may have other concerns not directly related to compliance with the MCA 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. IMCAs may at times wish to take formal action in relation to these – for example, instigating complaints processes.

Good practice points

Resolving any serious concerns raised by the IMCA about compliance with the MCA is a joint responsibility held by the IMCA organisation and the local authority leading the safeguarding adults process.

The IMCA should put in writing any serious concern about compliance with the MCA that they have been unable to resolve informally. The report should be submitted within one week of raising the concerns with the safeguarding manager. The safeguarding manager should respond to the IMCA's written concerns within one week.

Where concerns remain unresolved senior managers from both organisations should be involved in discussions to seek a possible resolution.

An application to apply to the Court of Protection should be made by the responsible body, if it has not been possible to resolve the serious concerns in any other way. An urgent application should be made unless it is agreed by both the IMCA service and the responsible body that a delay would not be detrimental to the best interests of the person.

IMCAs may raise concerns in their report and instigate formal challenges on matters other than compliance with the MCA.

When the IMCA will stop working with the person

It is recommended that to protect the independence of the IMCA service, decisions about when the IMCA stops representing a person at risk are ultimately made by the IMCA service.

Generally, IMCAs will stop representing a person at risk when they are satisfied that decisions about protective measures comply with the MCA. This is likely to be after the safeguarding planning meeting. On occasion it may require the IMCA staying involved until, and attending, the first review of the safeguarding plan.

Before ending work with an individual, the IMCA must submit an IMCA report which should address compliance with the MCA.

Good practice is for the IMCA to formally write to the safeguarding manager (and the instructor if different) advising them that they have ended work with the person at risk.

The IMCA may make recommendations about other advocacy support – possibly suggesting that an IMCA is instructed for a future review of the safeguarding plan.

If the instructing body feels that an IMCA is no longer required, this should be discussed with the IMCA. An example would be if the person at risk has been reassessed as having capacity regarding the protective measures. Where an instruction is formally withdrawn the statutory IMCA role ends. In exceptional cases the IMCA service may have unresolved concerns about the decision-making process. In such circumstances the IMCA service may pursue informal or formal challenges, including complaints and application to the Court of Protection. If any further action is taken after an instruction is withdrawn, IMCAs need to recognise that they no longer have, for example, the right to meet the person or access relevant records.

Good practice points

The decision about when to stop representing a person at risk, once instructed, should be made by the IMCA and not the instructing body.

The IMCA must for every person at risk submit an IMCA report and notify the safeguarding manager (and instructing body if different) in writing when they end their work.

The IMCA should consider making recommendations about other advocacy support, including the option of an IMCA being instructed for a future safeguarding plan review.

If instruction is withdrawn the statutory IMCA role ends. This does not preclude the possibility of the IMCA service challenging the decision-making process.

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Key documents

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OPG (Office of the Public Guardian) (2008) *Office of the Public Guardian and local authorities: a protocol for working together to safeguard vulnerable adults*. London: Office of the Public Guardian.

Organisations

Action for Elder Abuse, www.elderabuse.org.uk, tel: 0808 808 8141.

Ann Craft Trust (abuse of people with learning disabilities), www.anncrafttrust.org, tel: 0115 9515400.

Association of Directors of Adult Social Services, www.adass.org.uk.

Respond (working with victims and perpetrators of abuse who have learning disabilities), www.respond.org.uk, tel: 0808 808 0700.

SCIE (Social Care Institute for Excellence) www.scie.org.uk/imca, tel: 020 7089 6840.

Voice UK (supporting people with learning disabilities and other vulnerable people who have experienced crime or abuse), www.voiceuk.org.uk, tel: 0845 122 8695.

Witness (concerned with abuse by professionals – formerly POPAN), www.popan.org.uk, tel: 08454 500 300.

Appendix: Example policy for IMCA instruction in safeguarding adults

Introduction

The MCA code of practice expects local authorities and NHS bodies to have a policy setting out the criteria for deciding whether an IMCA should be instructed to represent and support a person involved in safeguarding adults proceedings. There is a requirement to consider whether an IMCA should be instructed for each person at risk who lacks capacity to agree to one or more protective measures being considered.

This policy is based on the practice guidance. It is recommended that this is embedded in local safeguarding adults procedures.

Who makes the decision to instruct an IMCA?

Responsibility for deciding whether an IMCA should be instructed sits with the safeguarding manager.

The safeguarding manager must consider whether an IMCA should be instructed for all people at risk.

The safeguarding manager must make a decision about instructing an IMCA at both the strategy discussion/meeting and the case conference/safeguarding planning stages.

Deciding if an IMCA should be instructed

If the person at risk lacks capacity to consent to one or more of the protective measures being considered (or interim measures put in place), the safeguarding manager should ensure that independent support and representation is available to the person at risk if one of the following applies:

1. Where there is a serious exposure to risk:
 - risk of death
 - risk of serious physical injury or illness
 - risk of serious deterioration in physical or mental health
 - risk of serious emotional distress.
2. Where a life-changing decision is involved and consulting family or friends is compromised by the reasonable belief that they would not have the person's best interests at heart.

3. Where there is a conflict of views between the decision-makers regarding the best interests of the person.
4. Where there is 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 instruction for safeguarding adults is just one way the person at risk may access independent representation. Potentially the person at risk already has an advocate or an IMCA instructed for another purpose. There may also be a choice between instructing an IMCA and involving another advocate.

To decide whether an IMCA should be specifically instructed for safeguarding adults issues, in addition to, or as an alternative to, other forms of independent representation, the following should be considered.

- Whether the person could benefit from advocacy support for issues other than those related to safeguarding adults. The IMCA instruction would be focused on the protective measures being considered and is likely to end when decisions have been made regarding these.
- Whether the IMCA's right of access to relevant records would make a significant difference for the person.
- Whether the IMCA service or other advocacy service has good availability to support the person during the safeguarding adults process.
- Whether the decisions regarding protective measures go beyond or are different to the reason for any existing IMCA instruction.
- If moving the person at risk is being considered as a protective measure there may be a requirement to instruct an IMCA for an accommodation decision if they have no one appropriate to consult.
- Where both the alleged perpetrator and alleged victim of abuse could benefit from independent representation, attention should be given to avoiding or minimising a conflict of interest. The same advocate or IMCA must not be expected to represent both people and ideally the two independent representatives will come from different organisations.

Once an IMCA has been instructed they should be invited to all safeguarding adults meetings.