

Gaddum ... Advocacy

Guidance Notes for Independent Mental Capacity Act Advocacy Referrals to Gaddum Advocacy

Who is entitled to an IMCA?

In accordance with the Mental Capacity Act 2005, referrals **must** be made for individuals in the following circumstances:

- The person is aged 16 or over
- A decision needs to be made in the person's best interests about either a **long-term change in accommodation** or **serious medical treatment**
- The person to be referred has been assessed as lacking capacity to make that specific decision at the time it needs to be made
- The person does not have a family member or friend who is 'appropriate to consult'
- The person has not executed a Lasting Power of Attorney for Health and Welfare
- There is no Court of Protection appointed Deputy who continues to act on the person's behalf in relation to health and welfare.

NB if a person has only a Property and Finance LPA or Deputy in place, this would not prevent them from being referred for an IMCA.

Referrals **may** also be made for decisions concerning

- **Care Reviews**, where there is no-one 'appropriate to consult' or
- **Adult Protection** cases, whether or not family, friends or others are involved.

For all referrals to Gaddum Advocacy, there is a requirement that the individual lacking capacity is **currently** resident or receiving care or treatment in Manchester.

Who is not 'appropriate to consult'?

- A friend or family member whom it is not practical or appropriate to consult, for example a family member living a long distance away or having limited contact with the person lacking capacity
- Someone who does not want to get involved
- Someone who is paid to look after the individual in a professional role

Who is 'appropriate to consult'?

- Any friend or relative, who is not paid to look after the person lacking capacity, who has an interest in their welfare
- NB if a family disagrees with a decision maker's proposed action, this is not grounds for concluding that there is nobody whose views are relevant to the

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decision and is not in itself a valid reason to make a referral to the IMCA service (Mental Capacity Act Code of Practice Chapter 10.79).

Referrals for Accommodation Decisions

- Referrals should be made on the Gaddum Advocacy referral form by the individual's social worker/care co-ordinator
- Includes accommodation arranged by the local authority or NHS which is likely to be for longer than 8 weeks and placement in hospital for a period that is likely to exceed 28 days
- Referrals need not be made if the person in question is going to be required to stay in the accommodation under the Mental Health Act 1983. However, if a person is going to be discharged from detention, they may then be entitled to an IMCA if they meet other qualifying criteria.

Referrals for Decisions on Serious Medical Treatment

- Referrals should be made on the Gaddum Advocacy referral form by the medical practitioner with responsibility for the individual's treatment
- 'Serious medical treatment' is defined in the Mental Capacity Act 2005 as a treatment which involves giving new treatment, stopping treatment that has already started or withholding treatment that could be offered in circumstances where:
 - ❖ If a single treatment is proposed, there is a fine balance between the likely benefits and the burdens to the patient and the risks involved
 - ❖ A decision between a choice of treatments is finely balanced, or
 - ❖ What is proposed is likely to have serious consequences for the patient. Serious consequences are those which could have a serious impact on the patient, either from the effects of the treatment itself or its wider implications, such as causing serious and prolonged pain, distress or side effects; have potentially major consequences for the patient; or have a serious impact on the patient's future life choices.
- the duty to instruct an IMCA need not be followed where an **urgent** decision is needed, in a person best interests. However, an ICMA should still be instructed for any serious treatment which follows the emergency treatment.
- A referral for an IMCA does not need to be made for patients detained under the Mental Health Act 1983 if
 - ❖ the treatment is for their mental disorder **and**
 - ❖ the treatment can be given without the patient's consent under that Act.However, if the serious medical treatment proposed for a patient detained under the Mental Health Act is not for their mental disorder, the patient then has a right to an IMCA, as long as they meet the other MCA requirements as detailed above.

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Referrals for Adult Safeguarding

- Referrals should be made on the Gaddum Advocacy referral form by the local authority co-ordinating the adult protection proceedings wherein the alleged perpetrator is deemed to lack capacity.
- An IMCA may be instructed, even if there is someone appropriate to consult.
- If a person meets the criteria for an IMCA under safeguarding they will also have the right to advocacy under the Care Act Advocate (see Care Act Referrals Guidance Notes).
- It maybe beneficial to consider a referral for an IMCA through the safeguarding process where the protective measure being considered may result in a change of accommodation or serious medical treatment or a deprivation of liberty.

Gaddum Advocacy provides statutory advocacy under the Mental Capacity Act 2005, the Mental Health Act 1983 and the Care Act 2014. Individuals requiring advocacy support may sometimes be eligible under more than one statutory stream.

For any queries about IMCA referrals, or advocacy generally, please contact us on advocacy@gaddum.co.uk or on **0161 834 6069**.