

## 8.1 What is advocacy?

An independent advocate is a paid worker or a volunteer from an independent advocacy project. The role of the independent advocate is to:

- listen to the adult at risk,
- to provide information and explain options to them,
- assist them to reach their own decision, and to
- support or represent the person in expressing their views.

The independent advocate will always support the views of the adult at risk whether or not they agree with these views.

Where an adult at risk is unable to express a view, as through mental incapacity or other reason they are unable to make their own decision, the role of the independent advocate is then to represent their rights and entitlements. Where an adult at risk lacks capacity an Independent Mental Capacity Advocate (IMCA) must be instructed.

A relative, carer or friend may act as an advocate for an adult at risk. In such a situation, it should be noted that the relative, carer or friend may have a conflict of interest regarding, for instance, caring responsibilities or financial or property assets.

Sometimes a professional or voluntary worker may undertake the advocacy role. Again it should be noted that a conflict of interest may occur within the professional or voluntary worker's official role.

It is important that independent advocates are appropriately trained in the principles of advocacy, and that they do not impose their own views of what they think is best upon the adult at risk.

## 8.2 Advocacy and Safeguarding

At the earliest stage in Safeguarding the following questions should be asked in relation to the **adult at risk**:

- Is the adult at risk able to represent their own views and opinions at this potentially very stressful time?

- Would they benefit from support from an advocate to ensure their voice is heard and to ensure they are able to make informed decisions?
- Would the support from an advocate empower the adult at risk to take control of the situation?
- Would the support from an advocate ensure the individual understands the Safeguarding process?
- Would the support of an advocate enable the person to attend Safeguarding meetings?

It is also important to ask the following questions at the earliest stage in Safeguarding process in relation to the **person alleged to be causing the harm IF they are also an adult at risk**:

- Is the alleged person causing harm able to represent their own views and opinions at this potentially very stressful time?
- Would they benefit from support from an advocate to ensure their voice is heard and to ensure they are able to make informed decisions?
- Would the support from an advocate ensure they understand the consequences of their actions?
- Would the support from an advocate ensure they understand the Safeguarding process?

In relation to **large scale investigations** the following questions should be considered:

- Would the group of service users / patients be able to represent their own views and opinions at this potentially very stressful time?
- Would all or anyone person benefit from the support of an advocate to help them disclose any areas of concern they may have?
- Would all or any individual benefit from the support of an advocate to understand the safeguarding process which may result in significant changes for them?

If we answer yes to any of the above questions we must seek the involvement of an independent advocate at an early stage after referral, so that the adult at risk(s) or the person alleged to be causing the harm if they are an adult at risk can be supported throughout the process.

The independent advocate will be expected to:

- Support the adult at risk so that they can participate in and contribute to investigations.

- Support the adult at risk to attend meetings and conferences or to represent the adult at risk's views if they are unable to attend or it is not appropriate they attend.
- Ensure the adult at risk understands the Safeguarding process and that their voice is heard.

Independent advocates MUST NOT:

- Impose their own views of what they think is best upon the adult at risk.
- Act as a counsellor or mediator.

The advocate should observe professional confidentiality whilst also putting the views of the adult at risk.

All decision made to instruct an advocate or not MUST be fully recorded on Careassess. The reader of these notes MUST be able to understand when decision was made and the supporting reasons for that decision.

#### Advocacy services available in Solihull:

<b>Older People</b>	Age UK Solihull The Priory Church Hill Road Solihull B91 3EF	Tel: 0121 705 9128  Email: <a href="mailto:info@ageuksolihull.org.uk">info@ageuksolihull.org.uk</a>  <a href="http://www.ageuk.org.uk/solihull">www.ageuk.org.uk/solihull</a>
<b>People with Learning Disabilities</b>	Solihull Action through Advocacy St Andrews Centre Pike Drive Chelmsley Wood Birmingham B37 7US	Tel: 0121 603 5576  Email: <a href="mailto:office@solihulladvocacy.org.uk">office@solihulladvocacy.org.uk</a>  <a href="http://www.solihulladvocacy.org.uk">www.solihulladvocacy.org.uk</a>
<b>People with a Mental Health illness aged under 65 years of age</b>	Making Space The Colebridge Trust 14 Arron Way Smiths Wood Solihull B36 0QG	Tel: 0121 788 3154  Email: <a href="mailto:advocacy.solihull@makingspace.co.uk">advocacy.solihull@makingspace.co.uk</a>

<b>People with Physical Disabilities</b>	DIAL Solihull 67 The Parade Kingshurst Solihull B37 6BB	Tel: 0121 770 0333
<b>Older People with Dementia</b>	Alzheimer's Society 149-153 Alcester Rd Moseley Birmingham B13 8JP	Tel: 01214426565  Email: <a href="mailto:BirminghamAndSolihull@alzheimers.org.uk">BirminghamAndSolihull@alzheimers.org.uk</a>
<b>Patients who are Detained</b>	Independent Advocacy Avenue M Stoneleigh Park Warwickshire CV8 2LG	Tel: 024 76 697 443 ext 229 or 230  Email: <a href="mailto:office@independentadvocacy.org">office@independentadvocacy.org</a>

### 8.3 Independent Mental Capacity Advocates (IMCA)

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

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

The role of the Independent Mental Capacity Advocate (IMCA) is to work with and support people who lack capacity, and represent their views to those who are working to determine their best interests.

The regulations state that IMCA's may be instructed where local authorities or NHS bodies "propose to take or have taken, protective measures in relation to a person 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.**

An Independent Mental Capacity Advocate (IMCA) must be involved in any decisions about:

- Serious medical treatment
- long term hospital moves (over 28 days)
- or long term care moves (over 8 weeks)

And should also be instructed to support and represent a person who lacks capacity where it is alleged that:

- The person is or has been abused or neglected by another person  
or
- The person is abusing or has abused another person.

If Safeguarding Adults procedures are proposed or already being taken an IMCA should be considered for an adult at risk who lacks capacity to make a decision when one of the following occurs:

- 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
- Risk of deprivation or liberty. Deprivation is the practice of exercising control over the care of a person without capacity to the extent they cannot choose what happens to them. This includes not being able to leave a care home or hospital or not being able to be discharged to a carer at their request. An unauthorised Deprivation is unlawful.
- 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.
- Where there is a conflict of views between the decision makers regarding the best interests of the person.

Examples of the types of decisions where an IMCA would be appropriate to instruct to support an adult at risk who lacks mental capacity: (this is not an exhaustive list)

- Medical examinations
- Counselling in response to abuse
- Protective accommodation on an interim or long term basis
- Denying access to an alleged abuser
- Provision of a protection plan

An IMCA must also be instructed in the following situations where the alleged person causing harm is an adult at risk who lacks mental capacity:

- 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 interest at heart
- Where there is conflict of views between the decision makers regarding the best interest of the person.

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.

#### **8.4 When a referral to an IMCA is made:**

- The referral must be decision specific. If generalised advocacy support is required, a referral should be made to traditional advocacy services.
- The decision-maker must be satisfied that having an IMCA will be of particular benefit to the person who lacks capacity.
- The decision-maker must also follow the best interests checklist, including getting the views of anyone engaged in caring for a person when assessing their best interests, and
- The decision-maker must consider the IMCA's report and related information when making a decision.
- When the relevant decision has been made, the decision-maker will inform the IMCA within 24 hours of making the decision.

#### **8.5 When in the process should an IMCA become involved?**

In every case where the Safeguarding Adults procedures for the protection of an adult at risk are initiated, consideration should be given to whether the person concerned meets the eligibility conditions criteria for instructing an IMCA. A record should be made of the decisions and the reasons.

Consideration should be given at all stages of the Safeguarding Adults process to identify if and when to instruct an IMCA. This will be dependent on the decisions to be made and the risks involved.

In all circumstances, the safety and wellbeing of the adult at risk is paramount. Referral and involvement of the IMCA in safeguarding

adult's situations should not delay any actions that are necessary to protect adult at risks from immediate risk of harm.

When an IMCA has been instructed they must be invited to attend safeguarding adults meetings, as appropriate, including any subsequent reviews. The involvement of the IMCA should be reviewed once the specific decisions that prompted the referral have been resolved.

In those cases involving Lasting Powers of Attorney or Court Appointed Deputy, where there is reasonable belief that the person holding the LPA / the Deputy is not acting in the best interests of the person lacking capacity, an application should be made to the Court of Protection for either a best interest decision or to displace the LPA before an IMCA is considered.

## **8.6 The role of the IMCA in safeguarding adult proceedings**

IMCA's have a statutory role to represent and support the adult at risk in relation to decisions concerning protective measures (including decisions not to take protective measures).

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

- Interview or meet the person if possible
- Talk to professionals; paid cares and other people who can give information about the person's wishes and feelings, beliefs and values.
- Access relevant records.

IMCA's will need to check whether 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.

IMCA's should find out whether the adult at risk is given as much support as possible to participate in the decision making process. This could include asking whether they have 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.

Regulations allow IMCA's 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.

## **8.7 The IMCA Report**

IMCA's are required to produce a report for the person who instructed them.

Ideally an IMCA report is provided before decisions are made about protective measures. Good practice is for the IMCA to provide written reports for safeguarding meetings. However in some cases the IMCA may have had little opportunity to write a report before decisions are made. Also delaying making decisions may go against the person's best interests.

Where decisions are made about protective measures before an IMCA report is received there is a statutory requirement to have had regard to any representations the IMCA has already made (including verbally at safeguarding adult meetings). When decisions have been made about protective measures as part of the safeguarding plan the IMCA report should be provided within one week of the decision being made to ensure timely and appropriate representation.

## **8.8 The IMCA's contact with the person at risk**

One of the statutory rights of IMCA's is to meet the person where "practical and appropriate". When instructed for an adult at risk there are a number of reasons why it may not be practical or appropriate to meet the person. This includes:

- 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 person causing the harm. IMCA's 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 his or her evidence. Pre-trial discussions may lead to allegations of coaching and, ultimately, the failure of the criminal case.

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



When IMCA's 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 adult at risk (particularly when they are an alleged person causing harm). The responsibility for risk assessment lies with the IMCA provider.

## 8.9 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 manager leading the Safeguarding process to communicate to anyone who needs to be aware of the safeguarding adult proceedings that an IMCA has been instructed to independently represent the person at risk. This may include family or friends.

IMCA's 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.

All decision made to instruct an IMCA or not MUST be fully recorded on Careassess. The reader of these notes MUST be able to understand when decision was made and the supporting reasons for that decision.

### The IMCA service for Solihull is:

<b>POhWER</b>	Coventry, Warwickshire, Herefordshire & Worcestershire ICAS County Buildings St Mary's Street Worcester Worcestershire WR1 1LT	Tel: 0300 456 2370  Email: <a href="mailto:pohwer@pohwer.net">pohwer@pohwer.net</a>
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## 8.10 Communicators/interpreters

Every effort should be made to ensure that victims of abuse are able to communicate effectively about what has happened to them. Similar efforts should be made in respect of any one else who may be able to give information relevant to the victim's situation.

Interpreters/communicators should be impartial and so it is not generally appropriate to rely on family members to act in these capacities.

When dealing with adults at risk it may be necessary to engage their services. The two roles tend to be used interchangeably as they reflect the similar responsibilities. Sometimes the use of the term "interpreter" focuses more on the use of foreign languages. An interpreter or communicator is a person who translates. This contrasts with, for example, the role of the intermediary, whose role is defined as a person facilitating communication between a witness, the police, the prosecution/and or the court, to ensure that the communication process is as complete, coherent and accurate as possible.

"Translation", in this context, not only means translating from a foreign language into English, but also translating sign language or any other form of communication used by the adult at risk.

The interpreter should use the words of the investigator to share with the adult at risk what has been asked, and use the words of the adult at risk to tell the investigator what is being communicated. Interpreters should not translate what they think is being said, or use their own words or interpretation. Investigators can help by directing questions to the interviewee, and by checking that the interpreter is aware of their role and responsibilities prior to the interview.

An interpreter may become a witness in cases of alleged criminal offences, and be asked to produce a statement in the language of the adult at risk in court.

Communication barriers may result from lack of common language, but also from a lack of knowledge of the culture of the adult at risk. Trained interpreters and communicators will take both areas into account.

There are five principal areas of communication difficulty:

- Ethnic minority languages, where English is not the person's first language.
- Sensory impairment, such as a British Sign Language user or someone very hard of hearing or blind.

- Disability, such as person with no verbal communication, or a user of Makaton or other non-verbal system of communication.
- Acquired language or speech problems such as stroke or other brain injury, or speech impediments such as a stammer.
- Mental health difficulty such as disordered thought processes.

It is always preferable to use a trained communicator or interpreter to assist in these areas.

Please also compare the role of the intermediary when “special measures” apply. They may be working with communicators and interpreters to ensure the welfare of an alleged victim of crime.

Communicators/interpreters services are accessed via Solihull Adult Social Care Communications Team.

## **8.11 Use of Intermediaries**

Section 29 of the Youth Justice and Criminal Evidence Act 1999 provides for the examination of a witness, through an intermediary for vulnerable witnesses in criminal proceedings.

An intermediary is defined as a person who facilitates communication between a witness, the police, the prosecution/and or the court, to ensure that the communication process is as complete, coherent and accurate as possible. In some cases an intermediary makes the difference between a witness being able to testify or not.

Intermediaries come from a range of professional backgrounds, including speech and language therapy, occupational therapy, psychology education and social work. When an intermediary is requested the Intermediary Registration Board (IRB) will match the skills of an intermediary with the specific needs of the vulnerable victim/witness.

Registered intermediaries have completed a rigorous assessment process and will be used in preference to an unregistered professional. The courts sanction intermediaries and therefore their personal expertise and conduct will be subject to legal challenge.

Intermediaries help working with a vulnerable victim/witness by carrying out an assessment. This has three main purposes:

- It enables the intermediary to evaluate the abilities and needs of a witness. The intermediary can assess whether they have the correct skills to act as the intermediary for that victim/witness and it enables them to establish rapport and trust with the victim/witness

so they can help them give their best possible evidence.

- The intermediary is able to provide professional advice about how the victim/witness communicates and their levels of understanding. This may include recommending a specific interview strategy. For example - types of questions to avoid, concepts to avoid, and suggestions for the way in which questions are formulated. Additionally they can advise on the duration of interviews and need for suitable breaks and other issues. An intermediary will usually provide a written report, which the CPS can incorporate in their application for special measures.
- Assisting directly in the communication process during an investigative interview or testimony at trial, by helping the victim/witness understand the questions they are asked and communicating their answers. This may include assisting with the preparation for trial, including accompanying the victim/witness to court, and familiarisation visits conducted by witness support services.

There should be a good reason for choosing NOT to use an intermediary for a victim/witness with a communication difficulty. Discussion as regards the appropriateness of using an intermediary should take place at the multi-agency strategy meeting or case conference, as more information will have been made available about the nature of the communication difficulty. Decision making rationale should be minuted. Even if an intermediary has not been used at the start of a case, one can be contacted subsequently.

Intermediaries are independent and do not pursue their own lines of questioning. It must be remembered their duty is to the court and justice, they are not investigators, advocates, interpreters or Interview supporters.

## **8.12 Victim Support**

The main focus of Safeguarding Adults is to make people physically and practically 'safe'.

Victim support can help anyone affected by crime – not only victims and witnesses, but their friends, family and other people caught up in the aftermath. People can talk to victim support regardless of if they have reported the crime to the police or not. Victim Support will support individuals and will not involve the rest of the criminal justice system unless the individual want them to (or unless it's an emergency and they think someone is at risk).

When contact is made, one of Victim Supports victim care officers will ask some questions about what has happened and how the individual think they have been affected by the crime. If the individual wants their support, Victim Support will put together a 'helping plan'. The help they provide falls into three main areas:

- Emotional support
- Information
- Practical support

Victim Support can give support over the phone or face-to-face. They can arrange visits to individuals own home or somewhere else that is feel safe. They will provide support for as long as the individual need it. Victim Support works with a wide range of charities to help find the situations.

The service is free and is not part of the police, the courts or any other criminal justice agency. Their trained volunteers can offer:

- Individuals someone to talk to in confidence
- Information on police and court proceedings
- Help in dealing with other organisations and
- Information about compensation and insurance.

<b>Solihull Victim Support</b>	1 <sup>st</sup> Floor Lancaster House 1 College Road Mosley Birmingham B13 9LS	Tel: 0121 702 1662 or: 0300 303 1977  <a href="http://www.victimsupport.org.uk">www.victimsupport.org.uk</a>
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