

# Keeping vulnerable adults safe

## Things you need to know

### Deprivation of liberty

April 2009

Deprivation of Liberty Safeguards fact sheet – advocacy and representation

#### Independent Mental Capacity Advocate Services (IMCA)

The introduction of the Mental Capacity Act – Deprivation of Liberty Safeguards has extended the role of the Independent Mental Capacity Advocate (IMCA) services beyond that previously given for the role described within the main Code of Practice for the Mental Capacity Act, and has given them new rights and responsibilities.

These new right and responsibilities are that the service and its IMCA's have the right to:

- as they consider appropriate, give information or make submissions to assessors, which assessors must take into account in carrying out their assessments
- receive copies of any assessments from the supervisory body
- receive a copy of any standard authorisation given by the supervisory body
- be notified by the supervisory body if they are unable to give a standard authorisation because one or more of the deprivation of liberty assessments did not meet the qualifying requirements
- receive a copy of any urgent authorisation from the managing authority
- receive from the managing authority a copy of any notice declining to extend the duration of an urgent authorisation
- receive from the supervisory body a copy of any notice that an
- urgent authorisation has ceased to be in force, and
- apply to the Court of Protection for permission to take the relevant person's case to the Court in connection with a matter relating to the giving or refusal of a standard or urgent authorisation (in the same way as any other third party can)

The IMCA should be instructed when there is nobody appropriate to consult, other than people engaged in providing care or treatment for the relevant person in a professional capacity (a friend or family member is **not** considered to be acting in a professional capacity) or for remuneration, and it is the responsibility of the managing authority to notify the supervisory body of the need for an IMCA when an application is made.

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The supervisory body must instruct the IMCA service of the need for an IMCA to represent the person as soon as the notification is received.

The duties of the IMCA will cease once a Relevant Person's Representative (RPR) is appointed, however they may still apply to the Court of Protection for permission to take the relevant person's case to Court in connection with the giving of a standard authorisation.

There are other circumstances where an IMCA must or may be instructed.

An IMCA must be instructed during gaps in the appointment of a RPR. In addition, an IMCA may be instructed at any time where:

- the RPR does not have a paid 'professional' representative
- the relevant person or their representative requests that an IMCA is instructed to help them, or
- a supervisory body believes that instructing an IMCA will help to ensure that the person's rights are protected

Further information on the IMCA role can be found in Chapters 3 and 7 of the 'Mental Capacity Act 2005 – Deprivation of Liberty Safeguards, Code of Practice to supplement the main Mental Capacity Act 2005 Code of Practice' and Chapter 10 of the main Code.

### **Relevant Person's Representative Role**

A Relevant Person's Representative (RPR) must be appointed once a standard authorisation is given to represent the person who has been deprived of their liberty, however the process of identifying a representative can begin as soon as the best interest assessor (BIA) is appointed, as there is a requirement for the BIA to identify if there is anyone they would recommend to become the RPR.

The BIA should also establish whether the relevant person has the capacity to select their own representative and, if so, should invite them to do so. If the relevant person has the capacity and selects an eligible person the BIA must recommend that person to the supervisory body for appointment. Similarly where there is a donee or deputy and they select the person to be the RPR and they are eligible to represent the person the BIA must recommend that person.

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The role of the RPR is:

- to maintain contact with the relevant person, and
- to represent and support the relevant person in all matters relating to the deprivation of liberty safeguards, including, if appropriate, triggering a review, using an organisation's complaints procedure on the person's behalf or making an application to the Court of Protection

The managing authority must ensure that the RPR understands:

- the effect of the authorisation
- their right to request a review
- the formal and informal complaints procedures that are available to them
- their right to make an application to the Court of Protection to seek variation or termination of the authorisation, and
- their right, where the relevant person does not have a paid 'professional' representative, to request the support of an IMCA

The RPR can only be someone 18 years of age or over and must be able to keep in contact with the relevant person and willing to be appointed. There are other circumstances which affect the ability of someone to be a RPR where the person must not be:

- financially interested in the relevant person's managing authority
- a relative of a person who has financial interest in the relevant person's managing authority
- employed by, or providing services to, the care home in which the relevant person is residing
- employed by the hospital in a role that is, or could be, related to the treatment or care of the relevant person, or
- employed to work in the relevant person's supervisory body in a role that is, or could be, related to the relevant person's case

There may be occasions where the BIA is unable to recommend anybody to be the RPR and they should then notify the supervisory body, it will then be the supervisory bodies' responsibility to identify an eligible person to be the RPR. This is likely to be someone who would perform the role in a professional capacity and this may be someone paid to undertake the role.

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There is a requirement for the RPR to have sufficient face to face contact with the relevant person to ensure that their best interests are being safeguarded and the care home or hospital should accommodate visits by the RPR at reasonable times and record these. If insufficient contact is kept the managing authority will need to consider informing the supervisory body, however if there are concerns these should be first raised with the representative to resolve informally before informing the supervisory body.

The RPR's appointment will come to an end when:

- the standard authorisation comes to an end and a new authorisation is not applied for, or if applied for is not given
- the relevant person, if they have the capacity to do so, objects to the representative continuing in their new role and a different person is selected to be their representative instead
- a donee or deputy, if it is within their authority to do so and the relevant person lacks the capacity to decide, objects to the representative continuing in their role and a different person is selected to be the representative instead
- the supervisory body becomes aware that the representative is no longer willing or eligible to continue in the role
- the supervisory body becomes aware that the relevant person's representative is not keeping in touch with the person, is not representing and supporting them effectively or is not acting in the person's best interests
- the relevant person dies

Further information on the role of the RPR can be found in Chapter 7 of the 'Mental Capacity Act 2005 – Deprivation of Liberty Safeguards, Code of Practice to supplement the main Mental Capacity Act 2005 Code of Practice'

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### For more information

For information on health and social care please contact your local Gateway to care on 01484 414933, NHS Kirklees PALS Service on 01484 466172.

### Information in other formats

Kirklees Adult Services is committed to ensuring that its communication is clear, plain and available for everyone. This information can be made available in languages other than English. It can also be made available in large print, audio CD, audiotape and Braille by telephoning 01484 225274.

یہ معلومات انگریزی کے علاوہ دوسری زبانوں میں، بڑی لکھائی میں، سی ڈی یا ٹیپ پر اور بریل میں بھی فراہم کی جاسکتی ہے۔ براہ مہربانی اس نمبر پر فون کر لیں: 01484 225274 (Urdu)

આ માહિતી અંગ્રેજી સિવાયની બીજી ભાષાઓમાં, મોટી છપાઇમાં, ઓડિઓ સી.ડી., ઓડિઓ ટેપ અને બ્રેઇલમાં ઉપલબ્ધ કરી શકાય છે. મહેરબાની કરી 01484 225274 નંબર પર ટેલિફોન કરો. (Gujarati)

اسے معلومات انگریزی تھئی علاوہ دونیاں زبانوں، موٹی لکھائی، سی ڈی یا ٹیپ پر تہ بریل وچ وی لپی سکئی اہہ۔ مہربانی کری تہ ہس نمبر اپر فون کری کینو: 01484 225274 (Pahari)

ਇਹ ਜਾਣਕਾਰੀ ਅੰਗ੍ਰੇਜ਼ੀ ਤੋਂ ਇਲਾਵਾ ਹੋਰ ਬੋਲੀਆਂ, ਵੱਡੇ ਆਕਾਰ ਦੀ ਛਪਾਈ, ਆਡੀਓ ਸੀ ਡੀ, ਆਡੀਓ ਟੇਪ ਅਤੇ ਬ੍ਰੇਲ ਵਿਚ ਵੀ ਮਿਲ ਸਕਦੀ ਹੈ। ਕ੍ਰਿਪਾ ਕਰਕੇ 01484 225274 'ਤੇ ਟੈਲੀਫੋਨ ਕਰੋ। (Punjabi)

这些资料备有其它语文、大字体、语音光碟、录音带和凸字版本可供索取。请致电 01484 225274 查询详情。(Chinese)

Te informacje można nabyć w różnych językach, w powiększonym druku, na płycie kompaktowej lub na taśmie i Braille. Proszę telefonować na numer 01484 225274. (Polish)