Can I instruct an IMCA for someone who has family and/or friends?

If a person is facing a decision about a change of accommodation or serious medical treatment, has been assessed to lack the capacity to make that decision and has no family or friends who can be consulted about the decision then they are definitely eligible for IMCA.

If in the same situation described above a person does have family or friends a situation may exist where the person still needs an independent mental capacity advocate. The term used in the Mental Capacity Act is that family or friends may not be ‘appropriate to consult.

It is the decision maker’s decision as to whether family or friends are appropriate to consult.

Who is ‘Appropriate to Consult’?
In reference to MCA Code of Practice Chapter 10:

10.75: The Act does not define those ‘whom it would be appropriate to consult’ but consultation about a person’s best interests shall include among others, anyone:

- named by the person as someone to be consulted on a relevant decision
- engaged in caring for them, or
- Interested in their welfare

10.76: The decision-maker must determine if it is possible and practical to speak to these people, and those described in paragraph 10.70 when working out whether the proposed decision is in the person’s best interests. If it is not possible, practical and appropriate to consult anyone, an IMCA should be instructed.
In summary, in the following situations a referral should be made:

- The family member or friend is not willing to be consulted about the best interest decision.
- The family member or friend is too ill or frail.
- There are reasons which make it impractical to consult with the family member or friend e.g. they live too far away.
- The person named by the client to be consulted feels that they do not know the person well enough to be involved.
- There is intense conflict within the family or with family and professionals disagreeing with the proposed course of action or with what would be in their relative's best interest to the extent that a decision cannot be made (not in Yorkshire & Nottinghamshire).
- There are allegations, suspicions or proved incidences of abuse by the family member or friend.
- The family member or friend is unwilling to involve the person whom the decision is about in the decision-making process.

If none of the above criteria apply, the person cannot be referred to the IMCA service.
Additionally:

The decision maker should state clearly their reasons for requiring an IMCA where there is family/friend involvement on the IMCA referral form and in their own records.

- Where there are family/friends involved who are not deemed appropriate to consult with, or due to adult protection proceedings the decision maker should inform the family/friends of their decision to instruct an IMCA. The VoiceAbility ‘F.A.Q’s for Family and Friends’ guidance should be forwarded to family and friends involved.

- Where a complaint is made about a decision to instruct the IMCA service, this should be made to the referring body i.e. the LA or NHS trust.

- Where a family/friend wishes to see the IMCA report they should approach the decision maker.

For more information or to make a referral please contact us:
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What is Total Voice Staffordshire?
Total Voice is a partnership providing independent advocacy services across the area. It is run by two charities working together: VoiceAbility and Asist. You can find out more on www.totalvoicestaffs.org or by calling us.