

Advocacy as required by the Care Act: an overview

Local authorities must involve individuals in decisions made about them and about their care and support. This applies both to individuals in need of care and support and to carers in need of support. No matter how complex a person's needs, local authorities are required to:

- help people express their wishes and feelings
- support them in weighing up their options
- assist them in making their own decisions

Independent advocates under the Care Act support individuals, including carers, to:

- understand information
- express their needs and wishes
- secure their rights
- represent their interests
- obtain the care and support they need

The statutory advocacy duty is based on the principle of enabling everyone to be fully involved in the decisions that shape their lives by providing extra help. It is different and distinct from general advocacy or campaign activity as it is totally focussed on the individual within the stated criteria.

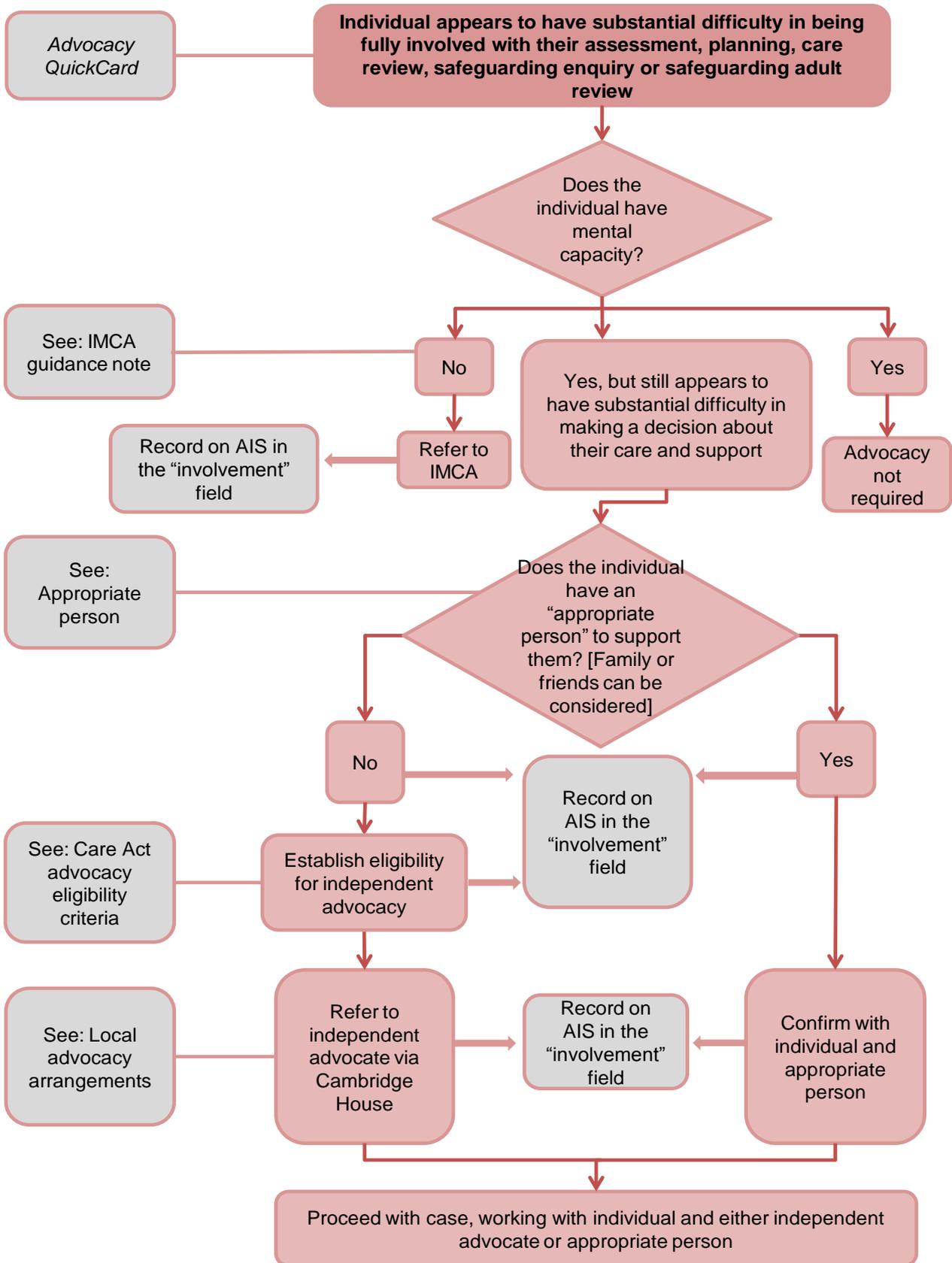
In Barking and Dagenham, the priority is to meet the advocacy needs of individuals who meet the criteria under the Care Act and those who qualify for advocacy by virtue of a mental capacity or mental health determination. Wider advocacy is available but is not a priority part of Council services.

The following guidance notes describe the procedures in relation to:

- Independent advocacy under the Care Act 2014 (guidance note 4.2.1/2016)
- Independent mental capacity advocacy (IMCA) for individuals who are unable to make decisions for themselves (guidance note 4.2.2/2016)
- Independent mental health advocacy (IMHA) for individuals detained under most sections of the Mental Health Act 1983, subject to guardianship, in hospital or on a community treatment order (guidance note 4.2.3/20)

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Independent advocacy under the Care Act



1. When must independent advocacy under the Care Act be provided

Independent advocacy is a duty under the Care Act 2014. The social worker makes a judgement against two conditions:

1. The person has substantial difficulty in being fully involved in these processes [See *Eligibility criteria* in the section 2 below]
2. There is no one appropriate to support and represent the person's wishes

An independent advocate must be appointed to support and represent the person for the purpose of assisting their involvement if these two conditions are met and if the individual is required to take part in one or more of the following processes described in the Care Act:

- a needs assessment
- a carer's assessment
- the preparation of a care and support or support plan
- a review of a care and support or support plan
- a child's needs assessment
- a child's carer's assessment
- a young carer's assessment
- a safeguarding enquiry
- a safeguarding adult review
- an appeal against a local authority decision under Part 1 of the Care Act (subject to further consultation).

2. Eligibility criteria for independent advocacy under the Care Act

An individual needs to meet **one** of the following criteria:

Criteria:	What this means:
Substantial difficulty in understanding relevant information	When an individual has been provided with information in formats which are suitable to them and time has been taken to explain it to them and they cannot understand it, then they have a substantial difficulty .
Substantial difficulty in retaining information	An individual's difficulty in retaining information which has been provided to them is a substantial difficulty if they cannot retain it for long enough to reflect and make an informed decision.
Using or weighing up information in order to make an informed decision about their care and support	An individual who has difficulty in using or weighing up information has a substantial difficulty when it prohibits them from making an informed decision around their lifestyle – for example weighing up the advantages and disadvantages of moving into a care home.

arrangements	
Communicating their views, wishes and feelings	If an individual cannot communicate their views, wishes or feelings, verbally or non-verbally (writing, signing or by any other means) then they will be disengaged from decision making and unable to make their decisions clear. This is a substantial difficulty .

3. The Care Act definition of an appropriate person

An **appropriate person** may be used instead of an independent advocate under the Care Act if this is the individual’s preference, and if both they and the individual give consent to them being an appropriate person.

The appropriate person must be able to support the person’s active involvement with the local authority processes. Examples of an appropriate person include:

- Unpaid carer
- Family member
- Interpreter or specialist communicator able to meet language or other communications needs
- Friend who is available, is able to have regular contact with the individual, and shows understanding of the role

An appropriate person **cannot** be:

- The individual’s paid carer
- Providing a professional service to the individual, such as GP, nurse or support worker
- The person alleged responsible in a current or previous safeguarding enquiry

In some circumstances, an independent advocate will be provided for an eligible person even if they have an appropriate person, for example:

- where a placement is being considered in NHS-funded provision in either a hospital (for a period exceeding four weeks) or in a care home (for a period of eight weeks or more), and the local authority believes that it would be in the best interests of the individual to arrange an advocate
- where there is a disagreement between the local authority and the appropriate person whose role it would be to facilitate the individual’s involvement, and the local authority and the appropriate person agree that the involvement of an independent advocate would be beneficial to the individual

4. Local advocacy arrangements

The Council has contracted an advocacy provider, Cambridge House, to provide advocacy support for service users and carers from 1 April 2016.

If you have a referral for independent advocacy under the Care Act, contact Cambridge House by:

Telephone: 020 7358 7007, or
Email: chadvocacy@ch1889.org

Their opening hours are: Monday to Friday, 9am to 5pm

LBBD's referral form for advocacy is published on the Care and Support Hub at:

- **Xxxx (Adrian with Jolene or Jade to upload and confirm url for inclusion in this procedural note)**

All advocacy details must be recorded on the relevant AIS case.

Cambridge House publishes further information about its independent advocacy under the Care Act at:

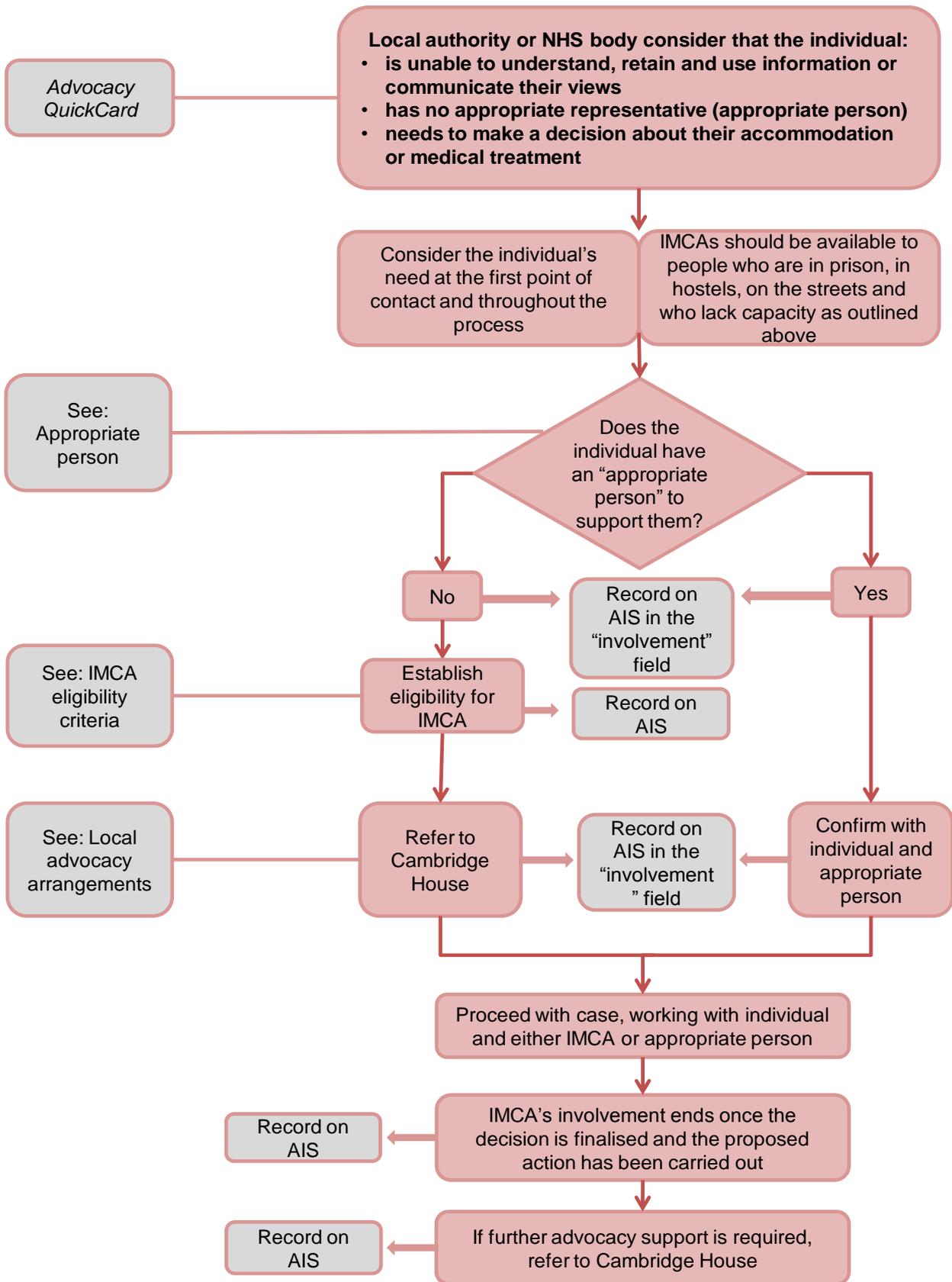
- <http://ch1889.org/our-work/advocacy/care-act-advocacy/>

5. Further information

- Sections [67](#)ⁱ and [68](#)ⁱⁱ of the Care Act 2014
- [Care and Support Statutory Guidance](#)ⁱⁱⁱ 2016
- [Care and Support \(Independent Advocacy\) Regulations 2014](#)^{iv} and [Statutory Instrument 2014 No. 2889](#)^v
- Social Care Institute for Excellence (SCIE): [Independent Advocacy](#)^{vi}

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Independent mental capacity advocacy (IMCA)



The role of the IMCA is to advocate for individuals who do not have mental capacity to make decisions for themselves.

Under the Mental Capacity Act 2005, the local authority or NHS body has a duty to provide an independent mental capacity advocate (IMCA) if, in their judgement, the adult or carer:

- is unable to understand, retain and use information or communicate their views
- has no appropriate representative and needs to make a decision about their accommodation or medical treatment.

IMCAs are independent and generally work for advocacy providers who are not part of a local authority or the NHS.

1. Eligibility criteria for accessing IMCA support

An IMCA must be instructed for individuals in the following circumstances:

- The person is aged 16 or over
- A decision needs to be made about either a long-term change in accommodation or serious medical treatment
- The person lacks capacity to make that decision, and
- There is no one independent of services, such as a family member or friend, who is “appropriate to consult”

An IMCA may also be provided to individuals for other decisions concerning:

- care reviews
- adult protection

In adult protection cases an IMCA may be instructed even where family members or others are available to be consulted.

Types of decision:	Is the person able to:
<ul style="list-style-type: none">• Is a decision being made about serious medical treatment or a long-term care move; or a care review or adult protection procedures?• Does the person lack capacity to make this particular decision?• Is the person aged 16 years or older?• Is there nobody (other than paid staff providing care or professionals) whom the decision-maker considers willing and able to be consulted about the decision? (This does not apply to adult protection cases)	<ul style="list-style-type: none">• Understand relevant information provided to them• Retain information provided to them• Use or weigh information up in order to make an informed decision about their care and support arrangements• Communicate that decision

2. Definition of an appropriate person

An appropriate person may be used instead of an IMCA if this is the individual's preference, and if both they and the individual give consent to them being an appropriate person.

The appropriate person must be able to support the person's active involvement with the local authority processes. Examples of an appropriate person include:

- Unpaid carer
- Family member
- Interpreter or specialist communicator able to meet language or other communications needs
- Friend who is available, is able to have regular contact with the individual, and shows understanding of the role

An appropriate person cannot be:

- The individual's paid carer
- Providing a professional service to the individual, such as GP, nurse or support worker
- The person alleged responsible in a current or previous safeguarding enquiry

The role of an 'appropriate individual' in place of an IMCA may simply be to consult the individual and then make decisions on their behalf. This definition is different from advocacy offered under the Care Act.

In some circumstances, an IMHA will be provided for an eligible person even if they have an appropriate person, for example:

- where a placement is being considered in NHS-funded provision in either a hospital (for a period exceeding four weeks) or in a care home (for a period of eight weeks or more), and the local authority believes that it would be in the best interests of the individual to arrange an advocate
- where there is a disagreement between the local authority and the appropriate person whose role it would be to facilitate the individual's involvement, and the local authority and the appropriate person agree that the involvement of an IMCA would be beneficial to the individual

3. Local advocacy arrangements

The Council has contracted an advocacy provider, Cambridge House, to provide advocacy support for service users and carers from 1 April 2016.

If you have a referral for independent mental capacity advocacy (IMCA) or advocacy for Deprivation of Liberty Safeguards (DoLS) or a Relevant Person's Representative (RPR), contact Cambridge House by:

Telephone: 020 7358 7007, or
Email: chadvocacy@ch1889.org

Their opening hours are: Monday to Friday, 9am to 5pm

LBBD's referral form for advocacy is published on the Care and Support Hub at:

- [Xxxx \(Adrian with Jolene or Jade to upload and confirm url for inclusion in this procedural note\)](#)

All advocacy details must be recorded on the relevant AIS case.

Cambridge House publishes further information about its IMCA and RPR services at:

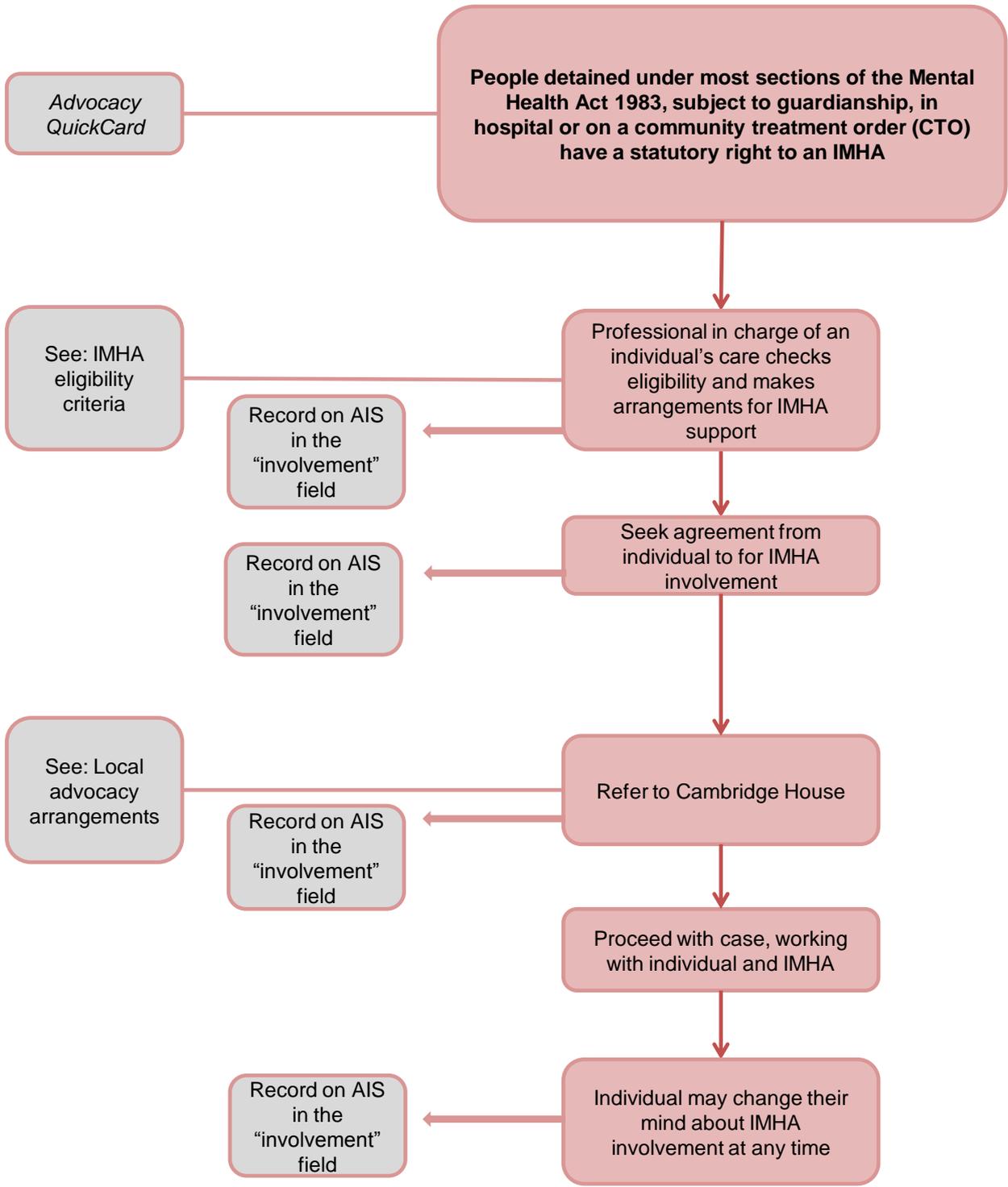
- <http://ch1889.org/our-work/advocacy/independent-mental-capacity-advocates/>
- <http://ch1889.org/our-work/advocacy/relevant-persons-representative/>

4. Further information

- NHS choices: [What is the Mental Capacity Act](#)^{vii}
- [The Mental Capacity Act 2005 \(Independent Mental Capacity Advocates\) \(General\) Regulations 2006](#)^{viii}
- SCIE: [IMCA resources](#)^{ix}
- SCIE [IMCA instruction: best practice guidance](#)^x
- Office of the Public Guardian: [Making decisions: The Independent Mental Capacity Advocate \(IMCA\) service](#). Helping people who are unable to make some decisions for themselves^{xi}

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Independent mental health advocacy (IMHA)



Independent mental health advocacy (IMHA) is for individuals subject to the Mental Health Act 1983

An IMHA is a specialist advocate, introduced in 2007 under amendments to the 1983 Mental Health Act. Mental health service staff are required to inform qualifying individuals of their right to an IMHA.

IMHAs can help people who use services to understand:

- their legal rights under the Mental Health Act
- the legal rights which other people (e.g. nearest relative) have in relation to them
- the particular parts of the Mental Health Act which apply to them
- any conditions or restrictions to which they are subject
- any medical treatment that they are receiving or might be given, and the reasons for that treatment
- the legal authority for providing that treatment
- the safeguards and other requirements of the Act which would apply to that treatment

IMHAs have legal rights which are not available to other advocates. These rights mean that IMHAs may:

- meet qualifying patients in private
- consult with professionals concerned with the patient's care and treatment
- see any records relating to the patient's detention, treatment or after-care, for the purpose of providing help to the patient and where the patient consents
- request access to records where the patient lacks capacity to consent, if accessing the records is necessary to carry out the functions as an IMHA

IMHA is not the same as IMCA. IMCA provision is a separate statutory duty to provide non-instructed advocacy for people who lack capacity to make certain decisions and who have no one able to support and represent them. It may be appropriate for someone to have both an IMHA and an IMCA. An IMHA can also work in a non-instructed way with people lacking capacity who are detained under the Mental Health Act.

Figure 3 sets out the pathway for accessing IMHA support.

1. Eligibility criteria for accessing IMHA support

IMHAs work with people in England who are:

- of all ages, who are detained (sectioned) for longer than 72 hours under the Mental Health Act
- conditionally discharged restricted patients
- on guardianships
- on community treatment orders (CTOs)

Other patients, who are informal, are eligible for IMHA services if:

- they are being considered for serious surgery, like neurosurgery, for a mental disorder ([section 57 or 58A treatment](#)^{xii} requiring consent and a second opinion)
- they are under 18 and being considered for electroconvulsive therapy (ECT)

2. Local advocacy arrangements

The Council has contracted an advocacy provider, Cambridge House, to provide advocacy support for service users and carers from 1 April 2016.

If you have a referral for independent mental health advocacy (IMHA), contact Cambridge House by:

Telephone: 020 7358 7007, or

Email: chadvocacy@ch1889.org

Their opening hours are: Monday to Friday, 9am to 5pm

LBBD's referral form for advocacy is published on the Care and Support Hub at:

- [Xxxx \(Adrian with Jolene or Jade to upload and confirm url for inclusion in this procedural note\)](#)

All advocacy details must be recorded on the relevant AIS case.

Cambridge House publishes further information about its IMHA service at:

- <http://ch1889.org/our-work/advocacy/imha/>

3. Further information

a) SCIE: [Independent Mental Health Advocacy](#) (IMHA)^{xiii}

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- i <http://www.legislation.gov.uk/ukpga/2014/23/section/67> <http://www.legislation.gov.uk/ukpga/2014/23/section/67>
- ii <http://www.legislation.gov.uk/ukpga/2014/23/section/68>
- iii <https://www.gov.uk/guidance/care-and-support-statutory-guidance>
- iv http://www.legislation.gov.uk/uksi/2014/2824/pdfs/uksi_20142824_en.pdf
- v <http://legislation.data.gov.uk/uksi/2014/2889/made/data.html>
- vi <http://www.scie.org.uk/care-act-2014/advocacy-services/>
- vii <http://www.nhs.uk/Conditions/social-care-and-support-guide/Pages/mental-capacity.aspx>
- viii http://www.legislation.gov.uk/uksi/2006/1832/pdfs/uksi_20061832_en.pdf
- ix <http://www.scie.org.uk/publications/imca/>
- x <http://www.scie.org.uk/publications/imca/files/imcainstructionguide.pdf>
- xi https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/365629/making-decisions-opg606-1207.pdf
- xii <http://www.mind.org.uk/information-support/legal-rights/consent-to-treatment/mental-health-act/#.VdxqAflVhBc>
- xiii <http://www.scie.org.uk/independent-mental-health-advocacy/index.asp>