



2016 CHAPTER 18

PART 4

INDEPENDENT MENTAL CAPACITY ADVOCATES

*Procedure for ensuring that an independent
mental capacity advocate is instructed*

Request for independent mental capacity advocate to be instructed

88.—(1) This section applies where it reasonably appears to an appropriate healthcare professional—

- (a) that a determination needs to be made of whether a particular act would be in the best interests of a person (“P”) who is 16 or over and lacks capacity in relation to the matter; and
- (b) that by reason of section 35 or 55, an independent mental capacity advocate needs to be instructed to represent and provide support to P in that determination.

(2) The appropriate healthcare professional may request the relevant trust to instruct an independent mental capacity advocate to represent and provide support to P in the determination of whether the act would be in P’s best interests.

(3) A request under this section may be made only if the steps required by section 89 have been taken so far as practicable.

(4) A request under this section must be in a prescribed form and include prescribed information.

(5) In this section—

“appropriate healthcare professional” means a person of a prescribed description.

“the relevant trust” means the HSC trust in whose area the act would be carried out.

Steps to be taken before independent mental capacity advocate may be requested

89.—(1) The steps referred to in section 88(3) are as follows.

(2) P must be given prescribed information relating to independent mental capacity advocates.

(3) P must be given an opportunity to decide whether to make a declaration under section 90 (refusal by P of independent mental capacity advocate).

(4) If P’s decision is to make such a declaration, P must be given an opportunity to make that declaration.

(5) But the steps in subsections (3) and (4) need not be taken where P does not have capacity to make a declaration under section 90.

(6) The information prescribed under subsection (2) must include notice that, if an independent mental capacity advocate is instructed, this may result in information about P (including sensitive personal information) being disclosed by virtue of this Act to the independent mental capacity advocate.

Right to declare that no independent mental capacity advocate to be instructed

90.—(1) Where the steps in section 89 have been taken, P may (at any time when P has capacity to do so) declare that he or she does not wish an independent mental capacity advocate to be instructed to represent and provide support to him or her in the matter in question.

(2) A declaration may be revoked by P at any time when P has capacity to do so.

(3) A declaration, or a revocation of a declaration, is valid only if it is in writing and the conditions of section 95 (formalities) are met.

(4) Where a declaration has been made (and not revoked)—

(a) no request may be made under section 88 for an independent mental capacity advocate to be instructed to represent and provide support to P in the matter in question; and

(b) accordingly, no such instruction may be given under section 91.

(5) In this section “declaration” means a declaration under this section.

Instruction of independent mental capacity advocate**91. Where—**

- (a) an HSC trust receives a request duly made under section 88 for the trust to instruct an independent mental capacity advocate to represent and provide support to a person (“P”) in the determination of whether a particular act would be in P’s best interests, and
- (b) no declaration has been made by P under section 90 in relation to the matter (or a declaration has been made but revoked),

the trust must instruct an independent mental capacity advocate to represent and provide support to P in the determination of whether the act would be in P’s best interests.

Powers of independent mental capacity advocates

92.—(1) This section applies where an independent mental capacity advocate has been instructed as mentioned in section 91 to represent and provide support to a person (“P”).

(2) The independent mental capacity advocate may do anything within subsection (3) or (4) for the purpose of exercising any of his or her functions.

(3) The independent mental capacity advocate may, at any reasonable time, visit P and interview P in private.

(4) The independent mental capacity advocate may, at any reasonable time, require the production of, examine and take copies of—

- (a) any health records relating to P, or
- (b) any records relating to P’s care, treatment or personal welfare,

that the person holding the record considers may be relevant to the independent mental capacity advocate’s investigation.