IMCA - Suffolk

Suffolk Independent Mental Capacity Advocacy Service

End of year Report - 2008-2009

ACE

Suffolk

Advice & Advocacy

Independent Mental Capacity Advocacy Service – Suffolk

Annual Monitoring Report

Period – 1st April 2008 to 31st March 2009

1. Introduction

1.1 This report relates to the second year's operation of the statutory Independent Mental Capacity Advocacy (IMCA) service provided in the County of Suffolk jointly commissioned by Adult & Community Services (ACS), Suffolk County Council, NHS Suffolk and Suffolk Mental Health Partnership NHS Trust.

1.2 The Commissioned IMCA service is provided in partnership by Optua Advice & Advocacy, ACE, Age Concern Suffolk and East Suffolk Mind. Optua Advice & Advocacy is the lead agency and undertakes the financial and operational management of the service.

1.3 This partnership model continues to be a unique model nationally. A great deal was achieved in our first year of operation and this has been built on during our second year.

1.4 The IMCA Service went live on 1st April 2007. This monitoring report is produced for the IMCA steering group and represents the second annual review of the service.

2. The Mental Capacity Act and the IMCA Service

2.1 The Mental Capacity Act (The Act) was implemented in two stages in 2007 (April and October); professionals working in health and social care that take decisions for people who have been assessed as lacking capacity have a duty to know about and follow the MCA's code of practice.

2.2 The Act covers a wide range of issues. It sets out a definition of a person who lacks capacity and sets out a clear test for assessing this

(diagnostic test / functional test of capacity). It explains what it means to be acting in the best interests of a person and provides a checklist to help people do this. It stresses the importance of keeping records that will withstand scrutiny. It establishes and describes the Court of Protection, the role of the Public Guardian and the Independent Mental Capacity Advocacy service.

2.3 The Act is based on five statutory principles and they are intended to be supportive and enabling, not placing restrictions or controlling of people's lives. It aims to protect people who lack capacity to make particular decisions, but also to maximise their ability to make decisions and / or to participate in the decision making process.

2.4 The Act created the independent mental capacity advocacy role as a specialist, targeted, issue focussed form of advocacy. The role places a duty upon the advocate to support and represent a person in decisions being made by others on their behalf. Advocates support some of the most vulnerable people in our society; the advocate has the right to question and to challenge decisions being made.

2.5 The IMCA service is to help vulnerable people who lack the capacity to make specific important decisions; the Act has also has placed a legal duty to instruct the IMCA Service in certain situations:-

- A move to or a change in longer term accommodation move;
- Serious medical treatment.

An IMCA may be instructed in:-

- Adult protection situations
- Care reviews

2.6 The IMCA service continues to provide a valuable safeguard for decision making for vulnerable people.

2.7 The IMCA service is for people aged 16 years or over and is targeted at the most vulnerable people (apart from Adult Safeguarding cases where this criteria does not apply). Eligibility is targeted at those who have no one to support and represent them *(unbefriended, no friends or relatives)* and who have been formally assessed to be lacking capacity.

2.8 The IMCA role is to support and represent the individual; the IMCA will meet with the person and try to establish their past and present wishes; their feelings, beliefs and values using appropriate means of communication. The IMCA will also review relevant records *(the IMCA has the right to access relevant information in NHS and in social care files)*; they can obtain information from other people who have known the person and interview people they consider relevant. Once the IMCA has gathered as much information as possible, they will then write a report feeding this information into the decision making process. The decision maker has to consider the report as part of the best interest decision making process and provide a written report of the best interest decision and provide details on how this decision was reached.

2.9 Accommodation Moves: The Act imposes a statutory duty on the local authority and the local NHS bodies who are responsible for longer term accommodation decisions to instruct an IMCA if they have a client / patient who is unbefriended and assessed as lacking capacity to make this decision. It affects those people whose hospital stay will be longer than 28 days or where they will be placed in a care home or other type of arranged accommodation for a minimum of 8 weeks (or more).

2.10 Serious Medical Treatment:

2.10.1 Section 37 of the Act imposes a duty on NHS bodies to instruct an IMCA whenever they propose to take decisions about “serious medical treatment”. This includes private hospitals that will be providing treatment on their behalf. The patient must be assessed as lacking capacity to consent to the proposed medical treatment and there is no one available such as family or friends to consult about the decision, paid staff cannot fill this role.

2.10.2 In these circumstances the duty on the medical practitioner is to instruct an IMCA. Once the referral has been made, the IMCA will produce a report about the person’s wishes, beliefs and preferences. The decision is for the Consultant, Doctor or medical team to decide whether or not to carry out the proposed serious medical treatment.

2.10.3 The Regulations define serious medical treatment as treatment which involves giving new treatment, stopping treatment or withholding treatment; where there is a fine balance between the likely benefits and

risks; or where a decision between a choice of treatments is finely balanced; or what is proposed is likely to have serious consequences.

2.11 Adult Safeguarding:

2.11.1 Local authorities and NHS bodies can instruct IMCAs 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,
- Where it is alleged that the person is abusing or has abused another person.

2.11.2 This means, that if they have been assessed as lacking capacity, both victims and perpetrators can benefit from the support of the IMCA service, irrespective of whether the person has family or close friends available.

2.11.3 The use of IMCAs in this situation is a power rather than a statutory duty.

2.12 Care Reviews:

IMCAs can be invited to be involved in reviews:

- Following accommodation moves; this provides a second opportunity for reviewing the accommodation move and check that it had really been in the 'best interest' of the person, who had not been able to consent to the move;
- If the County Council or responsible NHS body are satisfied that it would be of particular benefit to the person to be represented, the person has been assessed as not having capacity to be involved in the review and has been in the accommodation for 12 weeks or more and there is nobody else other than a paid carer to support him / her;
- If the care review will consider decisions about the nature of the physical accommodation to be provided e.g. a change of room or move to another unit within the care home;
- If changes to a persons care package are going to be considered which have implications for the person quality of life;
- If there are conflicting views between parties involved in the accommodation moves; this may be a conflict of opinion between

assessor and provider of accommodation, or between the person and the assessor;

- If changes are being made to the charging arrangements that will have an impact on the person;
- If additional sanctions or controls in relation to a person's behaviour are going to be discussed / restraint(s) has been applied.

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3. Referrals Received

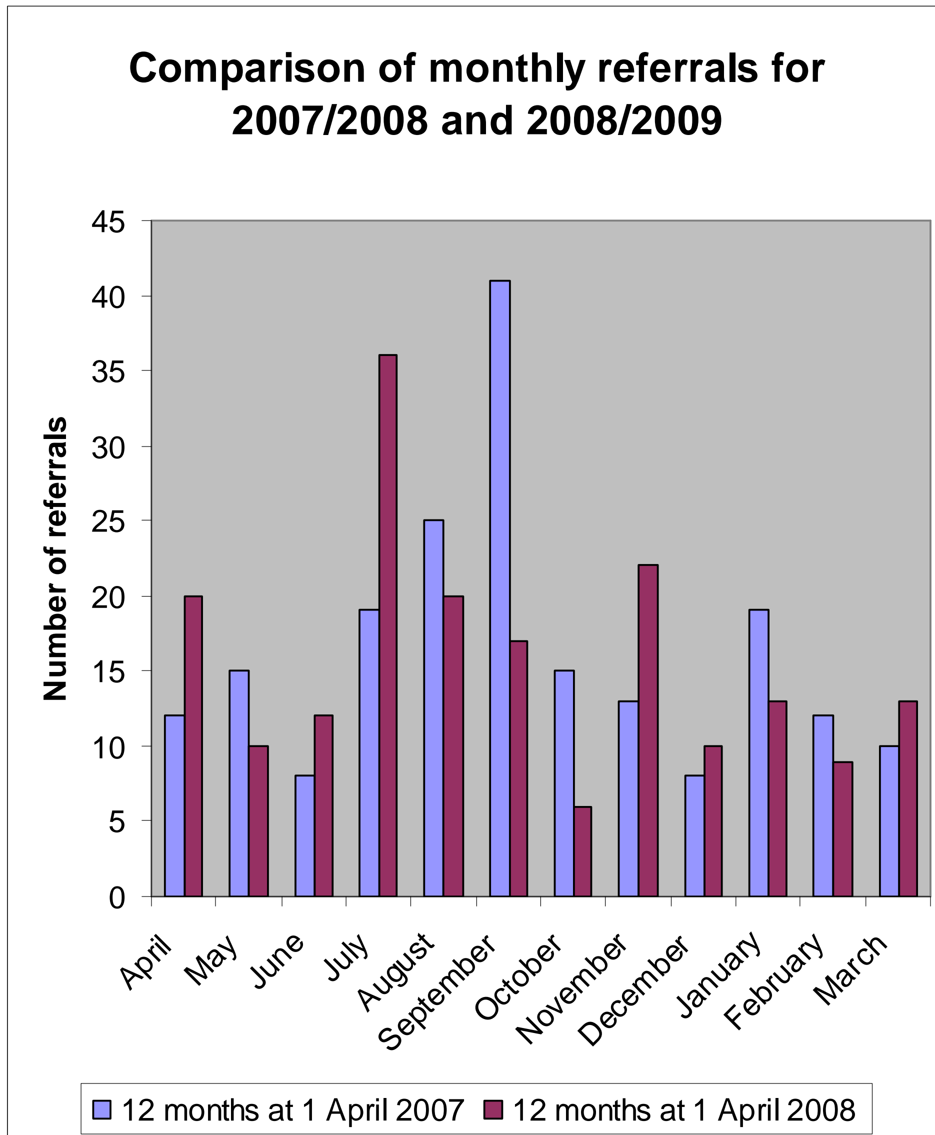
3.1 In 2008/09, a total of **190** referrals have been received by the service, compared to 197 in 2007/08, of which **145** were eligible for an IMCA. In 2007/08, 122 of the referrals were eligible.

3.2 As well as dealing with referrals for an IMCA, the office receives enquiries concerning all aspects of the Mental Capacity Act on a daily basis. The calls are from practitioners / professionals as well as members of the public.

3.3 The breakdown of enquiries is as follows:-

- Accommodation / housing – 439
- Adult Safeguarding – 120
- Care Reviews – 108
- Medical Treatment (including advance directives) - 53
- Legal / Financial (including lasting powers of attorney) - 29
- Social Care – 69
- Advocacy – 98
- Signposting / referred out - 18

3.4 Comparison of Monthly Referrals



3.5 With regard to the steep increase in referrals during July, 2008, this was due to Care Reviews for clients affected by Reprovisioning Phase 2.

3.6 Local authorities are required to ensure that an IMCA service is available for those people who meet the criteria set down in the Mental Capacity Act 2005 and the IMCA expansion of role regulations.

3.7 The initial estimates for the cost of the service by the Department of Health made a number of assumptions for England including the following:

- There would be 10,000 IMCA instructions annually for accommodation decisions;
- There would be 6,000 IMCA instructions annually for serious medical treatment decisions.
- IMCAs would be instructed for 10,000 care reviews and 4,000 safeguarding adults cases;
- IMCAs would spend an average of eight hours on each instruction.

These assumptions equate to an average of about 58 IMCA instructions per year for a population of 100,000.

3.8 Data on year two (April 2008- March 2009) from the IMCA database for England records the following:

- There were approximately 3,500 accommodation, 1,000 serious medical treatment, 1,000 safeguarding adults and 400 care review, eligible IMCA instructions;
- Eligible IMCA instructions increased by 24% in year 2 compared to year 1;
- The average recorded time for each eligible instruction was 11.7 hours.

3.9 There continues to be significant local variance regarding the level of instructions for the IMCA service which can not all be attributed to differences in population profiles. For example, in some local authorities, eligible instructions in year 2 exceeded 35 per 100,000 whilst in others it was below 5. Some IMCA providers report at times difficulties in meeting the demand for the IMCA service, however in other areas IMCA services are working under capacity.

3.10 The Department of Health's original assumptions for the number of instructions may still provide a valid indicator of what should be the level of demand for the service. For every 100,000 population it could be expected to have the following instructions each year:

- 19 accommodation decisions;
- 19 care reviews;
- 12 serious medical treatment decisions;
- 8 safeguarding adults.

4. Sources and Types – All Referrals

4.1 Based on all referrals, the following list demonstrates the geographical spread of sources.

Adult & Community Services / Mental Health Teams

Beccles	Bury St Edmunds
Eye	Felixstowe
Hadleigh	Haverhill
Ipswich	Lowestoft
Mildenhall	Saxmundham
Stowmarket	Sudbury
Wickham Market	

Hospitals

Aldeburgh	Beccles
Bungay	West Suffolk (Bury St Edmunds)
Carlton Colville	Newmarket
Ipswich	Ipswich – St Clements
Southwold	Sudbury

Campus Sites

Airey Close / Lothingland, Lowestoft
Stourmead, Haverhill
Walker Close, Ipswich

Out of County

Bedford, Beds	Borough of Barnet, London
Colchester, Essex	Derby
Great Yarmouth, Norfolk	James Paget Hospital, Norfolk
Norwich, Norfolk	Peterborough, Cambridgeshire
Thetford, Norfolk	Worthing, East Sussex

4.2 The majority of referrals concern people within supported care environments including:
Campus Sites, Care / Nursing Homes (including EMI units), Residential Homes, Own Home, No Fixed Abode, Hospital, Supported Living and Respite Adult Protection.

4.3 Hospital referrals and enquiries have been received from a greater number of locations (ref page 8), despite a considerable amount of work being undertaken locally by the Steering Group, Local Implementation Network, Health / Adult & Community Services partnership committee members and a Care Services Improvement Partnership (CSIP) awareness raising event and other initiatives, the number of serious medical treatment referrals actually fell in 2008/09!

4.4 The IMCA service received 2 urgent serious medical treatment referrals in both cases the pre-decision, decision maker's reports and post decision reports were issued within one day of receipt of the referral. Both of these cases are now being used as case studies within the hospital setting.

4.5 The IMCA service is aware of three occasions when the NHS consent form 4 *(a form for adults who are unable to consent to investigation or treatment)* has been used to authorise surgical procedures for people who lack capacity and have no-one else *(other than paid staff)* to support or represent them or be consulted.

4.6 The continuing low number of referrals for cases involving serious medical treatment continues to cause concern and one possible explanation is that there is reluctance from medical professionals to refer their patients to advocates.

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5. Statistics – Eligible Referrals

5.1 Of the **145** eligible referrals received during the period, 47 were still active at the end of the period; a number were closed by the referrer owing to a change of circumstance e.g. medical treatment no longer required, the client regained capacity or the client died, and a number of referrals were completed as ineligible because of a change in criteria following initial acceptance, usually the discovery of an appropriate relative.

5.2 The average time per case involving an IMCA was just over 10 hours time allocation per case:

Administration / Research	2 hours 10 minutes
Meeting client / Attending Meetings / Consulting with Others	3 hours 30 minutes
Report Writing	1 hours 50 minutes
Travel	2 hours 30 minutes

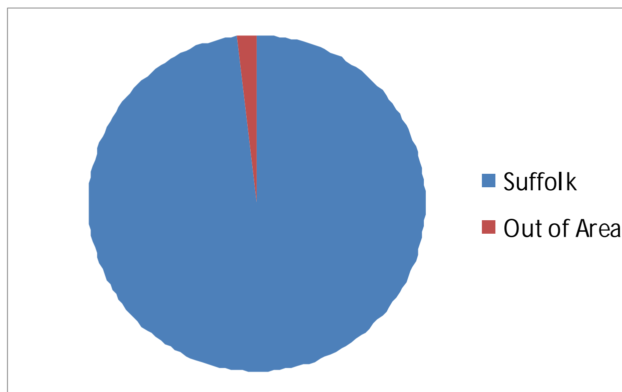
5.3 The average time per case - referral categories:

Serious Medical Treatment	8.30 hours
Change in Accommodation	12.00 hours – *includes reprovisioning*
Care Reviews	7.15 hours
Adult Safeguarding	12.45 hours - *1 case excluded*

5.4 The average time spent on ineligible referrals / enquiries:

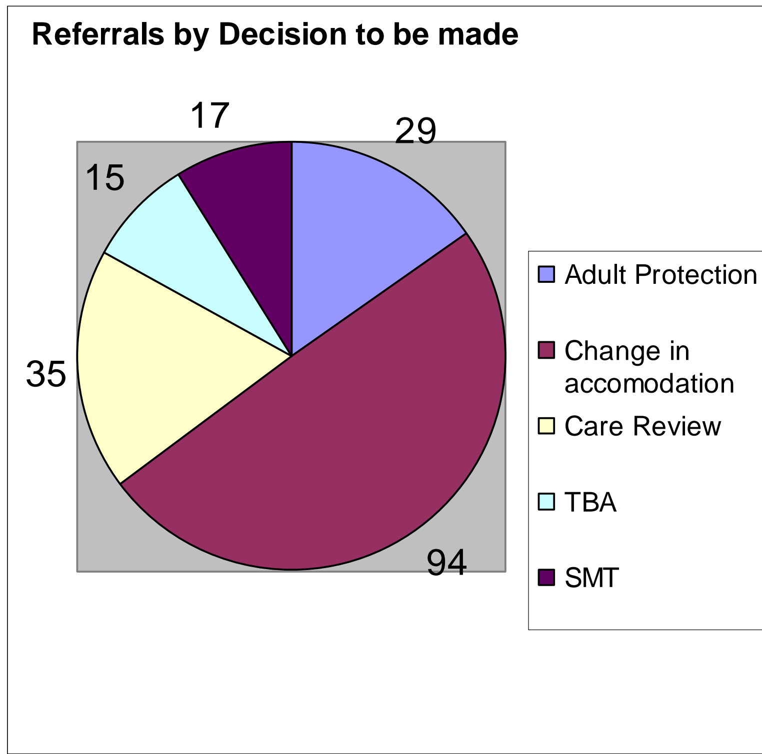
Time spent on ineligible referrals	0.25 minutes
Mental Capacity Act enquiries	0.15 minutes

5.5 Referring Authority: 98% of referrals come from Suffolk with 2% being from other counties.



5.6 Reason for Referral: The majority of referrals are for change of accommodation decisions which has been a fairly consistent pattern throughout the year.

5.7 Referrals by Decision to be made:



SMT = Serious Medical Treatment. TBA = Urgent referral

5.8 Professionals making referrals and / or decisions:

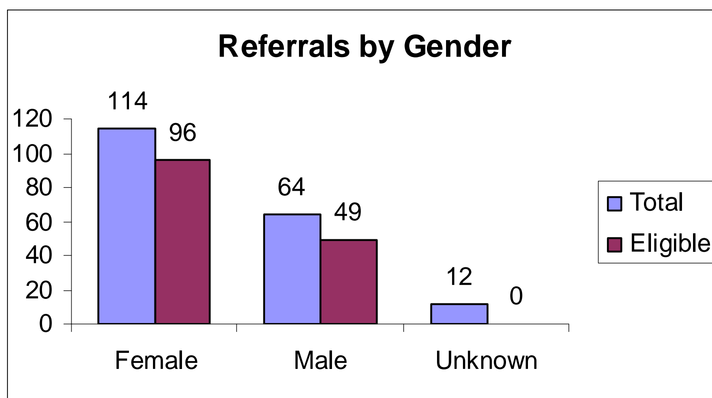
As in 2007/08, the largest group of authorised officers making decisions in 2008/09 was Social Workers.

- Social Workers;
- Community Practitioner
- Hospital Discharge Teams
- Community Psychiatric Nurses
- Consultants / Doctors – hospital based
- Dentists
- Occupational Therapist
- General Practitioners – including a Section 12 Doctor
- Care Managers

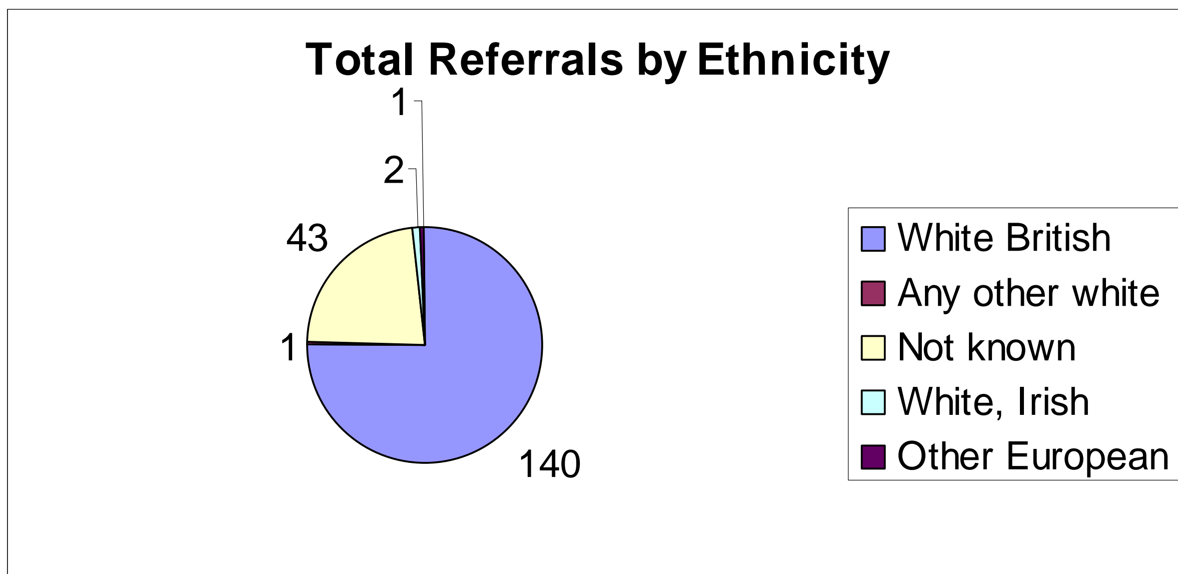
5.9 Client Profiles:

5.9.1 The information below provides details of gender, ethnicity, age, and the reason for incapacity of people who have been referred to the IMCA service:

5.9.2 Gender:



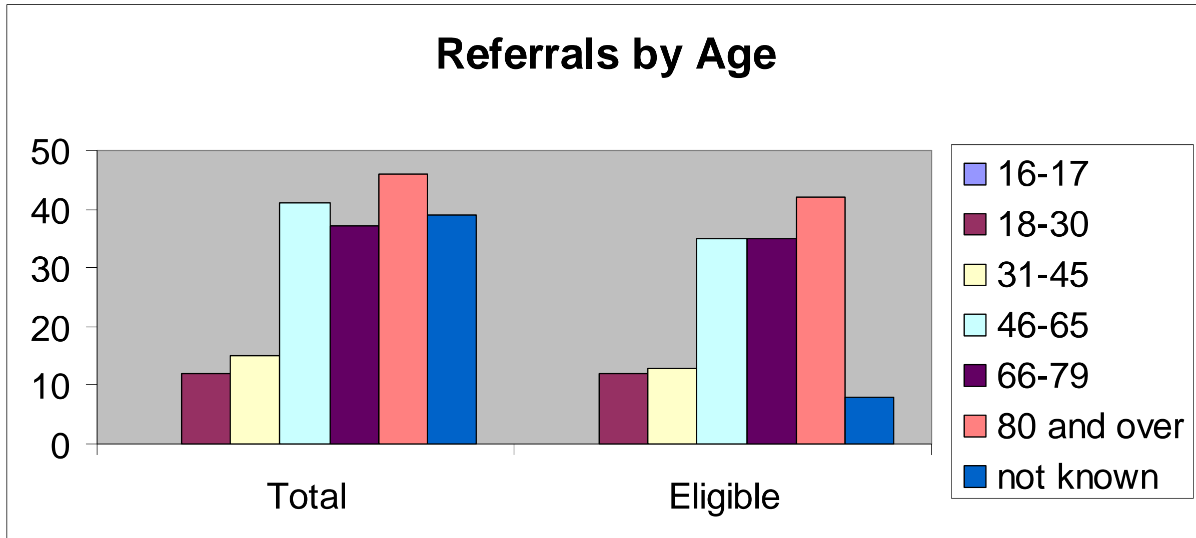
5.9.3 Ethnicity



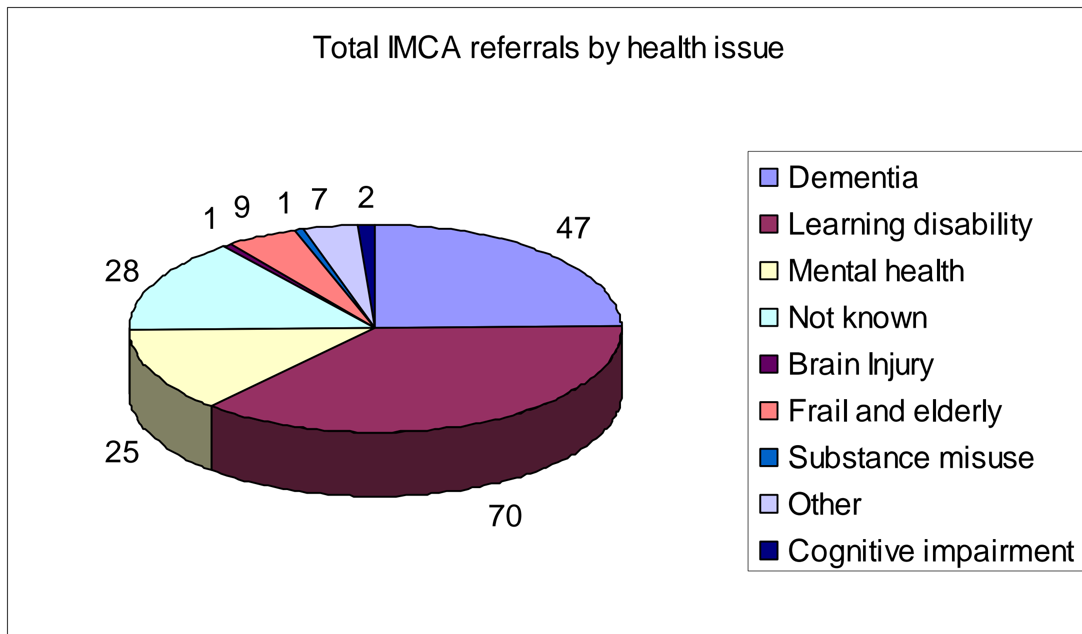
Ethnicity Breakdown:-

White British	White American
White European	Chinese
Vietnamese	

5.9.4 Age



5.9.5 Issues Affecting Capacity:



6. Statistics – Ineligible Referrals

6.1 55 referrals were received and rejected as ineligible during the period. It should be noted that IMCA Suffolk regularly receives enquiry calls about the IMCA Service, sometimes resulting in a decision not to refer. Often these calls are very short and dealt with quickly. As a result these calls are not logged as ineligible referrals.

6.2 IMCA Suffolk only logs a referral as being rejected as ineligible if:

- It is received in writing and subsequently rejected;
- A verbal referral is received and is dealt with by an IMCA who, after discussion of the case, advises that the referral is ineligible (please note that in theses cases not all data may be recorded as the reason for the referral being ineligible comes to light before full details are provided) and the call lasts more than 10 minutes.

6.3 Reasons for ineligibility include:-

- Not unbefriended;
- Outside Suffolk;
- No decision maker / failure to provide capacity assessment;
- Falls outside IMCA remit;
- Under 16 years of age.

6.4 Non eligible referrals and enquiries are dealt with in a positive and constructive manner. One to one detailed explanations are provided at the point of contact. Supportive documentation is provided as well as signposting the enquirer to other useful links on the Mental Capacity Act.

7. General Functioning

7.1 The Steering Group has continued to meet every 6 weeks and has members from our partner agencies, and our health and social care commissioners and the Mental Capacity Act lead and Adult Safeguarding. The aims of the group are to promote partnership working, address concerns relating to implementation of the Act and practice issues. It is also used to discuss anonymous IMCA cases to promote shared learning, and

consider any cases which may lead to formal complaints. The Steering Group has continued to play a key role in the growth and continued development of the service.

7.2 The Focus Group was established in 2009. Its aim is to bring IMCAs together to look at common barriers and issues they and their clients are facing and find solutions to them, or present these issues and / or our findings to our partners / commissioners to promote joint learning and practice development.

7.3 IMCA Suffolk Management and Support Structures: All IMCAs receive supervision and mentoring. Currently the partners receive supervision and mentoring from the Deputy Manager. The freelance IMCAs receive this support from the Manager of IMCA Suffolk. Team meetings are held on a monthly basis; these cover IMCA Suffolk issues, practices issues, and national development updates. This time is also used for in-house training, and guest speakers may be invited as part of ongoing professional development.

7.4 Partnership Working – IMCA Suffolk is managed and run by Optua Advice & Advocacy (lead partner) in partnership with Ace, Age Concern, East Suffolk MIND, and Optua independent advocates.

7.5 The website has continued to be developed and updated; the site now includes information on Deprivation of Liberty Safeguards (DoLs) and the role of the Paid Representative, and an updated ‘Useful Links’ page. Our Conflicts Resolution Policy and Referral Forms for IMCA and IMCA/DoLs can also be accessed and downloaded.

7.6 Non Eligible IMCA Referrals – There are considerable decreases in non eligible referrals which are due to an increase in practitioner knowledge of the Mental Capacity Act and the role of the IMCA, which has been brought about by training provided by IMCA Suffolk, Suffolk County Council and the Suffolk Mental Health Partnership NHS Trust.

7.7 Training:

7.7.1 IMCA Suffolk provided training for the Section 12 Doctors who were undergoing training for the Mental Health Assessor role as part of the Deprivation of Liberty Safeguards.

7.7.2 IMCA Suffolk continues to be one of the lead trainers with Suffolk County Council and Suffolk Mental Health Partnership NHS Trust in training their staff on the Mental Capacity Act and the IMCA role.

7.7.3 Training has been provided for Hospices in Suffolk on the Mental Capacity Act and their roles and responsibilities.

7.8 Presentation: IMCA Suffolk gave a presentation at the Eastern Development Centre (formally CSIP) Mental Capacity Act / Deprivation of Liberty Safeguards Primary Care and Acute NHS Trust event on the 27th February, 2009. This event aimed to prepare Primary Care and Acute NHS Trusts for the implementation of Deprivation of Liberty Safeguards and to increase their knowledge about referrals for Serious Medical Treatment.

7.9 Advocacy on a National Level: This is a very exciting time for advocacy nationally as, for the first time, very vulnerable people in our society have the legal right to have access to an advocate in the form of an IMCA or IMHA (Independent Mental Health Advocate). The National Advocacy Qualification has helped to bring about recognition for the skills needed to practice as a formal professional advocate, and also recognises the skills already held by many advocates from years of professional practice by creating a "fast track" route to the National Advocacy Qualification.

8. Complaints

8.1 There have been no formal complaints made to the service since its inception. However there has sometimes been friction in some Reprovisioning Cases as well as an Adult Safeguarding case. Such instances assist IMCA Suffolk to develop and improve our service.

8.2 IMCA Suffolk has a Conflicts Resolution Policy which is also accessible on our website.

9. Staff

9.1 IMCA Suffolk is made up of four partner organisations Optua Advice & Advocacy, Ace, Age Concern and East Suffolk MIND. The service also uses some freelance IMCAs. The managing organisation is Optua Advice & Advocacy. This model provides a broad range of expertise and experiences as it brings together organisations that work with and support people with different conditions and impairments.

9.2 IMCA Suffolk currently has seventeen trained mental capacity advocates and ten of those advocates also participated in the Deprivation of Liberty Safeguarding training.

10. New Developments

10.1 Deprivation of Liberty Safeguards

10.1.1 In October 2004, the European Court of Human Rights (ECHR) made a judgment in H.L versus The United Kingdom (The Bournewood judgment). This identified a failure to protect the most vulnerable people in our society who lack capacity to consent to their care and/or treatment. The outcome of this case was that people can only be deprived of their liberty by legal process with safeguards to monitor and review this decision.

10.1.2 In 2008 the Government amended the Mental Capacity Act 2005 and added new provisions to the Act in the form of Deprivation of Liberty Safeguards (DoLs) which came into force on 1 April 2009. The Government has allocated funding to all Local Authorities for the implementation of this service and the new roles that it has created. All Local Authorities must make provision for this implementation.

10.1.3 Since April 2009, the new Deprivation of Liberty Safeguards (DoLs) have come into force in England and Wales. IMCA Suffolk is providing the IMCA service for DoLs and the role of the Paid Representative.

10.1.4 The DoLs have created three main roles for IMCAs. In order for an

IMCA to practice under the new DOL Safeguards the IMCA must have completed the Department of Health IMCA Training comprising of 4 taught days, plus a portfolio of work and assessment, and the Department of Health IMCA/DoLs Training comprising of two taught days, plus a portfolio of work and assessment.

10.2 Section 39a IMCA: An IMCA will be instructed by the Supervisory Body to represent anyone without representation (unbefriended i.e. no family or friends) during the assessment process. Note: Paid carers or any other paid support cannot represent the person. Once a Section 39a IMCA is appointed, their role is to represent the individual throughout the assessment process to the assessors and submit reports around their findings to the assessors where appropriate but they *must* submit a final report to the Supervisory Body around the values, wishes and beliefs of the individual and their representations on the proposed authorisation.

10.3 Section 39c IMCA: Once authorisation has been granted, the individual must have a paid or unpaid representative. If for any reason the paid or unpaid representative is absent, a Section 39c IMCA takes on this role until a paid or unpaid representative is put in place again.

10.4 Section 39d IMCA: An IMCA also has the powers to work with an unpaid representative as a Section 39d IMCA. The IMCA is instructed by the unpaid representative themselves, or the Supervisory Body if they have concerns that the unpaid representative is struggling to support the authorised person throughout the authorisation.

10.5 IMCA Suffolk and the Paid Representative role:

10.5.1 If authorisation has been granted and the person is unbefriended, the Supervisory Body must appoint a paid representative. IMCA Suffolk carries out the role of a Paid Representative. The responsibility of the paid representative is to:

- Keep in touch with the person regularly, approximately one hour every fourteen days;
- Monitor the conditions set out in the authorisation and make sure that the Managing Authority is abiding by these;
- Support the authorised person with all matters concerning the authorisation;

- Where appropriate, trigger a review of the authorisation;
- Raise complaints on behalf of the authorised person using the organisation's complaints procedure;
- Make an application to the Court of Protection on behalf of the authorised person.

10.5.2 The Deprivation of Liberty Safeguards' Code of Practice states that the role of the paid or unpaid representative is a critical role in the Deprivation of Liberty process. They are providing the relevant person with representation and support. The best interest principals of the Mental Capacity Act apply when acting as a relevant person's representative be it paid or unpaid and the representative provides huge safeguards to the authorised person throughout their authorisation of deprivation of liberty.

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11. Next Steps

11.1 Quality Performance Mark: IMCA Suffolk aims to gain the Action for Advocacy Quality Performance Mark (QPM) within the next year. The cost of achieving this will be £1,275. The QPM comprises of a three stage assessment: Stage 1: Self Assessment; Stage 2: Desktop Assessment; and Stage 3: Site Assessment. The current number of advocacy services who already hold this award is growing, and it is clear that to hold this award not only promotes "best practice", making sure that our clients are receiving the best possible services, but it will support our tender bids in the future.

11.2 National Advocacy Qualification: The Department of Health has given a grant to all IMCA services in the UK to provide training to all IMCAs to achieve the National Advocacy Qualification. This involves completing four core modules via class based teaching, producing a portfolio, and assessment. Once these modules have been completed, a specialised unit needs to be completed in IMCA, IMCA-DoLs, IMHA, Children's Advocacy, Adult Generic Advocacy and Advocacy Management, in order to achieve the National Advocacy Certificate or Diploma in Advocacy.

11.3 IMCA Conversion: The Department of Health have stated all IMCA services need to convert their existing IMCA/IMCA-DoLs qualification to be in line with the National Advocacy qualification. IMCA Suffolk will be undertaking their training in September, 2009.
11.4 Further work will be undertaken to promote the service within health settings.

11.5 IMCA Suffolk will continue to ensure that all decision makers fulfil their legal commitments when instructing or working with an IMCA.

Mark J Farley
Manager, IMCA Suffolk

Sarah Bescoby
Deputy Manager, IMCA Suffolk

10th September, 2009

Acknowledgements

Independent Mental Capacity Advocacy – Suffolk Steering Group
Liz Whitby, Head of Customer Rights, Suffolk County Council
Gillian Mullins, Assistant Head of Customer Rights, Suffolk County Council
Pauline Martin, Customer Care Manager, Suffolk County Council
Dominic Naysmyth-Miller – Mental Capacity Act Professional Advisor
Karen Wood, Commissioner, NHS Suffolk
Hilary Gibbs, Stowcare Ltd (representing the Independent Care Providers Forum)
Mark Farley, IMCA Manager, Optua Advice & Advocacy
Sarah Bescoby, IMCA Deputy Manager, Optua Advice & Advocacy
Seb Smith, Adult Safeguarding Manager, Suffolk County Council
Nichola Burley, Adult Safeguarding Manager, Suffolk County Council
John Godward, Mental Capacity Act Co-ordinator, Suffolk County Council
Kim Arber, Commissioning Manager, NHS Gt Yarmouth & Waveney

Rota of Provider Representatives

Jo Searle, Chief Executive, East Suffolk MIND
Raza Ahmed, East Suffolk MIND,
Linda Davey, Manager, ACE
Daphne Savage, Chief Executive, Age Concern
Gordon Slack, Age Concern

Independent Mental Capacity Advocates

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Katy Flynn
Paula Lambert
Jenny Pawsey
Paula Stroud
Age Concern Suffolk IMCA's
Mary Hunt
Tim Mason
Gordon Slack
East Suffolk Mind IMCA's
Ros Dearden
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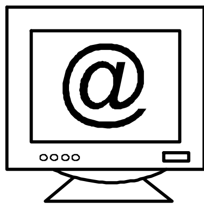

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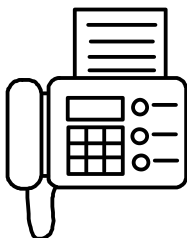

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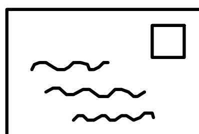

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