Access to the Independent Mental Capacity Advocate service

David Thompson

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Overview

- Information about the IMCA service
- Findings from the first two years
- Current issues regarding access in healthcare settings

IMCA service overview

- Introduced by the Mental Capacity Act in 2007
- Mainly a safeguard for people who don't have family and friends who can represent them.
- The person needs to lack capacity to make specific decisions to access the IMCA service.

IMCA decisions

Duty to instruct an IMCA

- Accommodation decisions
- Serious medical treatment

Power to instruct an IMCA

- Care reviews
- Safeguarding adults

The DOLS introduced additional IMCA roles

Accommodation decisions

- Arranged by NHS or local authority
- Over 8 weeks in a care home
- Over 28 days in hospital
- The person lacks capacity to make decision about their accommodation
- They have ‘no one who it is appropriate to consult’

What are SMT decisions?

Giving, not giving or withholding treatment:

- if a single treatment is proposed there is a fine balance between the likely benefits and the burdens to the patient and the risks involved
- a decision between a choice of treatments is finely balanced, or
- what is proposed is likely to have serious consequences for the patient.

SMT year 2

Pregnancy termination	1
Major Amputations	10
Affecting Hearing/Sight	15
Hip / Leg Operation	23
Artificial nutrician and hydration	25
Major Surgery	39
Cancer Treatment	81
Serious Dental Work	105
DNAR	109
Medical Investigations	163
Other	397
Total	968

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IMCA role

- Represent and support the person in the decision making process
- Rights to meet the person and access relevant records
- Must prepare a report which the decision maker must have regard to.
- May challenge decisions

England referrals year 2

- Eligible referrals 6583

  This is a 24% increase from year 1
- Ineligible referrals 1745

  This is a 24% decrease from year 1
- There continues to be a wide variance in the number of instructions across local authorities which cannot be explained only by demographics

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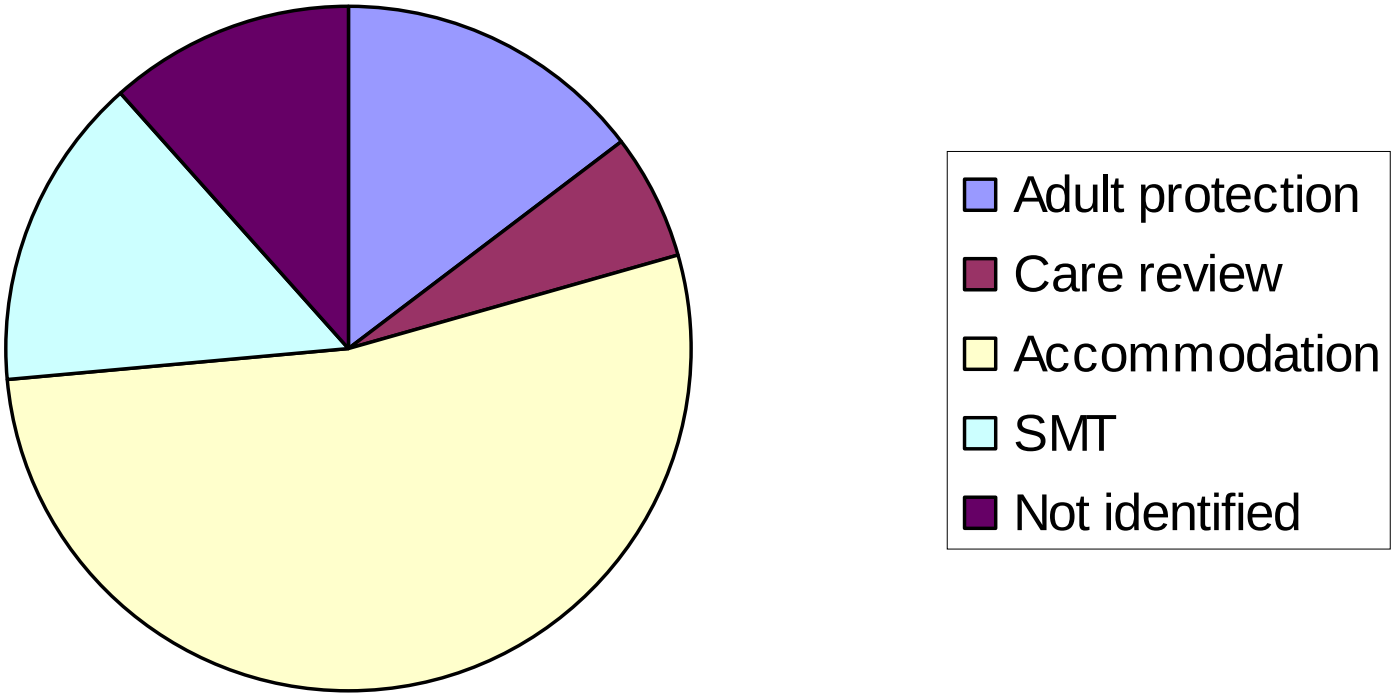
Eligible referrals year 2



Consistent with year 1

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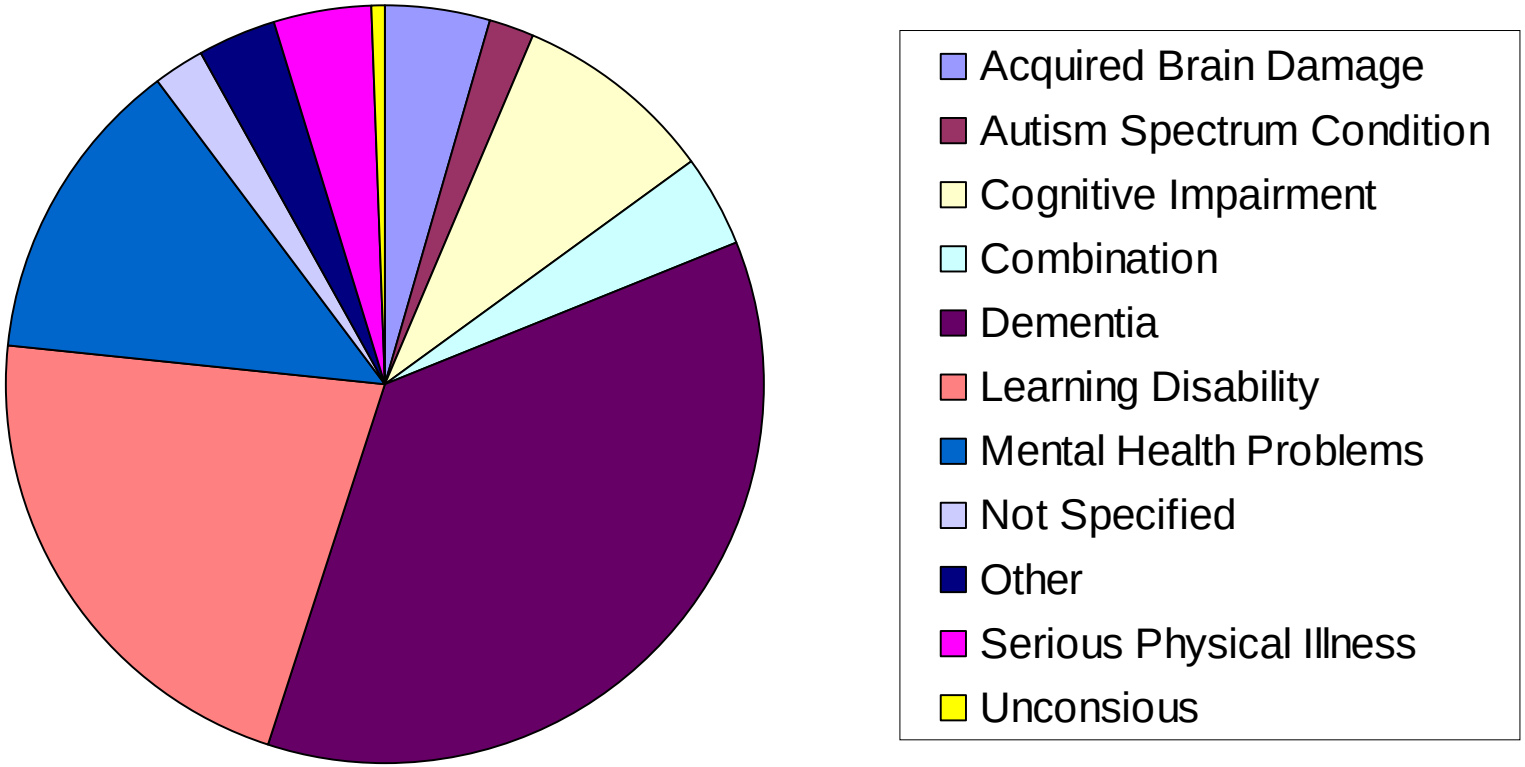
Mental impairment year 2



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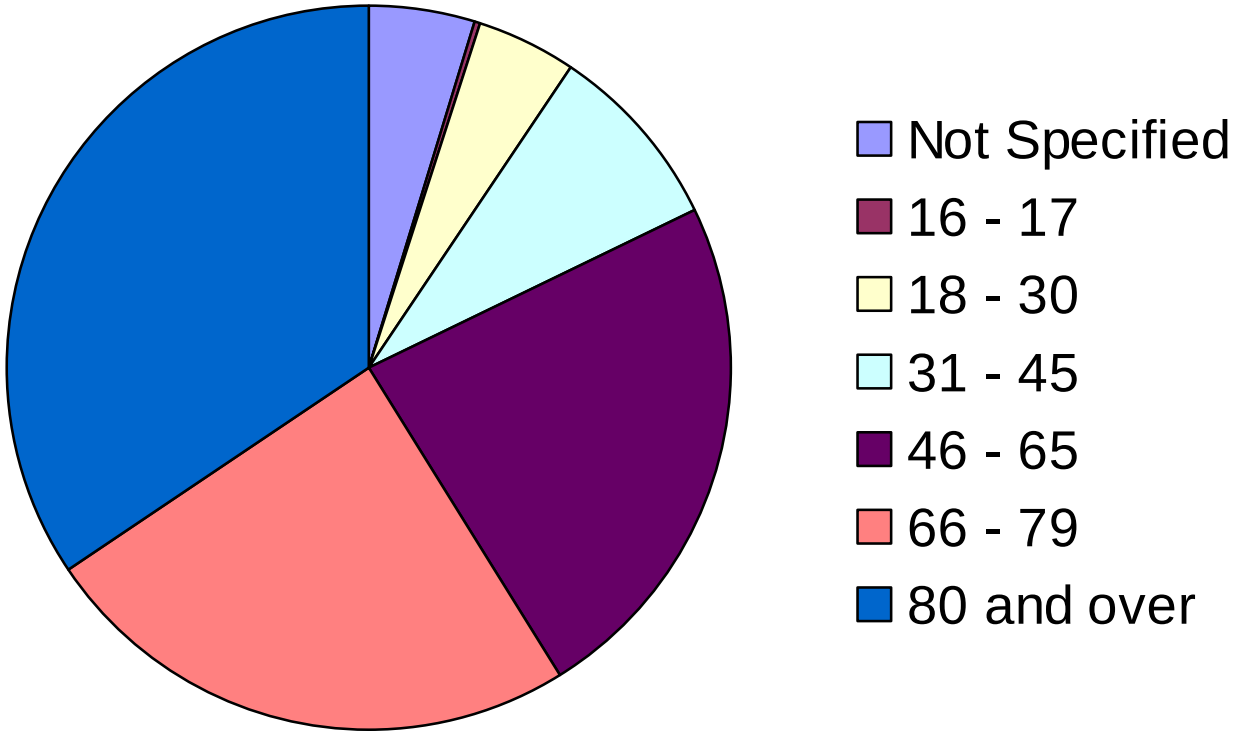
Age profile year 2



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SMT decisions

- IMCAs have a right to request a second medical opinion.
- Department of Health concerned that significant numbers of people are not accessing an IMCA for SMT
- Being older and having dementia are associated with being less likely to access an IMCA for SMT decisions

Issues for IMCA services

- Service quality (qualification in independent advocacy)
- Defining good practice
- Access to the Court of Protection when challenging decisions
- Maintaining independence

Accommodation decisions

- Instruction prior to admission, and when stays exceed 4 weeks.
- Not risking delayed discharge by late instruction of an IMCA
- Using the power to instruct an IMCA for care reviews

SMT decisions

- Need consistent practice regarding consent and mental capacity assessments
- Complex nature of decision making processes means that there can be uncertainty about who should instruct for SMT
- Greater concern about a failure to instruct when the decision is not to offer treatment

Accountability

- CQC will be looking at compliance with the MCA when auditing healthcare settings.
- SCIE good practice guidance suggests that formal complaints or safeguarding alerts are made if a person is denied their legal right to be supported by an IMCA

Contact details

David Thompson

Practice Development Manager: IMCA

imca@scie.org.uk

Tel. 02070896864

www.scie.org.uk/imca

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