

12.9

When an IMCA is asked to act, please explain your understanding of the similarities and differences between the role of an advocate role under sections 39A - 39D of the Mental Capacity Act 2007 and that of the paid Relevant Person's Representative (RPR) (550 words, not including additional evidence requested)

There are four distinct roles in which an IMCA can act, in relation to DoLS;

Section 39A

The 39A instruction takes place before a DoLS authorisation is granted. The 39A IMCA examines a range of factors to determine whether the person is being deprived, and if so, whether the deprivation is in the person's best interest. These include:

- the individual's views in relation to the restrictions proposed,
- whether the objective and subjective factors are met and the confinement is imputable to the state (as set out by *Stork v. Germany*, 2005)
- the potential impact of the deprivation, including infringement on other rights as well as safety and risks, and alternative less restrictive options.
- conditions that could define a clear path for the authorisation to be lifted, for example a treatment and care package that may enable the person to return home.

Paid RPR

If the DoLS threshold is met and the person does not have someone appropriate who is able and willing to take on the unpaid RPR role the paid RPR can be instructed.

The key responsibilities of the paid RPR are to:

- support the individual to understand the DoLS,
- gather the individual's views in relation to the DoLS,
- review the progress of conditions set out,
- support the individual to understand and exercise his or her rights, including seeking a review and non-means tested access to the Court of Protection.

The paid RPR achieves this through regular contact with the person for the duration of the DoLS once it has been authorised and an appropriate person to be appointed as an unpaid RPR has not been found.

39D

If there is an unpaid RPR appointed, then a 39D instruction can be made. The role of the 39D is distinct in that the IMCA will primarily support the unpaid RPR who is appointed to support the individual. The work of the advocate under a 39A instruction provides a framework for the unpaid RPR and the 39D to use to determine whether there is (or continues to be) a deprivation, and whether the deprivation is (or continues to be) in the person's best interest. This means that although the RPR and 39D roles are distinct to the 39A in terms of when the instruction is made, and the purpose they serve, they are similar in terms of the key issues to be determined.

Where the paid RPR will directly support the person to understand the authorisation and the rights under the MCA, and how to exercise those rights, a 39D instruction is made to support both the person and the unpaid RPR. The 39D IMCA will also identify whether there is disagreement between the individual and the unpaid RPR. If there is, another 39D IMCA can be instructed for the person themselves. In this situation, the role of the 39D is similar to that of a paid RPR, with the distinction that the 39D must take forward the individual's requests,

whereas the paid RPR can exercise judgement about whether to actions those requests, for example waiting for an option to materialise before pursuing Court of Protection.

39C

A 39C IMCA is instructed to cover gaps in the appointment of an unpaid RPR, thus the 39C IMCA has similar powers to the paid RPR.