

Myth buster – independent mental health advocates (IMHAs)

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IMHA role

MYTH

IMHAs aren't any different to non-statutory mental health advocates.

FACT

IMHAs are like non-statutory mental health advocates in many ways. However IMHAs have legal rights and obligations under the Mental Health Act and non-statutory advocates do not. For example, IMHAs will have the right to visit patients in hospital and to interview professionals involved in their care. They will also have the right to access patient's records, subject to certain conditions.

An IMHA's statutory powers only apply to their specific role set out in legislation. Where an IMHA provides advocacy support outside this role – for example, supporting informal patients or helping a patient on money concerns – they do not have statutory powers.

MYTH

IMHAs must be present when a patient is assessed under the Mental Health Act to determine if they need to be detained.

FACT

IMHA services are not expected to provide an emergency response service. While there is nothing to stop IMHAs being involved in the assessment process for patients who already qualify for help from an IMHA, they are unlikely to be present during most assessments.

MYTH

IMHAs cannot accompany patients to Tribunals or Hospital Managers hearings.

FACT

IMHAs can accompany patients to Tribunals and Hospital Managers' hearings and speak on their behalf. However, IMHAs are not the same as legal representatives and are not expected to take over duties currently undertaken by solicitors and their staff.

MYTH

IMHAs will replace legal representation for patients at Tribunals

FACT

IMHAs are not the same as legal representatives and are not expected to take over duties currently undertaken by solicitors and their staff. Qualifying patients will continue to have the right to be legally represented in Tribunals

and that representation will continue to be free of charge under legal aid arrangements. One role for IMHAs is to help ensure that patients are made aware about their right to access legal aid and/or seek advice from a solicitor.

Access to records

MYTH

IMHAs can have access to any of the qualifying patient's records.

FACT

Where the patient agrees, the IMHA will have the right to see any clinical or other records relating to the patient's detention or treatment in any hospital, or to any after-care services. IMHAs have a similar right to see any local social services authority records. The IMHA does not have the right to access any other records relating to the patient.

MYTH

An IMHA can look at a patient's records even if the patient hasn't consented.

FACT

The IMHA does not have the right to access records where a patient with capacity has not consented.

If the patient is unable to consent because they lack capacity, the holder of the records must allow the IMHA access if they think that it is appropriate and that it is relevant to the help the IMHA will provide.

IMHA services

MYTH

Patients will have to pay for IMHA services

FACT

IMHAs services are free - patients will not be charged for help from an IMHA.

MYTH

Patients can request help from a specific IMHA

FACT

Patients have the right to access the IMHA service itself, rather than the services of a particular IMHA. However, it would normally be good practice for the same IMHA to remain involved while the person's case stays open, where possible.

MYTH

Patients can choose anyone they wish to be their IMHA.

FACT

Only advocates who are employed as an IMHA by a commissioner or by an IMHA service, can act as an IMHA. Patients can choose to be supported by someone else – such as a general mental health advocate or a family member – rather than use the IMHA service or in addition to using the IMHA service. However, these representatives will not have the same statutory rights or powers as an IMHA.

MYTH

Patients qualify for help from an IMHA if they are receiving after-care services made under section 117 of the Mental Health Act.

FACT

Patients do not qualify for help from an IMHA simply because they are receiving after-care services made under section 117. However, some patients receiving after-care services will qualify for an IMHA because, for example, they are under Guardianship or on SCT.

MYTH

SCT patients will only have access to an IMHA once they return to hospital

FACT

IMHAs will help patients in hospitals and in the community. This includes patients on supervised community treatment. The roles and responsibilities of the IMHA remain the same regardless of where the patient is.

Patients who lack capacity

MYTH

Only Independent Mental Capacity Advocates (IMCAs) can work with patients without capacity

FACT

IMHAs will be able to help all qualifying patients, regardless of mental capacity. IMHAs will normally use instructed advocacy; they will only act on instruction from the patient to represent their views and wishes. However, IMHAs may also use non-instructed advocacy with patients who lack the mental capacity to instruct or have difficulties communicating. When using non-instructed advocacy, the IMHA will represent the patient's wishes (as far as those wishes are known) and ensure that the patient's rights are respected.

MYTH

If a patient qualifies for an IMHA they won't qualify for an IMCA

FACT

Where a patient qualifies for both an IMHA and an IMCA, the IMCA will represent the patient in line with the IMCA's statutory role. An example is a qualifying patient who lacks capacity and is being considered for cancer treatment; in this case, the IMCA would represent the patient in the decision-making process for this treatment.

Experience and training

MYTH

IMHAs must have completed the National Advocacy Qualification before they can practice as an IMHA.

FACT

IMHAs do not need any specialist training before they start practice. However, they must demonstrate appropriate experience or training, or an appropriate combination of experience and training. It will be up to the person or organisation appointing the IMHA, to decide whether they demonstrate this. In making this determination, they must have regard to guidance issued by the Secretary of State.

The Secretary of State's guidance about appropriate training and experience says that IMHAs should be expected to successfully complete the IMHA module of the National Advocacy Qualification within their first year of practice. Information on the qualification is available on the NIMHE website.

MYTH

IMHAs aren't required to have any previous experience or training, or to undertake any training while practising as an IMHA

FACT

Under regulations, an IMHA must have appropriate experience or training, or an appropriate combination of experience and training. It is up to the person or organisation appointing the IMHA to determine whether they demonstrate this. When making this decision, they should consider:

- Previous experience working in advocacy, particularly mental health advocacy
- Previous experience working with people with mental health needs
- Successful completion of an advocacy qualification, in particular the IMHA module of the National Advocacy Qualification

In addition, the Secretary of State's guidance about appropriate training and experience says that all IMHAs should be expected to successfully complete

the IMHA module of the National Advocacy Qualification within one year of starting practice.