

CHAPTER 20 **Independent mental health advocates**

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This chapter explains the role of independent mental health advocates (IMHAs) under the Act.

Purpose of independent mental health advocacy services

20.2 Independent mental health advocacy services provide an additional safeguard for patients who are subject to the Act. IMHAs are specialist advocates who are trained specifically to work within the framework of the Act to meet the needs of patients.¹

20.3 Independent mental health advocacy services do not replace any other advocacy and support services that are available to patients, but are intended to operate in conjunction with those services.

Patients who are eligible for independent mental health advocacy services (qualifying patients)

20.4 Patients are eligible for support from an IMHA if they are:

- detained under the Act (even if they are currently on leave of absence from hospital);
- conditionally discharged restricted patients;
- subject to guardianship; or
- supervised community treatment (SeT) patients.

20.5 For these purposes, detention does not include being detained:

- on the basis of an emergency application (section 4) until the second medical recommendation is received (see chapter 5);
- under the holding powers in section 5; or
- in a place of safety under section 135 or 136.

20.6 Other patients ("informal patients") are eligible if they are:

- being considered for a treatment to which section 57 applies ("a section 57 treatment"); or
- under 18 and being considered for electro-convulsive therapy or any other treatment to which section 58A applies ("a section 58A treatment"). "

20.7 The Act calls patients who are eligible for the support of an IMHA "qualifying patients".

The role of independent mental health advocates

20.8 The Act says that the support which IMHAs provide must include helping patients to obtain information about and understand the following:

- their rights under the Act;
- the rights which other people (eg nearest relatives) have in relation to them under the Act;
- the particular parts of the Act which apply to them (eg the basis on which they are detained) and which therefore make them eligible for advocacy;
- any conditions or restrictions to which they are subject (eg as a condition of leave of absence from hospital, as a condition of a community treatment order, or as a condition of conditional discharge);
- any medical treatment that they are receiving or might be given;
- the reasons for that treatment (or proposed treatment); and
- the legal authority for providing that treatment, and the safeguards and other requirements of the Act which would apply to that treatment.

20.9 It also includes helping patients to exercise their rights, which can include representing them and speaking on their behalf.

20.10 IMHAs may also support patients in a range of other ways to ensure they can participate in the decisions that are made about their care and treatment.

20.11 The involvement of an IMHA does not affect a patient's right (nor the right of their nearest relative) to seek advice from a lawyer. Nor does it affect any entitlement to legal aid.

Duty to inform patients about the availability of independent mental health advocacy services

20.12 Certain people have a duty to take whatever steps are practicable to ensure that patients understand that help is available to them from IMHA services and how they can obtain that help, as set out in the following table. This must include giving the relevant information both orally and in writing.

Duty to provide patients with information about advocacy services

Type of patient	Steps to be taken by	As soon as practicable after
Detained patient	The managers of the hospital in which the patient is liable to be detained	The patient becomes liable to be detained
Guardianship patient	The responsible local social services authority	The patient becomes subject to guardianship
SCT patient	The managers of the responsible hospital	The patient becomes an SCT patient
Conditionally discharged patient	The patient's responsible clinician	The patient is conditionally discharged
Informal patient	The doctor or approved clinician who first discusses with the patient the possibility of them being given the section 57 or 58A treatment in question	That discussion (or during it)

20.13 The relevant person must also take whatever steps are practicable to give a copy of the written information to the patient's nearest relative, unless the patient requests otherwise (and subject to the normal considerations about involving nearest relatives - see paragraphs 2.27-2.33).

20.14 However, any information about independent mental health advocacy services should make clear that the services are for patients and are not advocacy services for nearest relatives themselves.

20.15 The duty to give information to nearest relatives does not apply to informal patients, nor to patients detained in hospital under Part 3 of the Act (although it does apply to those patients if they subsequently become SCT patients).

Seeking help from an independent mental health advocate

20.16 A qualifying patient may request the support of an IMHA at any time after they become a qualifying patient. Patients have the right to access the independent mental health advocacy service itself, rather than the services of a particular IMHA, though where possible it would normally be good practice for the same IMHA to remain involved while the person's case stays open.

20.17 A patient may choose to end the support they are receiving from an IMHA at any time.

20.18 IMHAs must also comply with any reasonable request to visit and interview a qualifying patient, if the request is made by the patient's nearest relative, an approved mental health professional (AMHP) or the patient's responsible clinician (if they have one). But patients may refuse to be interviewed and do not have to accept help from an IMHA if they do not want it.

20.19 AMHPs and responsible clinicians should consider requesting an IMHA to visit a qualifying patient if they think that the patient might benefit from an IMHA's visit but is unable or unlikely for whatever reason to request an IMHA's help themselves.

20.20 Before requesting an IMHA to visit a patient, they should, wherever practicable, first discuss the idea with the patient, and give the patient the opportunity to decide for themselves whether to request an IMHA's help. AMHPs and responsible clinicians should not request an IMHA to visit where they know, or strongly suspect, that the patient does not want an IMHA's help, or the help of the particular IMHA in question.

Independent mental health advocates' access to patients and professionals

20.21 Patients should have access to a telephone on which they can contact the independent mental health advocacy service and talk to them in private.

20.22 IMHAs should:

- have access to wards and units on which patients are resident;
- be able to meet with the patients they are helping in private, where they think it appropriate; and
- be able to attend meetings between patients and the professionals involved in their care and treatment when asked to do so by patients.

20.23 When instructed by a patient, the nearest relative, an AMHP or the responsible clinician, an IMHA has the right to meet the patient in private. IMHAs also have a right to visit and speak to any person who is currently professionally concerned with a patient's medical treatment, provided it is for the purpose of supporting that patient in their capacity as an IMHA.

20.24 Professionals should remember that the normal rules on patient confidentiality apply to conversations with IMHAs, even when the conversation is at the patient's request. IMHAs have a right of access to patients' records in certain cases (described below), but otherwise professionals should be careful not to share confidential information with IMHAs, unless the patient has consented to the disclosure or the disclosure is justified on the normal grounds (see chapter 18).

Independent mental health advocates' access to patients' records

20.25 Where the patient consents, IMHAs have a right to see any clinical or other records relating to the patient's detention or treatment in any hospital, or relating to any after-care services provided to the patient. IMHAs have a similar right to see any records relating to the patient held by a local social services authority.

20.26 Where the patient does not have the capacity (or in the case of a child, the competence) to consent to an IMHA having access to their records, the holder of the records must allow the IMHA access if they think that it is appropriate and that the records in question are relevant to the help to be provided by the IMHA.

20.27 When an IMHA seeks access to the records of a patient who does not have the capacity or the competence to consent, the person who holds the records should ask the IMHA to explain what information they think is relevant to the help they are providing to the patient and why they think it is appropriate for them to be able to see that information.

20.28 The Act does not define any further what it means by access being appropriate, so the record holder needs to consider all the facts of the case. But the starting point should always be what is best for the patient and not (for example) what would be most convenient for the organisation which holds the records.

20.29 In deciding whether it is appropriate to allow the IMHA access, the holder of the records needs to consider whether disclosure of the confidential patient information contained in the records is justified.

20.30 The key consideration will therefore be whether the disclosure is in the patient's best interests. That decision should be taken in accordance with the Mental Capacity Act 2005 (MeA) (or, for children under 16, the common law), like any other decision in connection with the care or treatment of patients who cannot make the decision for themselves.

20.31 Record holders should start from a general presumption that it is likely to be in patients' interests to be represented by an IMHA who is knowledgeable about their case. But each decision must still be taken on its merits, and the record holder must, in particular, take into account what they know about the patient's wishes and feelings, including any written statements made in advance. (For further information on taking decisions in the best interests of people who lack capacity to make the decision themselves, please see the Code of Practice to the MCA.)

20.32 Records must not be disclosed if that would conflict with a decision made on the patient's behalf by the patient's attorney or deputy, or by the Court of Protection.

20.33 If the record holder thinks that disclosing the confidential patient information in the records to the IMHA would be in the patient's best interests, it is likely to be appropriate to allow the IMHA access to those records in all but the most exceptional cases.

