

Independent Mental Health Advocacy

Effective Practice Guide

August 2009



DH INFORMATION READER BOX

Policy	Estates
HR / Workforce	Commissioning
Management	IM&T
Planning / Performance	Finance
Clinical	Social Care / Partnership Working

Document Purpose Best Practice Guidance

Gateway Reference 12184

Title Independent Mental Health Advocacy: Effective Practice Guide

Author National Mental Health Development Unit

Publication Date 18th August 2009

Target Audience PCT CEs, SHA CEs, Foundation Trust CEs, Local Authority CEs, Directors of Adult SSs, PCT Chairs, NHS Trust Board Chairs, Communications Leads, Directors of Children's SSs

Circulation List

Description Effective Practice Guide for Independent Mental Health Advocates who are appointed by Advocacy organisations commissioned by PCTs

Cross Ref N/A

Superseded Docs N/A

Action Required N/A

Timing N/A

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For Recipient's Use

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Introduction

Welcome to this Effective Practice Guide for Independent Mental Health Advocates (IMHAs).

Independent mental health advocacy was introduced by the Government to provide, for the first time in England, a statutory source of independent help and support for people subject to the Mental Health Act 1983 (“the Act”). It was one of the key amendments to the Act introduced by the Mental Health Act 2007. From 1st April 2009, qualifying patients subject to compulsion under the Act can access support from an Independent Mental Health Advocate (IMHA).

This guide is for advocates working as Independent Mental Health Advocates (IMHAs) in England. It describes the statutory framework and requirements for IMHAs. This includes the rights, duties and responsibilities under the Act of IMHAs and those who provide IMHA services.

This document is a good practice guide, not a definitive statement of law. This means that (unless otherwise stated) it describes practical considerations not statutory requirements, and is not intended as a substitute for consulting the Act and Regulations.

Its purpose is to provide guidance for IMHAs to support them in their everyday practice; it is a quick reminder of some of the issues IMHAs may face with suggestions for good practice.

The guide reflects the Department of Health’s commitment to promoting equality and eliminating discrimination. In line with that commitment it aims to foster responsiveness to the needs of different groups.

Thank you to all those who have contributed their views and expertise to the development of this guide.

We hope you will find it useful.

A handwritten signature in black ink, appearing to read 'Malcolm King', with a stylized flourish at the end.

Malcolm King
National Advocacy Lead
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Throughout this document:

- The Mental Health Act 1983 as amended by the Mental Health Act 2007 will be referred to as 'the Act';
- The Regulations referred to are the Mental Health Act 1983 (Independent Mental Health Advocates) (England) Regulations 2008;
- The Code of Practice to the Mental Health Act 1983 will be referred to as the "The Code of Practice says / (COP)";
- 'Patient' – this guide uses the term 'patient', as does most of the official information about the Act, because that is the term the Act uses. But it is important to remember that it is just a legal term – in practice, other terms, such as 'client' or 'service user' may be used.

What the guide describes:

Section

1

Independent mental health advocacy services

The statutory requirement to provide IMHA services and informing patients about IMHA services and referrals

Section

2

The IMHA's rights

The rights IMHAs have when helping patients under the Act

Section

3

Delivering effective advocacy

Suggested advocacy processes and principles

Section

4

Meeting diverse needs

Working with patients with different needs

Section 1

Independent mental health advocacy services

What is an IMHA?

An IMHA is a specialist advocate with particular roles and responsibilities under the Act. Patients subject to compulsion under the Act often require support to help them understand what is happening to them, to find out what choices and options are available to them and how to express their views and secure their rights.

Who provides IMHA services?

Primary Care Trusts (PCTs) are responsible for commissioning IMHA services. If a PCT commissions mental health care for a patient, they will usually also be responsible for ensuring that they have access to an IMHA. But the PCT can ask another PCT or a Local Authority to commission IMHA services on their behalf.

These commissioners usually contract with another organisation to provide the IMHA service for their patients.

Who can be an IMHA?

Under Regulations, someone can only act as an IMHA if they are employed as an IMHA by a commissioner, or by an organisation with a contract with a commissioner for IMHA services.

Additionally, the regulations state that the person or organisation appointing the IMHA must check that they meet certain appointment requirements.

An IMHA must:

- Have appropriate training or experience¹ or an appropriate combination of both;
- Be a person of integrity and good character²;
- Be able to act independently of any person who requests an IMHA to visit and interview the patient;

1. Guidance on what constitute appropriate training and experience is on the Department of Health's website.
http://www.dh.gov.uk/en/Healthcare/Mentalhealth/DH_091895

2. When determining that the IMHA is of integrity and good character, they must undergo an enhanced Criminal Records Bureau (CRB) check or (if this is not required) a standard CRB check.

- Be able to act independently of any person who is professionally concerned with a patient's medical treatment.

Who are IMHA services for?

The Act describes patients who are eligible for IMHA services as 'qualifying patients'.

A qualifying patient is a patient who is:

- Detained under the Act (even if they are currently on leave of absence from hospital) – but see exceptions below;
- Conditionally discharged;
- Subject to guardianship;
- On supervised community treatment (SCT);
- Being considered for a treatment to which the special rules in s57 of the Act apply (mainly neurosurgery for mental disorder);
- Under 18 years of age and being considered for treatment to which the special rules in s58A of the Act apply (i.e. electro-convulsive therapy).

Because the IMHA service is not intended to be an emergency response service, patients do **not** qualify for an IMHA service by being detained:

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

The role of the IMHA

The role and responsibilities of the IMHA are set out in the Act. Broadly speaking it defines the role of the IMHA as:

- Helping patients access and understand certain information
- Helping patients to exercise their rights

The Code says that the first part of this role could include helping patients to obtain information about and understand the following:

- Their rights under the Act;
- The rights which other people such as nearest relatives have in relation to them under the Act;
- The particular parts of the Act which apply to them e.g. the basis on which they are detained;
- Any conditions or restrictions to which they are subject, e.g. conditions of leave of absence from hospital or conditions of a community treatment order;
- Any medical treatment they are receiving or might be given;
- The reasons for that treatment or the 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.

(COP, 20.8)

The second part of the role is to help patients exercise their rights, either by speaking on their behalf as their representative or in other ways.

Good practice points – Obtaining and explaining information

- You should be familiar with the kind of information for which patients commonly ask, for example, information about:
 - Applying to the Tribunal;
 - Applying for a manager's hearing;
 - Understanding the effects of medication;
 - Wanting to change medication;
 - Wanting different forms of treatment;
 - Leave of absence;
 - Access to religious/spiritual support;
 - Wanting more help from community services.
- You may need to collect information or be available to help the person make sense of information they receive from other sources.

- You should know how to access sources of information such as the Act, Code of Practice, appropriate websites and other relevant sources of information.
- Some information may best be given directly by another person, other than the advocate, for example, information of a technical nature outside the expertise of the advocate. You can help to make sure the person understands the information they are being given. This can be important where a professional (for example, a doctor or solicitor) gives complicated information.
- You can speak to professionals involved in the patient's treatment or access the patient's records to help patients obtain information, particularly about their care and treatment. (See what are the IMHA's rights, pg. 19.)

The Code of Practice says that IMHA can also support patients in a range of other ways to ensure they can participate in the decision that are made about their care and treatment (COP, 20.10).

Examples of when might you be asked to support a patient

- Soon after the patient's arrival in hospital, they may want support to obtain reassurance and understanding of their situation within the hospital environment and mental health system;
- When they know that their care and treatment is going to be discussed in a meeting or ward round and they want help in preparing for the meeting, or support or representation at the meeting itself;
- When a patient is concerned about particular aspects of their care or treatment and wishes to meet with their doctor/responsible clinician;
- When they are going to be examined by a second opinion appointed doctor;
- When they want to express concern about any aspect of their hospital experience or access the complaints process;
- When applying for or attending a hospital manager's hearing;
- When applying to the Tribunal for a hearing, obtaining legal representation, needing support at a hearing or help in understanding the decisions made by a Tribunal;

- When they have questions about their rights in relation to their nearest relative;
- When they need help to understand, apply to and obtain legal representation for County Court hearings about changing their nearest relative;
- When they are being considered for supervised community treatment (SCT);
- When they are talking to their guardian about requirements the guardian is imposing on them (for example, about where they should live);
- When they want support to access medical or social services records;
- Prior to a discharge planning meeting to explore all their options and raise concerns about appropriate after-care;
- When they want support in accessing other services.

Good practice points – Supporting patients to exercise their rights

You can help patients:

- Understand and think through options;
- Express their views, through supporting them to self-advocate, representing them and speaking on their behalf;
- Prepare for meetings about their care and treatment, and accompany them to those meetings; (See *Supporting patients in meetings*, pg. 28.)
- Prepare for Tribunals and hospital managers' hearings;
- Make a complaint about their care and treatment. (See *Raising concerns*, pg. 40.)

Responsibilities of professionals: providing information about IMHA services

Under the Act, certain people have a duty to ensure patients understand the help that is available to them from IMHA services and how they can access that help.

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 a 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 s57 or s58A treatment in question	That discussion (or during it)

(See COP, 20.12)

In practice, where the duty to provide information is the responsibility of the hospital managers, they are likely to delegate this responsibility to hospital staff, such as clinicians or ward staff.

Under the Act, this information must be given to the patient orally and in writing. As good practice, the person giving the information should check that the patient understands the information, that it is given in a language they understand, and that it is in the right format for them.

Except for patients detained through the criminal justice system, the person responsible for giving information is normally required to take whatever steps are practicable to give a copy of the written information to the patient's nearest relative unless the patient requests otherwise. When giving information to the nearest relative, the information should make clear that the IMHA service is for the patient and not the nearest relative themselves.

Referring to an IMHA service

Statutory referrals

Patients can, and often will, seek help directly from IMHA services. IMHA services must respond to request from qualifying patients.

In addition, under the Act, IMHAs must visit and interview a qualifying patient where a reasonable request for them to do is made by any of the following people:

- The patient's nearest relative;
- The patient's responsible clinician (RC);
- An approved mental health professional (AMHP).

The Code of Practice says that AMHPs and RCs should consider requesting an IMHA to visit where they think that the patient may benefit from an IMHA's support, but is unable or unlikely to request it themselves. Normally the RC or the AMHP should discuss this with the patient first and ask them if they want an IMHA's help. They should not refer the patient to the IMHA service if they know or strongly suspect that the patient does not want this.

(See COP, 20.19)

Other referrals

Other people such as a member of the care team or a family member might also refer the patient. IMHA services do not have a statutory duty to respond to these referrals.

Good practice points – Referrals

- Organisations will have to agree locally the time frames for responding to referrals;
- Policies on responding to non-statutory referrals should be agreed locally.

Responding to the referral

Once the referral has been accepted, an IMHA will arrange to visit the patient. If the IMHA service does not accept the referral, they should explain this to the person who made the referral, giving their reasons why, while maintaining patient confidentiality.

Good practice points – Initial meeting with the patient

You should:

- Introduce yourself and check how the patient wishes to be addressed: clear and respectful introductions are important;
- Explain that the service is free and independent;
- Explain what issues you can help the patient with;
- You may need to explain to the patient the specific role of the IMHA and the extent and limitations of the role;
- Establish why the patient has approached the service;
- If the referral was made by someone other than the patient, check that the patient is happy to meet you and that they understand they have the right to decline the use of the service if they wish;
- If the patient wants your help, agree the range and nature of the involvement;
- If the patient does not want your help, remind the patient that they can access the IMHA service at any time they remain a qualifying patient.

Some patients may be referred to the service because they lack the capacity to refer themselves. In these cases, think about asking the person who referred the patient about their reasons for the referral. (See *Meeting diverse needs*, pg. 47.)

Section 2

What are the IMHA's rights?

For the purpose of supporting patients, the Act provides an IMHA with certain rights in order to help them to fulfil their responsibilities. This section explains what these rights are.

Set out in section 130B of the Act, they include the rights to:

- Meet qualifying patients in private;
- Meet professional concerned with the patient's care and treatment;
- Access a patient's records.

Rights of the IMHA: meeting patients in private

An IMHA has the right to meet patients in private. Local arrangements should set out where IMHAs will meet patients, whether in hospital or in the community. There are a number of different factors that will need to be considered when making arrangements for these meetings. It is good practice for organisation employing IMHAs to have policies about meeting patients in private.

Good practice points – Hospital/residential settings

- As an IMHA you should have access to wards and units where patients are resident;
- When entering the ward/unit, you should let a senior member of staff know that you are there and which patient(s) you have come to visit. You should also inform the staff when you leave;
- If you are unsure of the routines of the unit, check with staff if there are any times where it would be difficult to meet patients, for example, meal times or medication rounds;
- Check with the staff if there are any issues concerning safety or risk you need to be aware of;
- If you are concerned about your safety, explore alternative meeting spaces – such as having the meeting in a room with clear windows so you can be observed while maintaining a confidential environment;

- You could ask another advocate or manager to be present in the room instead of a member of the clinical team. In all these circumstances you need to be clear with the patient why you are meeting with them under such circumstances.

Good practice points – Community settings

- Local policies should set out arrangements for meeting patients in the community;
- IMHAs should arrange the visit somewhere mutually acceptable and preferably where other people are available (for example, a community centre, café, day centre, etc.);
- If it is considered appropriate for a home visit to take place, consideration should be given to the health and safety of both the patient and the IMHA;
- Try to fit in with the patient's lifestyle when agreeing a time and place to meet;
- Consider the safety of the patient and your safety when making arrangements to meet;
- Check with the care team if there is anything you should be aware of concerning issues of safety and risk.

Where meeting in private is not possible – hospital/residential settings

Although the IMHA has the right to meet patients in private, there may be occasions when the staff or the IMHA assess that it is not safe to meet a patient alone or it is not possible at the time, for example:

- The patient is under close observation;
- The patient is in seclusion; or
- A suitable room is not available.

On these occasions, you should consider the possible options in the circumstances,

- How the patient is feeling? Is now the best time for them to meet you?
- Is it safe to meet with the patient? Consider the safety of the patient and staff members and your own safety;
- Can the meeting be facilitated in another way? Is there a quiet space on the ward or could you meet with a member of staff present?
- Does the patient still wish to meet you under these circumstances, or would they prefer you to come back at another time?

If the meeting cannot take place because a suitable room is not available, this should be reported to the IMHA service. If a suitable room is frequently unavailable, this should be raised with the appropriate service managers.

When meeting in private is not possible – community settings

There may also be occasions when it is not possible to meet patients in the community in a private setting, for example, if there is not a suitable location or because of safety considerations for the patient or IMHA. On these occasions, the IMHA will need to decide whether they should facilitate the meeting in another way or arrange to see the patient at another time.

- If you do not feel comfortable meeting the patient by themselves in a private setting, arrange to meet the patient in a public space or in the company of someone else (for example, another advocate);
- Consider whether a personal alarm would be appropriate;
- Where you do not meet the patient in a private space, make your reasons clear to the patient.

Rights of the IMHA: meeting with professionals

Under the Act, the IMHA has the right to visit and interview any professional who is involved in the patient's medical treatment.

Professionals are often busy and IMHAs will need to be flexible when agreeing a time, date and venue. A face to face meeting may not be necessary in all circumstances. It may be possible to discuss things with the person on the telephone, but as an IMHA you do have a right to insist on meeting with the professional in person.

Where the IMHA meets the professional without the patient being present, they should agree with the patient beforehand what issues will be discussed in the meeting. Where appropriate, the IMHA should obtain written consent from the patient to discuss these issues for them. (See *Obtaining the patients consent*, pg. 33.) If the patient lacks the capacity to instruct the IMHA and/or consent to the meeting, the IMHA should only ask the professional for information that is relevant and appropriate to the help the IMHA is providing to that patient.

Good practice points – Meeting with professionals

- Introduce yourself, showing proof of identity where appropriate;
- You may be asked for written consent from the patient to the meeting before information is disclosed. Either show the professional any written consent or explain to them that you are acting on the patient's behalf;
- Generally, you should not ask for information which you have not agreed with the patient beforehand;
- If you are helping a patient who lacks capacity, only ask for information which is relevant and appropriate to the help you are providing;
- Remind the professional that anything said in the meeting will be fed back to the patient;
- Report back to the patient on the meeting as soon as possible afterwards.

Rights of the IMHA: access to records

Under the Act, the IMHA has the right to access the patient's records, subject to certain conditions.

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;
- Any clinical or other records relating to any after-care services provided to the patient;
- Any records relating to the patient held by a local social services authority.

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, certain conditions apply:

- 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;
- Otherwise, the record holder 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.

The Code of Practice says that in such cases the record holder 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.

The Act does not define what it means by access being appropriate, so the record holder needs to consider all the facts of the case. But the Code of Practice says that the starting point should always be what is best for the patient and not, for example, what would be most convenient for the organisation holding the records.

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 (MCA) and its Code of Practice (or, for children under 16, the common law)

(See COP, 20.30)

Good practice points – Access to records

- Agree with the patient beforehand which records you will access;
- If you are helping a patient who lacks capacity, only ask for records that are relevant to the help you are providing to the patient;
- It is good practice to put the request to the record holder in writing, outlining exactly what information has been requested and (where appropriate) demonstrating that the patient has requested the information be shared;
- Be aware that where a patient lacks the capacity to consent, the record holder may wish to ascertain for themselves that the patient lacks the capacity to make this decision, or to ask someone else involved in the patient's care to verify this;
- Check how long it will normally take the record holder to provide the records, and make the record holder aware of any exceptional circumstances which may affect this (e.g. the patient has a Tribunal hearing imminently and needs the records sooner than normal timelines);
- Under the Act, you have the right to the *"production and inspection"* of records. Depending on local arrangements, you might be given paper or electronic copies of the records or you might only view the records;
- Where you are given paper or electronic copies of the records, you must comply with statutory requirements on sharing and storing information.

Confidentiality

Respect for confidentiality is a key advocacy principle as patients often do not feel able to speak freely and explore options unless they can do so in confidence. There are times, however, when confidentiality cannot be maintained or upheld and disclosure with or without the consent of the qualifying patient may be necessary.

In carrying out your responsibilities under the Act, you will have access to a range of confidential information. This is because you may:

- Have access to wards and units on which patients are resident;
- Meet with patients in private;
- Attend meetings between patients and professionals involved in the patient's care and treatment;
- Speak to any person who is professionally concerned with a patient's medical treatment.

Accordingly, you must understand the duty of confidentiality and the circumstances in which confidential information may be disclosed to third parties even if the person concerned does not consent. Information can be shared without breaching the common law duty of confidentiality if:

- Information is not of a confidential nature (advice should be sought if it is not clear whether information is of a confidential nature or not); or
- The person to whom the duty of confidentiality is owed has given explicit consent; or
- There is an overriding public interest in disclosure (such as to protect a person from serious harm or prevent a crime); or
- Sharing is required by a court order or other legal obligation.

Good practice points – Confidentiality

- Explain to the patient what confidentiality means and in what circumstances this confidentiality may be breached;
- Explain that you receive supervision and why and that you will be required to discuss your work with your line manager on a regular basis;

- Respect the patient's confidentiality and not share information about them without their permission, unless there are reasons to breach this confidentiality;
- If you feel that there is reason to breach a patient's confidentiality, discuss this as soon as possible with the appropriate person in the IMHA service, in line with local procedures;
- Try to avoid unintentionally learning information about the patient from other sources such as staff members or written records which the patient may not wish you to know or you are unable to share with the patient.

Information that cannot be shared with the patient

The Department of Health has issued guidance on its website on this. It is recommended that you read this information before requesting to see patients' records.

Although patients have a right to access their own records, data protection legislation means that information in their records may be withheld from them because:

- an appropriate health professional has decided that its disclosure may cause serious harm to the patient or other people;
- it contains confidential information provided by, or relating to, a third party who has not consented to its disclosure.

These restrictions do not apply to IMHAs' rights to see patients' records. Record-holders cannot refuse to allow IMHAs access to information in records simply because it would not be disclosed to the patient. However, if IMHAs are given access to such information, they are generally not allowed to share it with the patient.

You will normally not know in advance whether a patient's records contain information which would not be disclosed to the patient. If you do not want to see such information, you need to make that clear to the record holder in advance, otherwise you risk unintentionally coming into possession of information about the patient which you cannot share with them.

If you are considering asking to see records without specifying that you do not want to see information which would not be disclosed to the patient, the Department's guidance recommends you should specifically check that the patient agrees. To do that, you will need explain to the patient that such material might exist, and, if it does exist, specifically ask the patient whether they consent to you seeing it. You will also need to explain to the patient that you will generally not be able to pass that information on, or even tell the patient that it exists.

Where the patient lacks capacity to consent, you will need to decide for yourself whether to request all the information in the records or only the information which would be disclosed to the patient. In doing so, you need to consider how this will affect your ability to provide help and support to the patients as an IMHA. On the one hand, being in possession of information that cannot be shared with the patient may cause difficulties in the relationship of trust with the patient. On the other hand, there could be circumstances in which not accessing all the available information could restrict your ability to help the patient as fully as possible.

Good practice points – Information that cannot be shared with the patient

- Where the patient has capacity, check with them that they agree before you access information which you may not be able to share with them and explain what this means;
- Where the patient lacks capacity to consent, consider whether you should see information you cannot share with the patient. You should balance your relationship of trust with the patient against your duty to help the patient as fully as possible;
- If you do not want to see information which the patient themselves cannot access, make the record holder aware of this when you request access to the records.

Supporting patients in meetings

Although not a statutory right under the Act, the guidance in the Code of Practice says that the IMHA should be allowed to attend any meeting that patient would be expected to attend, either with or without the patient (COP, 20.22). Where the patient has the capacity to instruct the IMHA, they should only attend meetings and speak on issues with the agreement of the patient. Where the patient does not have this capacity, the IMHA should consider attending the meeting to speak on the patient's behalf. (See *Using non-instructed advocacy*, pg. 47.)

Where the IMHA attends a meeting with the patient, they can help:

- Support the patient to feel confident;
- Remind the patient of what they wanted to say;
- Speak for the patient, if the patient does not wish to self-advocate;
- Reflect with the patient after the meeting on what was said.

Where an IMHA attends a meeting without the patient, they can:

- Represent the patient's views, wishes and rights;
- Feed back to the patient what was said in the meeting.

Good practice points – Supporting patients in meetings

- Discuss with the patient before the meeting what they want to achieve and help them access any information they might want prior to the meeting;
- Inform them of their rights, entitlements and choices;
- Ask to sit next to the patient in the meeting where appropriate;
- Support the patient to self-advocate in the meeting where possible.
- Where you attend a meeting with the patient, check with the patient afterwards if they understood everything that was covered in the meeting or if they would like any further clarification;
- Where you attend a meeting without the patient, explain to everyone present that you will report to the patient anything said at

the meeting. You should report back to the patient on the meeting as soon as possible;

- Check that any action points agreed at the meeting are followed up and that the patient is happy with the outcomes.

Section 3

Delivering effective advocacy

While an IMHA's practice must comply with the legal framework, their everyday activities will also be impacted by the requirements of the IMHA service that employs them, the way that local mental health services operate, and their own personal values and experiences.

IMHAs need to be able to make judgments about issues arising in every day practice. The judgments IMHAs will have to make will be at different levels of complexity depending on the issue presented by a qualifying patient.

Finding out the patient's wishes

IMHAs should always start the advocacy process by finding out the patient's wishes. This involves:

- Listening to the patient;
- Discussing options;
- Recording the patient's views and wishes.

Where the patient does not have the capacity to express their wishes, the IMHA should use non-instructed advocacy principles to record any known wishes of the patient. (See *Using non-instructed advocacy*, pg. 47.)

The role of the IMHA should be to enable a person to be aware of options. This means ensuring that information about the options is received by them in a way they can make sense of and retain in order to explore the options.

Good practice points – Finding out the patient's wishes

When ascertaining a patient's wishes, you should:

- Communicate in a way the patient can understand;
- Ask the patient what suits them;
- Make sure communication needs identified are met: this may mean arranging interpreters or signers;

- Give information that is relevant to the person's life so that it is easier to understand – relevant to their age, culture, etc;
- Collect information from different sources or be available to help the person make sense of information they receive from other sources;
- Actively listen to the patient and check they have understood;
- Observe non-verbal communication, asking questions where it appears to contradict what the patient is saying;
- Feed back to the patient their understanding of what has been agreed;
- Record any agreed responses.

Agreeing actions

Once the patient's wishes are known, the IMHA should plan with them a course of action based on agreed outcomes. Using an action planning template can help with this

If the patient cannot instruct the IMHA, the IMHA should plan a course of action based on any known wishes of the patient and upholding their rights. (See *Using non-instructed advocacy*, pg. 47.)

Good practice points – Agreeing actions

- When agreeing an action plan, you should be directed by the patient about what their priorities are;
- Where the patient does not have the capacity to instruct you, draw up priorities and actions based on the patient's wishes and rights;
- The action plan should identify initial outcomes and timescales, but not be prescriptive or inflexible;
- Once the advocacy objectives are clear, you may need to consult several types of information resources. You may need to seek background information because the issues raised by the qualifying patient are outside your expertise. These resources are usually available in text books, journals or on the internet;

- At other times, you may need to consult a specialist resource (e.g. a pharmacist in relation to medication);
- The conclusions from this research still need to be checked and evaluated for appropriateness with the qualifying patient and their view of the problem(s) they are raising with you;
- Use the action plan as the basis for subsequent meetings with the patient. (See reviewing, pg.34.)

The action planning process

The action planning process should be based on:

- **Clarifying, negotiating and setting objectives**
What does the patient want to achieve?
What's most important for them?
- **Choosing tasks and activities**
What actions do you need to take?
How will you undertake them?
- **Understanding the time frame available**
Are there any key dates?
- **Identifying the targets to meet the objectives**
What order should you undertake actions?
Which are the most important?
- **Identifying key people, particularly those you should talk to**
Who do you need to approach?
Should you approach them with the patient?
- **Assessing what resources are needed**
Do you need to access legislation, records, books, legal advice?

Obtaining the patient's consent

Once the IMHA and the patient have agreed an action plan, the IMHA should obtain the patient's consent to undertake any actions on their behalf. If the patient does not have the capacity to give this consent, the IMHA should make a written record of this.

Good practice points – Obtaining consent

- It is good practice to complete a consent form, which sets out specifically what the patient authorises you to do on their behalf and is signed by them;
- A copy of this consent form can then be shown to any third party you contact when carrying out the patient's wishes;
- If, for reason other than lack of capacity, it is not possible to obtain a patient's written authority, make a written record that the signature was requested and refused and the reason why.

In particular, it would be good practice to obtain written consent from patients if there is a need to:

- Negotiate formally on their behalf when the patient cannot be present and there is no opportunity to refer back to them;
- Approach other agencies for information about their case.

Reviewing

The action plan and any actions undertaken by the IMHA should be reviewed with the patient on a regular basis, to ensure that the patient is happy with the outcomes. Where the patient does not have the capacity to review the action plan, the IMHA should still conduct regular reviews to assess whether the patient's wishes and rights are being best met.

Good practice points – Reviewing

- Regularly review the action plan with the patient.
- If the patient wishes to revise the action plan because they are unhappy with the outcomes or have changed their mind, help the patient with this.

Ending the advocacy relationship

The IMHA's help to the patient is completed once the patient's objectives have been achieved, or if the IMHA is unable to offer further support in reaching these objectives.

Good practice points – Ending the advocacy relationship

- Do not assume patients do not want any further support simply because their original objectives have been met. Always check with the patient if they would like further support or not.
- Patients may wish you to continue to support them but in a “befriending” role or with issues outside your IMHA role. In such cases be clear with the patient about the boundaries of your role and consider other options with them. (See *Maintaining boundaries with patients*, pg. 39.)
- Do not put pressure on patients to continue accepting IMHA support, where the patient has asked for the help to end.
- Remind the patient that they may ask for an IMHA again at any point they remain a qualifying patient.

Closing a case

The reason for closing the case should be recorded in individual records. The following questions should be addressed:

- Have the identified outcomes been achieved?
- If not, what were the reasons, and were all reasonable attempts made?
- Is there nothing else an advocate can do?
- Has the client decided they no longer want an advocate? (If so and if known, record the reason.)
- Was the client satisfied with the work of the advocate?
- Were other interested stakeholders satisfied with the advocate?
- Is there anything to be learned from the case?

Using advocacy principles

Independence

Independence is an underpinning principle of all advocacy services. This is because patients may not feel able to trust services they see as part of the health or social care system. IMHAs will need to develop courteous and professional relationships with health and social care staff. However, you will need to balance your co-operation with staff with your need to be independent of health and social care services. In particular, you need to consider how patients will perceive your interaction with staff and professionals: an overly familiar relationship could be perceived by patients as threatening the independence and confidentiality of the advocacy relationship.

The main challenge for an IMHA is the extent to which a balance between your need to be independent and need to co-operate with others can be struck, and your practice still be effective and safe.

The issues may include:

- The way patients may perceive interactions with staff and professionals.
- Keeping boundaries clear on the distinction between the IMHA role and others.
- Being clear on information sharing and the limits of action an IMHA can take or be involved in which the patient has not requested.

Good practice points – Independence

- Only go into the staff office when necessary.
- Wherever possible, meet staff in the presence of the qualifying patient.
- If it is necessary to speak to staff on the patient's behalf, ensure the patient knows what the IMHA is discussing and provide feedback quickly.
- Not mingling, being familiar or closely associating with the clinical team and others;
- Try and see things from the patient's perspective and avoid taking the perspective of the staff team;

- Maintain clear boundaries with health and social care staff;
- You should be able to support patients free from any conflicts of interest and without any pressure from health and social care services.

People-centred

The IMHA's primary role is to help and support patients. The patient and their wishes and rights should be at the centre of an IMHA's practice.

Good practice points – Being people-centred

- Recognise the patient as the best authority on their own experience;
- Use instructed advocacy where possible, acting only on the patient's directions and on their behalf;
- Where you use non-instructed advocacy, try to promote the patient's wishes (where those wishes are known) and uphold their rights;
- Decisions should be the patient's own. You should discuss options with patients, but not offer them advice on what to do.

Accessibility and communication

How IMHAs communicate with patients is key to making sure all patients can access the service, regardless of communication skills or language.

Good practice points – Accessibility and communication

- Communicate in a way the patient can understand and regularly check their understanding;
- Recognise that some patients may not be able to concentrate for long periods of time.

Where you think the patient needs help understanding or communicating, consider:

- Could the information be explained in another way?
- Does the patient need information in a special format? This could include another language, pictorially, or in Braille?
- Could the patient benefit from an interpreter? Remember that you should avoid asking other patients or family members to act as interpreters for patients.

Appropriate help

IMHAs are expected to help a range of patients with diverse needs and backgrounds. (See *Respecting diversity*, pg. 50.) The help offered by an IMHA to a patient should be tailored to the individual's circumstances, to ensure that the service is appropriate for them and their specific needs.

Good practice points – Appropriate help

- Consider any culture, gender, religious, faith, age, sexual orientation or disability issues of the patient;
- Remember that a patient's cultural background may be very different to your own. Consider what is the best way to provide culturally appropriate help;
- Be careful not to make assumptions about a patient based only on their gender, their ethnicity or other characteristic.

Equality

It is important to have equality in the relationship between the IMHA and the patient. Patients may trust an IMHA more and request their support if they do not feel the IMHA is another 'authority' figure.

Good practice points – Equality

- Always treat what the patient says in a serious and respectful manner;
- Be completely honest about the support you are able to give the patient and be open with the patient about the advocacy process;
- Where the patient has capacity to consent, only seek information with the patient's permission and share it with them in full (unless that is legally impossible).

Maintaining boundaries with patients

While the IMHA role may be similar to other support services, it is distinct from them and should not seek to replace them. It is also not an impartial advisory, lobbying or campaigning role and clearly not a 'befriending' role. However, establishing and maintaining an open, informal and trusting relationship with qualifying patients is likely to lead to positive outcomes for the patient and a positive experience of advocacy for them.

Good practice points – Maintaining boundaries with patients

- Explain to the patient the scope and limitations of the IMHA role;
- If you cannot help the patient because their issue is outside your role (e.g. information about benefits or housing), explain this to the patient and signpost them to where they can find the information for themselves;
- Signpost the patient to any other services that could offer help, e.g. other advocacy services, counselling services, and patient advice

and liaison services. You may find it helpful to draw up a list of appropriate of services operating in their area.

Raising concerns

Part of the IMHA's role is helping patients raise complaints if they are unhappy with the care or treatment they are receiving under the Act. Where the patient has the capacity to instruct the IMHA, the IMHA should always be directed by the patient as to how they wish to handle their complaint.

The IMHA should also consider the best way to represent a patient who does not have the capacity to instruct but whom the IMHA thinks has grounds for a complaint, for example, for reasons of unnecessary risk, ill treatment, neglect or discrimination.

You should always be clear to staff that you are acting on behalf of the patient and their wishes. However, if conflict arises then you should try to resolve the conflict at the lowest level, either talking to the member of staff directly or with the member of staff's manager. You should report back any conflicts to the IMHA service provider who may be required to take up the issue on your behalf.

Good practice points – Raising concerns

You should provide the patient with information on the options available to have their concerns addressed. These might include:

- Doing nothing;
- Finding a way of addressing the concerns through informal negotiation;
- Instigating a complaint under the NHS complaints procedure; or
- Referring their complaint to the Independent Complaints Advocacy Service.

You can help the patient have their complaints addressed if the patient wishes this. With the patient's permission, the complaint should be dealt with at the lowest possible level.

If issues raised relate to more than one patient and suggest there may be a general problem with the way a mental health service is being provided, suggest to the management of the IMHA service provider that it raises the issue with the service provider in question.

Conflicts between the IMHA and health and social care staff

On occasion, conflicts can arise between IMHAs and health and social care staff. This is because staff may not fully understand the IMHA's role and consequently feel that the IMHA is being obstructive or that the IMHA is acting on their own volition and not on behalf of the patient.

Conflicts can particularly arise where:

- A patient wants to question decisions that have been made about their treatment or care;
- A patient wants to make a complaint; or
- A patient has asked an IMHA to advocate for something which staff judge to be risky or harmful.

Good practice points – Conflicts between IMHAs and care staff

- Be clear to staff that you are acting on behalf of the patient and their wishes;
- Only act on the patient's behalf, not on your own agenda or interests;
- Be clear whenever you are directly using the patient's words in written documents or in conversations with staff;
- If the patient agrees, try to resolve the conflict at the lowest level, either talking to the member of staff directly or with the member of staff's manager;
- Report back any conflicts to the IMHA service provider.

Managing risk

IMHAs need to be aware of potential risks in their work. Conducting a risk assessment can help an IMHA to judge the risk's severity and likelihood. If a risk is present, the IMHA must take steps to minimise its potential impact.

Where IMHAs make a risk assessment, they should consider:

- The factors which contribute to the risk;
- The causes of the risk;
- The changes necessary to eliminate or control the risk.

Good practice points – Managing Risk

- Have a working knowledge of the risk assessment policy of the IMHA service provider and of any organisations you are visiting;
- Consider conducting a risk assessment when you first meet a new patient;
- Raise potential risks and hazards with your employer as soon as possible;
- Patients can feel stigmatised if they are labelled as a 'risk'. However, you should remember that the safety of the patient, other people and yourself must always come first.

Supporting decisions that may be risky or unwise

An important part of the IMHA's role is to support qualifying patients to be independent of the views of others and make their own informed choices, even where the patient's view or wish is challenged by other people, including staff or family members. This role is supported by the general advocacy principles that advocacy is client-led, non-judgmental and values diversity and equality.

Patients may choose a course of action or take decisions which others deem risky or not in their best interests. An IMHA may even be concerned that what they have been asked to do by a qualifying patient is contrary to the patient's recovery/treatment or may indeed be harmful to them.

Nonetheless, the role of an IMHA includes respecting the choices and wishes of the patient they are supporting even when the IMHA does not understand this choice or agree with it.

Where the consequences of the decision being made by a patient are potentially serious, you should seek the support of a senior colleague within your employing organisation to reflect on the dilemma and the available options. You should not support the patient if the proposed course of action would put the patient, you or anyone else in danger, or if the action is against the law.

Patient wants support with issues outside the IMHA's remit

Patients may want the IMHA to do more for them than the role allows either in terms of the depth of relationship or type of advocacy issues. For example, the patient may want you to advocate for them in relation to issues beyond the scope of your responsibilities as an IMHA (e.g. noisy neighbours, welfare benefits or employee/employer grievances), or may want to retain the services of the IMHA for longer than is necessary.

In these circumstances the IMHA needs to be able to clearly explain the scope and limitations of their role to the patient, and be prepared to signpost the person to other services as appropriate. This may include a referral to non-statutory advocacy services.

Signposting

There are many agencies whose job it is to offer advice, and an IMHA should provide information and support to help qualifying patients to find out about these, facilitate access to the appropriate service available and support the person to weigh up the information or advice given.

For example, someone may need:

- advice about the law from a solicitor or lawyer;
- information about appropriate welfare benefits they are entitled to from a benefits advice agency such as the Citizens Advice Bureau; or
- help with a medical matter when they would need to talk to an appropriately trained medical professional.

With all the above mentioned agencies, the patient may need support from an advocate to help them understand what is being said or written by those who are advising them.

Record keeping

IMHAs should keep clear records underpinning every stage of the advocacy process. This is because IMHA services may need to refer to records to see what actions were agreed with the patient, what actions were undertaken by the IMHA on the patient’s behalf and what outcomes were achieved.

Good practice points – Record keeping

You should keep records that:

- Are in the standard format used by the IMHA service provider;
- Are up-to-date and written in a way that is not discriminatory or biased;
- Are clearly written, so as to differentiate between facts, your opinions and the views of those involved;
- Identify any conflict of views or wishes and say how these were addressed and by whom;
- Are in a form that assumes that they may be used for supervision, auditing purposes, inspection or in a public Court of Law.

Reflection

It is important for IMHAs to regularly reflect on their own practice. This means taking time to think about the way they have helped a patient(s) and identifying what was successful and what they might have done differently. It offers a useful way for IMHAs to build their understanding, inform their practice, detect and correct errors and look for more effective ways of helping patients.

Good practice points – Reflection

When reflecting on your practice you should consider:

- **Stage 1: Identify present situation**
What am I good at? What causes concern? What could be developed?
- **Stage 2: How can it be changed or improved?**
How do I go about it? What skills do I have? What skills do I need?
- **Stage 3: Implementing and Monitoring**
What do I do? What resources are available? Who can help me?
- **Stage 4: Evaluate evidence**
Has there been change? Have I developed? How do I move forward?

Section 4

Meeting diverse needs

Deciding if a patient lacks mental capacity

Mental capacity is the ability to make a decision. The Mental Capacity Act 2005 says a person lacks capacity if they are unable to make a decision because of an impairment of, or a disturbance in, the function of their mind or brain.

The lack of capacity may be temporary, e.g. because of mental health issues drugs, or it may be permanent, e.g. because of brain damage.

A person is unable to make a decision if they cannot do one or more of the following:

- Understand information given to them about the decision;
- Retain the information for long enough to make the decision;
- Use or weight up the information as part of the decision-making process; or
- Communicate their decision by any means, e.g. talking, sign language or blinking.

It should be assumed that a person has mental capacity unless established otherwise. All practicable steps to help them make and communicate their decision should be tried first.

The Mental Capacity Act requires “decision specific” assessments of capacity. This is because a person may have the mental capacity to make certain decisions but not others.

Using non-instructed advocacy

In cases where the patient lacks the capacity – either temporarily or permanently – to instruct them or make their wishes known, the IMHA can use **non-instructed advocacy**.

When helping the patient through non-instructed advocacy, the IMHA should seek to:

- Uphold the person's rights;
- Ensure fair and equal access to services; and
- Make certain that decisions are taken with due consideration for the patient's preferences and perspectives, including any known wishes.

There is an important distinction between advocating for a qualifying patient where all reasonable attempts to obtain instruction have failed, and simply speaking for the person without consent.

In other words, non-instructed advocacy is not an excuse for failing to engage with the patient; nor is it a way of short-cutting the engagement process.

Good practice points – Non-instructed advocacy

- Before using non-instructed advocacy, decide if the patient could benefit from your help. If the patient was referred to the IMHA service, consider asking that person for their reasons for the referral;
- It is not the role of the advocate to offer their own views or opinions as to what is in the patient's best interest or to determine a particular course of action;
- Try to determine any known wishes of the patient. In particular, consider if the patient has made an advance statement of their wishes and feelings;
- If you are unfamiliar with non-instructed advocacy talk to the IMHA service provider about having additional support to do this or whether another IMHA in the same provider might be better qualified to help the patient.

When delivering non-instructed advocacy, you should aim to:

- Support the patient to participate as fully as possible in any relevant decision;
- Understand their wishes and feelings;
- Respond to and represent the patient's views, wishes and interests, where appropriate;

- Where a patient has deliberately stated their wishes in advance about a variety of issues, including their medical treatment, the steps that should be taken in emergencies and what should be done if particular situations occur, ensure that such wishes are given the same consideration as wishes expressed at any other time;
- Where appropriate, take into account the views of people who know the patient well about what the patient would want; and
- Ensure the patient's rights are respected and upheld.

Communication

An IMHA will need to use a combination of communication skills to ensure they establish the person's wishes, preferences and values, including their religious and cultural beliefs.

Sensitivity and appropriate communication skills are needed at all times. They are particularly important where it may be that a patient chooses to express themselves in non-verbal or unconventional ways. Even if that increases the possibility that the patient will be misunderstood by others, they should still be supported to articulate their views, wishes and concerns if at all possible.

Children and young people

Children and young people have the same rights as an adult to help from an IMHA. IMHAs should ensure they provide help that is appropriate and accessible to the child or young person, in line with their age, individual needs and capacity or competence to understand information and give instructions.

Good practice points – Children and young people

- Use clear and age-appropriate language when talking to children and young people;
- Always be directed by the child or young person and recognise they may ask for different support to an adult patient, for example, support in asking staff to routinely address them rather than their parents;

- Do not assume a child or young person does not have the competence or capacity to consent to your help simply because their decisions seem unwise or unrealistic or because they are unable to communicate their wishes clearly;
- Where the child or young person wants your help in demonstrating capacity or competency, help them talk to a clinician about this and support them to demonstrate that they have the ability to understand and make decisions;
- If you are unfamiliar with providing advocacy support to children and young people, talk to the IMHA service provider about having additional support to do this or whether another IMHA with the same provider might be better qualified to help the patient.

Respecting diversity

As an IMHA, you are performing a public function. That means you have various specific legal duties not to discriminate, to promote equality of opportunity and to make sure you act compatibly with people's human rights.

An IMHA will need the appropriate knowledge of the law and the skills to practice effectively with qualifying patients across a wide range of patient groups, including patients experiencing different types of mental disorders and patients from different cultural backgrounds.

This does not mean IMHAs are expected to be experts in every area of the qualifying patient's particular individual needs. Depending on local arrangements in certain cases IMHAs may need to link with specialist groups and organisations to provide a service. This might include services within hospital settings, externally from services within the statutory and independent sectors, local faith groups or service user-led support groups.

A person typically experiences their identity through the interaction of many factors including class, race, age, disability, sexuality and gender.

Patients from black and minority ethnic (BME) groups

Inequalities between people from different ethnic groups in the mental health system are widely recognised, though the reasons for them are not fully understood

Good practice points – People from BME communities

When supporting patients from BME communities or groups you should:

- Provide a safe and secure relationship within which any feelings of isolation and consequences of stigma associated with mental illness and racism can be addressed;
- Respond appropriately to the language and cultural needs of the patient;
- Not use colleagues and patients from the same ethnic background as 'race experts';
- Exercise caution about the use of 'accepted' terms used to refer to identity (e.g. ethnicity). Where possible, check with the patients themselves the definitions and descriptions they prefer;
- Provide advocacy built on an understanding of cultural values and beliefs;
- Actively promote practice that is socially inclusive;
- Encourage BME mental health service users to define their own identity and needs;
- Read, use and contribute to policies in place for diversity, equality and anti-discriminatory practice.

People with learning disabilities

Few people with learning disabilities are detained under the Act and where they are, it is rarely solely because of their learning disability. It is important to remember that people who have a learning disability may also experience mental ill health and they may need to be detained in hospital for assessment or treatment of that disorder quite separately from their learning disability.

Good practice points – People with learning disabilities

The Code advises professionals working under the Act with people with learning disabilities to bear in mind the following general points:

- People with learning disabilities may use non-verbal communication rather than spoken language. This non-verbal communication may include behaviour, gestures, posture and body language, ways of moving, signing, noises and pointing;
- People with learning disabilities may find new environments, such as a medical setting, frightening. They may need a quiet space, or one link person to speak with them;
- The most appropriate method of communication for each person with learning disabilities should be identified as soon as possible, and the help of a speech and language therapist should be sought wherever appropriate. It is helpful to identify a specific person who will undertake this task;
- Some people with learning disabilities may prefer to have written material in simple language with images or symbols to assist, and this could be reinforced orally, through personal contact or other means;
- It can be helpful to repeat information and leave a record of the information that has been passed on, so that the person can consult it and ask others to clarify anything that is difficult to understand;
- It is important to set aside sufficient time for preparation of suitable information and for preparation before meetings. In order to allow the patient every chance to understand the information given, meetings should be held in an environment that is not intimidating.

People with learning disabilities may also encounter problems in:

- Understanding what is being explained to them and in communicating their views (in situations that increase their levels of anxiety they may find it even more difficult to understand what is said to them); and
- In being understood, particularly where lack of spoken language makes it hard for them to provide explanations of pain or other symptoms that might aid diagnosis of physical or mental illness.

Appendix

Glossary

AC	Approved Clinician
AMHP	Approved Mental Health Professional
COP	Code of Practice Mental Health Act 1983 (England)
Hospital Managers	Managers of a hospital
RC	Responsible clinician
s	Section of an Act
SCT	Supervised Community Treatment

Notes

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper has a slight shadow on the right side, suggesting it's resting on a surface. There is no handwriting or other markings on the paper.

This CD-Rom contains a PDF electronic version of the Effective Practice Guide as well as a short film “Shoulder to Shoulder” commissioned by NMHDU for their independent mental health advocacy training programme which features people drawn from the voluntary and statutory services talking about their perceptions of independent advocacy.



Designed by design-culture.co.uk



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Front and back cover artwork by a student of Brookside School