

Statutory Advocacy:
Independent Mental Health Advocacy (IMHA)
and
Independent Mental Capacity Advocacy (IMCA)

Advocacy Support Cymru

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Independent advocacy is about speaking up for, and standing alongside individuals or groups, and not being influenced by the views of others. Fundamentally it is about everyone having the right to a voice: addressing barriers and imbalances of power, and ensuring that an individual's human rights are recognised, respected, and secured.

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Scottish Independent Advocacy Alliance.

Independent Advocacy Remit



- ▶ Endorse right to autonomy and self-determination
- ▶ Empower clients to self-advocate, where possible
- ▶ Promote rights and entitlements
- ▶ Ensure a personalised approach to care and support
- ▶ Ensure correct processes are followed
- ▶ Ensure least restrictive option is fully explored
- ▶ Redress power imbalance



- ▶ Advise
- ▶ Offer opinions
- ▶ Make decisions
- ▶ Counsel
- ▶ Befriend
- ▶ Make judgements
- ▶ Act in best interests

Independent Mental Health Advocacy (IMHA)

- ▶ Statutory role created by the 2007 amendment to Mental Health Act (MHA) 1983
- ▶ Expanded by Mental Health (Wales) Measure 2010 to include access to informal patients and those under short-term sections.
- ▶ IMHAs have the right to :
 - ▶ Visit and interview patient in private
 - ▶ Visit, interview and get views of anyone professionally concerned with the patient's medical treatment
 - ▶ Inspect relevant patients records
- ▶ Issue-specific: medication, treatment and care for mental health only
- ▶ Act on instruction from the client whenever possible, although non-instructed advocacy is provided to those who lack the capacity to provide instruction.

IMHA: Welsh Qualifying Patients

Compulsory:

- ▶ Detained under the MHA including sections 4, 5(2) and 5 (4) - not sections 135 or 136
- ▶ Community Treatment Orders
- ▶ Guardianship Orders
- ▶ Conditionally Discharged Restricted Patients

Informal:

- ▶ All in-patients in any hospital or registered establishment in Wales, who are being assessed or treated in relation to a mental disorder whilst in that setting and who are not liable to be detained.
- ▶ Patients where treatment under section 57 or 58A (ECT) is being considered

IMHA = Age Blind: There is no upper or lower age limit

Duty to inform patients about IMHA

CATEGORY OF PATIENT	RESPONSIBLE PERSON
Detained patients	Managers of hospital in which patient is liable to be detained
Guardianship patients	Responsible LA
CTO patients	Managers of responsible hospital
Conditionally discharged patients	Responsible clinician
Informal patients receiving particular treatments (under sec 57 or 58A)	Doctor/Approved clinician who first discusses treatment in question
Informal patients	Managers of hospital to which patient has been admitted

When to consider making an IMHA referral?

- ▶ Following admission and discussion of rights
- ▶ During discussions about a proposed treatment plan
- ▶ When a patient is objecting to any aspect of their care or treatment
- ▶ When ECT is being considered
- ▶ When a CTO is being considered, renewed or revoked
- ▶ When a patient wishes to appeal their detention
- ▶ To discuss/challenge any aspect of their care and treatment (for mental health)
- ▶ When discharge planning commences
- ▶ If the patient lacks capacity and/or cannot participate in decision-making processes

Non Instructed Advocacy (NIA)

An approach advocates use when a client is unable to provide instruction due to impaired communication or capacity. NIA ensures:

- ▶ Parity between those who can instruct advocates and those who cannot
- ▶ Services address multiple aspects of the person's care and treatment
- ▶ Safeguarding against abuse of rights

NIA involves:

- ▶ Getting to know the individual over time and learning how to communicate with them
- ▶ Learning about their past
- ▶ Observation
- ▶ Scrutiny of records
- ▶ Liaising with others including professionals, paid carers, and family members

IMCA

Introduced by the Mental Capacity Act (MCA) to help people age 16+ who lack the capacity to make certain decisions and have no family or friends willing/able to be consulted (except safeguarding and DoLS) when certain decisions are made.

IMCAs have a right to access relevant healthcare and social service records and to meet in private the person they are supporting, where practical and appropriate.

An IMCA will :

- ▶ Gather and evaluate information
- ▶ Ensure compliance with the MCA and other legislation
- ▶ Make representations
- ▶ Challenge decisions
- ▶ Produce reports for certain decisions that must be considered

IMCA: When should a referral be made?

An IMCA must be instructed whenever:

- ▶ An NHS body is proposing to provide or withdraw serious medical treatment
- ▶ An NHS body is proposing to arrange a stay in hospital lasting longer than 28 days
- ▶ Move of accommodation arranged by NHS/LA to a care home for longer than 8 weeks.

An IMCA instruction must be considered to support someone who lacks the capacity to make decisions concerning:

- ▶ Care reviews, where no one else is available to be consulted
- ▶ Adult Safeguarding cases, for the victim or perpetrator

IMCA DoLS

An IMCA may also be instructed when:

- ▶ An Urgent DoLS Authorisation has been made and a Standard Authorisation applied for or an unauthorised Deprivation of Liberty is being checked (39a)
- ▶ There is a gap in the appointment of a RPR or the appointment of the RPR ends (39c)
- ▶ The person does not have a paid 'professional' RPR and the RPR or the DoLS team feel that an IMCA needs to be instructed to support the RPR role (39d)

Statutory Advocacy Referral Pathway

IMCA

Has a service user, aged 16 or over, been assessed as lacking the capacity to make a decision regarding serious medical treatment, or a change of accommodation? (For accommodation only, P would not qualify for IMCA if detained under the MHA and are being placed using the MHA.)

YES

Do they have any family or friends to consult with or advocate on P's behalf? (i.e. Is there only paid staff?)

NO

For decisions about serious medical treatment (example: dentist, DNAR, diagnostics, etc.) or a change of accommodation you **MUST** refer to IMCA. For care reviews you must consider a referral to IMCA.

YES

Not eligible for IMCA unless the family are not appropriate to consult with i.e. safeguarding issues, **BUT** are they eligible for an IMHA?

YES

Please see information about qualifying patients for IMHA.

NO

Consider a referral to Community Advocacy.

NO

IMHA

Is a patient of any age (including a child or young person) in any hospital setting being assessed or treated for a mental disorder?

(They can have family advocating on P's behalf and have an IMHA).

YES

Does the patient have capacity to understand the IMHA role?

YES

Inform them of their statutory right to IMHA and support them to make a referral.

NO

Ask the question "Why shouldn't they have an independent advocate?" and make referral on their behalf.

IMCA (Safeguarding)

Is a service user subject to adult safeguarding procedures? (Can be alleged victim or perpetrator.)

YES

Do they lack the capacity to input into the process?

YES

Regardless of the patient having family support, the Designated Safeguarding Lead must consider a referral to IMCA.

To make a referral for any of the above, please telephone ASC on 029 2054 0444

ASC Contact Details

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St Mellons

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