Improving access to Independent Mental Health Advocacy for providers of mental health services

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Key messages

- Research has shown that less than half of those qualifying for IMHA appear to be accessing it.
- Open access means qualifying patients are automatically referred to IMHA services unless they object.
- An open access process can ensure that more qualifying patients are referred to IMHA services.
- Open access processes need to address consent, capacity and confidentiality.
- Patients' choices and pathways should be rigorously recorded and monitored.

Introduction

The majority of patients detained under the Mental Health Act 1983 are eligible, under section 130 of the 2007 Act, to access Independent Mental Health Advocate (IMHA) services. Hospital managers, clinical staff on wards and in the community and Mental Health Act administrators have to give information about IMHA to all qualifying patients as soon as practicable. Research has shown that less than half of those qualifying for an IMHA appear to be accessing them. The adoption of an open access policy may help address this issue. This summary and flowchart provide the essential information needed to implement an open access policy. Open access means qualifying patients are automatically referred to IMHA services unless they object. This approach has implications for IMHA service capacity and resourcing which need to be addressed locally and are beyond the scope of this briefing. Open access also raises some issues around consent and confidentiality. Some mental health NHS trusts, in partnership with advocacy services and commissioners, are already operating an open access process and this protocol draws on their experiences in overcoming practical difficulties around consent and confidentiality.

This summary of how to implement an open access process for IMHA services should be considered in conjunction with the Improving Open Access to IMHA flowchart.

Qualifying patients

Most patients detained under the Mental Health Act 1983 are eligible to access Independent Mental Health Advocate (IMHA) services. A list of qualifying patients and more

information can be found in chapter 6 of the Mental Health Act: Code of Practice (2015).

Statutory duty

It is a statutory duty under Section 132 of the Mental Health Act 1983 (MHA) for mental health NHS trusts to take all practicable steps to ensure all detained patients are given both general and specific information. This includes information about the role of the IMHA and how to contact this service.

Key information for qualifying patients

The following information is what qualifying patients need to know in order to make an informed choice about getting support from an IMHA:

- Your advocate will be qualified and is independent from the mental health services.
- They will listen to you in confidence.
- Your advocate can tell you about the Mental Health Act, and how it applies to you.
- They can tell you what your rights are and help ensure your views are listened to.
- Your advocate can speak on your behalf if you give them permission to do this.
- Your advocate can see records relating to your detention, treatment or after-care – if you give consent.
- Your advocate can put you in touch with other services that can help you, such as legal and welfare rights advice.
- Seeing an advocate from the IMHA service does not stop you consulting a lawyer if you want to exercise your right to appeal to a managers hearing and/or a tribunal.

Information about IMHA should be provided in accessible formats and given verbally, in written forms and (if available) in video format.

Pathways and choices

Mental health staff must take whatever steps are necessary to ensure qualifying patients understand the support that IMHAs can provide and how they can obtain it.

After informing qualifying patients of their right to IMHA, this should be recorded formally (see below). There are two main pathways:

A] They would like an IMHA. Tell them that you will give their name and contact details to the IMHA service and someone from that service will contact them (within a specified timeframe) **OR** if they want to contact the advocacy service themselves they can be supported to do so.

B] If they do not want IMHA service, staff will not pass on their details (name and ward or community team) and will make sure an advocate **does not** come to see them. If they decide to change their mind at any time, staff will make an introduction as in A above. After being introduced, people can decide to stop seeing an advocate at any time as in B above.

Capacity and reporting

It is important that staff assess each person's capacity to make an informed choice to receive support from an

IMHA. Under section 130 of the 2007 Act, IMHAs can provide non-instructed advocacy for individuals assessed as lacking capacity where a decision has been made that having an advocate is in the person's best interest.
Mental Health Act administrators should give a weekly report to the advocacy service of qualifying patients (names and ward or community team), excluding the names of those who have objected to automatic referral.

The right to confidentiality of those who object to a referral must be respected at all times.

Staff should be trained in assessing capacity, and giving and recording information.

Mechanisms for regular monitoring of how the open access system is operating should be in place between mental health services and advocacy providers and commissioners.

Staff should complete a form that records the conversation with qualifying patients which should be used to support referrals to the IMHA provider. This form should record the following information:

- Patients right to an IMHA discussed, Open Advocacy explained and written information provided **YES/NO**
- The patient is assessed as having capacity to make the decision, is fully informed and **OBJECTS** to the referral to the advocacy service **NO/YES** *(do not give details to the advocacy service).*
- The patient is assessed as having capacity, is fully informed to make the decision and does not object to referral to the advocacy service **YES/NO**
- The patient is assessed as not having capacity to make the decision. The rationale for the best interest decision to refer or not to the advocacy service has been recorded**. YES/NO**

Practice example
Lancashire County Council – A commissioner's perspective

The 'Right to be Heard' research highlighted difficulties for people in getting their voice heard in and benefit from their statutory right to Independent Mental Health Advocacy (IMHA). In April 2013, after the local authority became the lead commissioner for IMHA, and in partnership with Blackburn with Darwen Council, Lancashire Care NHS Foundation Trust and Advocacy Focus (advocacy provider), a new approach was established to ensure no patient was left without support to be heard through decisions around their care and treatment.

The partnership led to the alignment of reporting mechanisms and communication protocols to share data between the public and third sector, allowing a new system to auto-refer patients unless they chose to opt out. This increased the take-up of the IMHA service by 63 per cent for 2013/14. Lancashire Care NHS Foundation Trust also used innovative approaches to increase awareness of support for mental health through a new suite of podcasts. Due to the success of this model, Lancashire Care NHS Foundation Trust is considering extending this model as a pilot to older adults and secure mental health services and more people are benefiting from their right to be heard in mental health systems than ever before.

The below Flowchart for Open Access IMHA has been adapted from Lancashire Care NHS Foundation Trust Open Advocacy Protocol

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Flowchart for Open Access IMHA

Is the service user a 'qualifying patient'? This includes people:

- detained under the Mental Health Act 1983 (excluding s4, s5 or s135/136)
- subject to guardianship
- placed on supervised community treatment order (CTO)
- conditionally discharged,
- who are informal and being considered for Section 57 or 58A Treatment

If yes

Provide information about right to access IMHA support as soon as is practicable. Advise qualifying patients they will be automatically referred to the IMHA service unless they object.

If qualifying patient is assessed as having capacity to make the decision to access IMHA. Record

- If qualifying patient wants to contact the IMHA service directly. → Self-referral: Provide information and support self-referral
- If qualifying patient prefers staff to refer to IMHA service → Make referral: Provide details of name, contact details and confirm they are a qualifying patient.
- If qualifying patient objects to referral or 'opts out' → Do not make referral: Staff must regularly remind the qualifying patient of their right to IMHA and record they have done this

If the qualifying patient is assessed as **NOT** having capacity to make the decision to access IMHA. This must be recorded.

Record formally the best interests decision to refer to IMHA or not

If no → Do not make referral: Staff must regularly assess capacity and best interests rationale

If yes → Make referral: Provide details of name, contact details and confirm they are a qualifying patient.