Tees, Esk and Wear Valleys
NHS Foundation Trust

Public – To be published on the Trust external website

Independent mental health advocacy (IMHA)

Ref MHA-0013-v4.1

Status: Approved
Document type: Procedure

Contents

1 Purpose

This document informs practitioners:

- Which patients are eligible for an Independent Mental Health Advocate (IMHA)
- How those eligible patients should be informed of the IMHA availability
- The role of the IMHA
- The rights of the IMHA in fulfilling that role

Following this procedure will help the Trust meet its obligations to:

- Ensure that information about the IMHA service is communicated consistently
- Ensure that staff are aware of the IMHA role
- Ensure that staff assist the IMHA wherever possible

2 Related documents

- Code of Practice Mental Health Act 1983, TSO, 2015
- Mental Capacity Act Policy
- Section 132/132A procedure
- Independent Mental Health Advocates, supplementary guidance on access to patient records under section 130B MHA 1983
- Confidentiality and sharing information policy
- Requests for information: how to make them and what we do

2.1 Which patients are eligible for an IMHA?

IMHA services do not replace any other advocacy and support services that are available to patients.
They are intended to operate in conjunction with those services.

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

- Detained under the MHA (including patients on leave of absence), excluding sections 5(4), 5(2), 4, 135 and 136.
- Conditionally discharged restricted patients
- Subject to guardianship
- Community Treatment Order (CTO) patients

Informal patients are eligible if they are:

- Being considered for a treatment regulated by section 57 (neurosurgery for mental disorder or the surgical implantation of hormones to suppress the male sex drive)
- Under 18 and being considered for electro convulsive treatment (ECT)

Informal patients remain eligible until treatment is complete or it is decided they will not be given treatment for the time being.

2.2 What does an IMHA do?

Under the MHA, the role of the IMHA must include helping patients to obtain information about and understand:

- Their rights under the MHA
- The rights which other people (e.g. nearest relatives) have in relation to them under the MHA
- The particular parts of the MHA which apply to them (e.g. the basis on which they are detained)
- Any conditions or restrictions to which they are subject
- Any medical treatment they are receiving or might be given
- The legal authority for providing that treatment

The IMHA role includes helping patients exercise their rights which may include representing them and speaking on their behalf.

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.

In order to fulfil this role, IMHAs should:

- Have access to wards and units
- Be able to meet privately with the patients they are helping
- Be able to attend meetings between patients and the professionals involved in their care and treatment when asked to do so by patients

2.3 What rights does an IMHA have?

2.3.1 Access to the patient

An IMHA has the right to meet the patient in private.
This right is subject to the usual considerations around risk assessment and management and the safety of both the IMHA and the patient.

2.3.2 Access to professionals

IMHAs have the right to visit and speak to any person who is currently professionally involved with a patient's medical treatment, providing it is for the purpose of supporting that patient in their capacity as an IMHA.

The normal rules of patient confidentiality apply to conversations with IMHAs, even when the conversation is at the patient's request.

2.3.3 Access to records

Section 130B gives IMHAs the right to access records relating to a patient's detention or treatment or to any aftercare provided under section 117.

See section 6 - Standard operating procedure for IMHA access to health records for further information.

The records may be held in one or more of the following forms:

- Electronic Patient Records
- MHA documentation
- Paper files

IMHAs have a right of access to patients' records in defined circumstances:

Patients with capacity	Where the patient consents: • the IMHA can see any records relating to the patient's current detention or treatment • this includes records held electronically
Patients who lack capacity	Where the holder of the records believes it to be in the best interests of the patient: • the IMHA can see any records relating to the patient's current detention or treatment • this includes records held electronically

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

3 How does a patient get the support of an IMHA?

The support of an IMHA can be sought:

- By the qualifying patient at any time
- When a request is made by:
  - the nearest relative
  - an Approved Mental Health Professional (AMHP)
  - the Responsible Clinician (RC)

Whilst Section 130B sets out that an independent mental health advocate shall comply with any reasonable request made to him by any of the above, requests/referrals are usually made by nursing staff and IMHA Services accept requests/referrals from nursing staff.

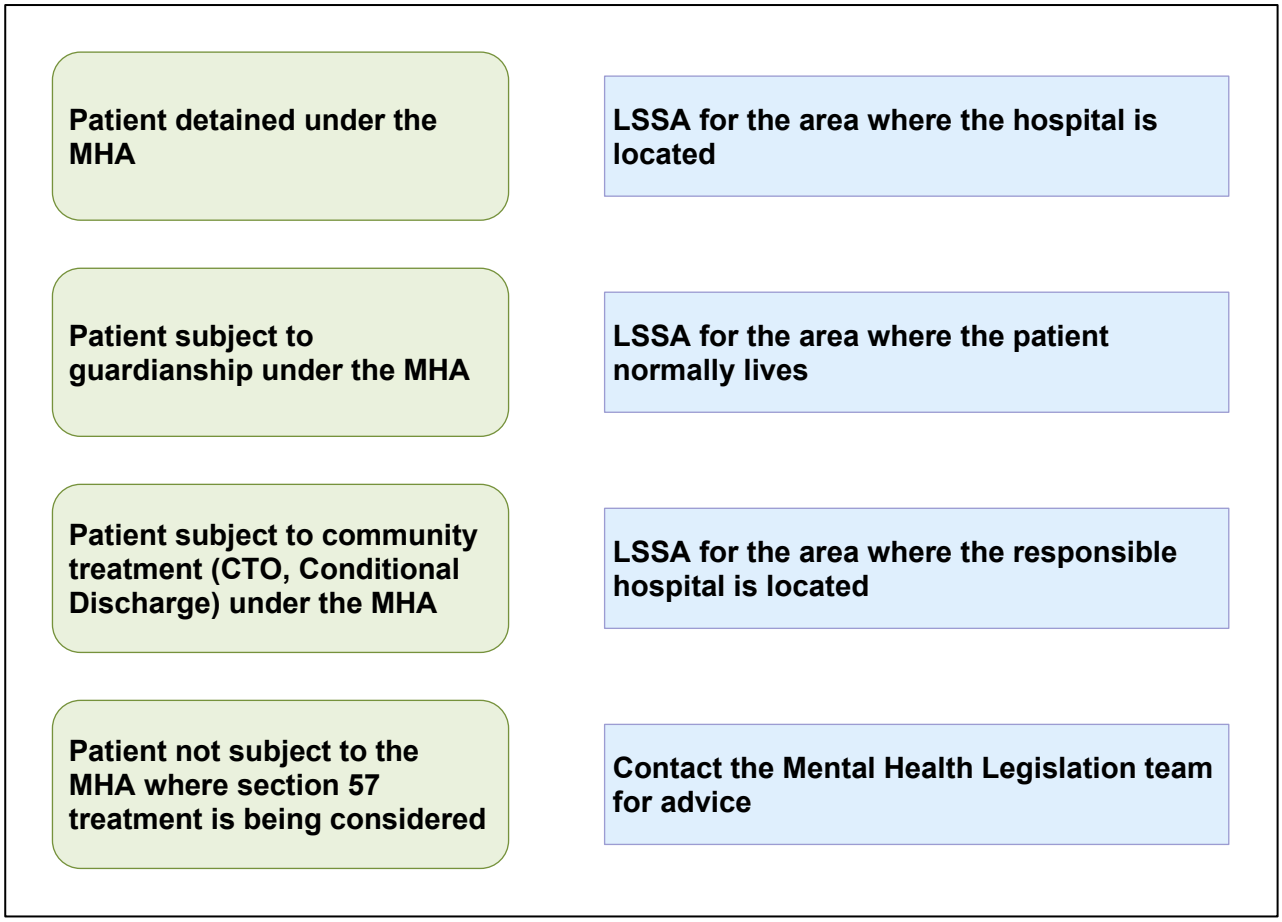
4.1 Opt Out Access

TEWV operates an 'opt out' process for access to the IMHA service. **All** eligible patients will be informed at the point where they are informed of their rights under section 132, both initially and on subsequent occasions, that they **will** be referred to the IMHA service **unless** they specifically **decline** the help available and **object** to a referral being made. This applies whether the patient has capacity or lacks capacity. This **must** be recorded on the Rights Form on admission and on subsequent reviews. An entry detailing the process and the outcome, ie accepted or declined, and actions taken, ie referral made, **must** be made in the **MHA progress note** within the electronic patient records. If a referral form is used, a copy of this **must** be retained within the care record, if not, the referral details **must** be captured within the electronic patient records.

4 Which IMHA service?

IMHA services are commissioned by Local Social Services Authorities (LSSAs).

- Current contact details for IMHA providers can be found on the trust website.
- Follow the diagram below to identify the correct LSSA



Chapter 6 of the MHA Code of Practice provides further information.

5 Standard operating procedure for IMHA access to health records

Under section 130B of the Mental Health Act 1983 (the Act), for the purpose of providing help to a qualifying patient, IMHAs may require the production of and inspect any records relating to a patient's detention or treatment in any hospital or registered establishment or to any after-care services provided for the patient under section 117 of the Act. IMHAs may also require the

production of and inspect any records of or held by, a local social services authority, which relate to the patient.

Anyone who refuses, without reasonable cause, to produce records that an IMHA has a right to inspect may be guilty of the offence of obstruction under section 129 of the Act.

5.1 Patients with Capacity

Where the patient has the capacity (or in the case of a child, the competence) to decide whether to consent to the IMHA seeing the records, the IMHA can only access the records if the patient has consented.

5.2 Patients without Capacity

Where the patient does not have the capacity or competence to consent to this disclosure:

Records must not be disclosed if that would conflict with a decision made in accordance with the Mental Capacity Act 2005 on the patient's behalf by a donee of lasting power of attorney or a 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.

In this latter case, the MHA CoP advises that 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.

5.3 Access

Once it is established that the IMHA may access the record, and which specific information, IMHAs will be required to agree a date and time with the ward or the Care Co-ordinator which is mutually agreeable to both in order to facilitate this, bearing in mind any scheduled meetings such as Mental Health Tribunals which the IMHA may need access to the records prior to.

A qualified member of the ward team, or the Care Co-ordinator for a community patient, will either log in and navigate the electronic patient record allowing the IMHA to view the relevant information, or print off the relevant information, such as a progress note summary, to give to the IMHA to view or take away dependant on what the patient has consented to. Where the record is a paper document, e.g. MHA documents, the IMHA may be allowed to view the documents or be given copies, again dependant on what the patient has consented to.

6 Definitions

Term	Definition
Informal patient	Someone who is being treated for a mental disorder and who is not detained under the MHA. Also sometimes known as a voluntary patient.
Detained Patient	A patient who is detained in hospital under the MHA, or who is liable to be detained in hospital but is (for any reason) currently out of hospital.
Liable to be detained	Broadly speaking, a patient is liable to be detained if they either are, or could be, detained in hospital because a specific authority for that is in force in respect of them. It includes patients who are on leave of absence or who are absent without leave. Patients who have been conditionally discharged are not liable to be detained, neither are Community Patients, they are liable to recall.
Community Treatment Order	The legal authority for the discharge of a patient from detention in hospital, subject to the possibility of recall to hospital for further treatment for mental disorder, if necessary.

7 How this procedure will be implemented

- This procedure will be published on the Trust's intranet and external website.
- Line managers will disseminate this procedure to all Trust employees through a line management briefing.
- This procedure will be cross referenced in the Trust's Mental Health Legislation E-Learning

7.1 Training needs analysis

Staff/Professional Group	Type of Training	Duration	Frequency of Training
All clinical staff	E-Learning	Incorporated into MHL e-Learning package which is completed by all clinical staff	Every 2 years.

8 How the implementation of this procedure will be monitored

Auditable Standard/Key Performance Indicators		Frequency/Method/Person Responsible	Where results and any Associate Action Plan will be reported to, implemented and monitored; (this will usually be via the relevant Governance Group).
1	Referral for IMHA services is identified at point of completing 132 rights. Completion of rights forms is monitored by MHL department	Report on incomplete or delayed rights is collated monthly by MHL department	Reported to MHLC on a quarterly basis.

9 References

Code of Practice Mental Health Act 1983, TSO, 2015

Independent Mental Health Advocates, supplementary guidance on access to patient records under section 130B MHA 1983

10 Document control (external)

To be recorded on the policy register by Policy Coordinator

Date of approval:	31 August 2023	
Next review date:	01 April 2024	
This document replaces:	MHA-0013-v4	
This document was approved by:	Name of committee/group	Date
	Mental Health Legislation Committee	31 August 2023
This document was ratified by:	Name of committee/group	Date
	n/a	n/a
An equality analysis was completed on this document on:	21 January 2021	
Document type	Public	
FOI Clause (Private documents only)	n/a	

Change record

Version	Date	Amendment details	Status

3	12 June 2018	Minor changes, reflecting change to procedure template, appendix incorporated into body of document.	Withdrawn
3	08 July 2020	Links to InTouch removed. Review date extended by six months to 12 Jan 2022.	Withdrawn
4	21 Jan 2021	Process for IMHA referral changed to opt out system. Procedure template updated.	Published
4.1	31 August 2023	Sections 2.3.3 and 4.1 have had “PARIS” replaced with “electronic patient record” in readiness for the implementation of Cito. Section 4.1 replaces references to 132a and 132b forms with Rights Form. (to be published when CITO system is live – published 07 Feb 2024)	Published

Appendix 1 - Equality Analysis Screening Form

Please note; The Equality Analysis Policy and Equality Analysis Guidance can be found on the policy pages of the intranet

Name of Service area, Directorate/Department i.e. substance misuse, corporate, finance etc.	Mental Health Legislation					
Policy (document/service) name	IMHA Procedure					
Is the area being assessed a…	Policy/Strategy		Service/Business plan		Project	
	Procedure/Guidance			X	Code of practice	
	Other – Please state					
Geographical area covered	Trust wide					
Aims and objectives	Ensure standard process across Trust for referral and access to IMHA services.					
Start date of Equality Analysis Screening (This is the date you are asked to write or review the document/service etc.)	Dec 2019					
End date of Equality Analysis Screening (This is when you have completed the equality analysis and it is ready to go to EMT to be approved)	January 2021					

You must contact the EDHR team if you identify a negative impact. Please ring the Equality and Diversity team on 0191 3336267/3046

1. Who does the Policy, Service, Function, Strategy, Code of practice, Guidance, Project or Business plan benefit?					
Trust staff Patients					
2. Will the Policy, Service, Function, Strategy, Code of practice, Guidance, Project or Business plan impact negatively on any of the protected characteristic groups below?					
Race (including Gypsy and Traveller)	No	**Disability** (includes physical, learning, mental health, sensory and medical disabilities)	No	**Sex** (Men, women and gender neutral etc.)	No
Gender reassignment (Transgender and gender identity)	No	**Sexual Orientation** (Lesbian, Gay, Bisexual and Heterosexual etc.)	No	**Age** (includes, young people, older people – people of all ages)	No
Religion or Belief (includes faith groups, atheism and philosophical belief's)	/No	**Pregnancy and Maternity** (includes pregnancy, women who are breastfeeding and women on maternity leave)	No	**Marriage and Civil Partnership** (includes opposite and same sex couples who are married or civil partners)	No
Yes – Please describe anticipated negative impact/s **No** – Please describe any positive impacts/s					

3. Have you considered other sources of information such as; legislation, codes of practice, best practice, nice guidelines, CQC reports or feedback etc.? **If 'No', why not?**	**Yes**	**X**	**No**	

Sources of Information may include: • Feedback from equality bodies, Care Quality Commission, Equality and Human Rights Commission, etc. • Investigation findings • Trust Strategic Direction • Data collection/analysis • National Guidance/Reports	• Staff grievances • Media • Community Consultation/Consultation Groups • Internal Consultation • Research • Other (Please state below)

4. Have you engaged or consulted with service users, carers, staff and other stakeholders including people from the following protected groups?: Race, Disability, Sex, Gender reassignment (Trans), Sexual Orientation (LGB), Religion or Belief, Age, Pregnancy and Maternity or Marriage and Civil Partnership

Yes – Please describe the engagement and involvement that has taken place

No – Please describe future plans that you may have to engage and involve people from different groups

5. As part of this equality analysis have any training needs/service needs been identified?					
Yes	Please describe the identified training needs/service needs below Training will be provided via elearning and is mandatory for clinical staff every 2 years.				
A training need has been identified for;					
Trust staff	Yes	Service users	No	Contractors or other outside agencies	No
Make sure that you have checked the information and that you are comfortable that additional evidence can provided if you are required to do so					
If you need further advice or information on equality analysis, the EDHR team host surgeries to support you in this process, to book on and find out more please contact the team.					