

Mental Health Law Briefing

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Solicitors

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Independent Mental Health Advocates II

As outlined in our previous briefing¹, the Mental Health Act 1983 was amended by the 2007 Act to include a new statutory Independent Mental Health Advocacy Service. This is to be introduced in England in April 2009 (having been introduced in Wales in November 2008).

The Department of Health have recently published a range of supporting legislation and guidance.

Pursuant to section 130A of the Act, the role of an IMHA is to be available to help qualifying patients. A “qualifying patient” is defined in section 130C and covers all those liable to detention under the Act except those detained via emergency short term detentions e.g. section 4. It includes patients covered by community treatment orders and those subject to guardianship, conditional discharge and those transferred from prison to hospital.

The Act imposes a duty on the managers of the hospital to ensure that patients understand that an IMHA is available (and a similar obligation is placed on local authorities in connection with guardianship).

The role of the IMHA will be to assist the patient in understanding:

- (a) the provisions of the Act which result in him being detained (or otherwise subject to that Act);

- (b) any conditions or restrictions to which he is subject;
- (c) what medical treatment is given to him or is proposed;
- (d) why this is given or proposed;
- (e) the authority under which the treatment is to be given;
- (f) the requirements under the Act which apply in connection with the giving of treatment;
- (g) the patient’s rights under the Act and the rights of his nearest relative;
- (h) help in exercising those rights.

To assist in undertaking this role the IMHA has the right to visit a patient in private, to interview the medical staff and (with patient consent) to see the patient’s medical and social services records.

The new regulations² explain who may be appointed as an IMHA. Such individuals must have appropriate experience and training, be of integrity and good character and be able to act independently as an advocate. The IMHA needs to act independently of any person who is professionally concerned with the qualifying patient’s medical treatment, and be able to act independently of any person who requests that person to visit or interview the qualifying patient. An enhanced CRB certificate must be obtained for any person who acts as an IMHA.

¹ Mental Healthlaw Briefing No 140

² Mental Health Act 1983 (Independent Mental Health Advocates) (England) Regulations 2008 SI 2008/3166 – available at www.opsi.gov.uk/si

The obligation to provide the IMHA service falls on the PCTs. They will commission IMHA services for qualifying patients but the regulations permit them to commission jointly or delegate commissioning to other PCTs, or as part of partnership arrangements with local social services authorities.

The issue that may arise, particularly in the private sector, is whether the obligation falls on the PCT commissioning the patient's placement or the PCT for the area where the hospital is located.

Guidance on this has been provided by NIMHE (see box in next column).

In broad terms, this means that the statutory duty to make arrangements for an IMHA to be available to help qualifying patients is in line with how the majority of PCTs' functions in relation to specialist mental health services are exercised. Normally, the PCT responsible for commissioning mental health care for a qualifying patient will also be responsible for ensuring that that patient has access to an IMHA.

Note, however, that the rules about responsibility for commissioning continuing care for people placed "out of area" (i.e. in accommodation in a care home, or independent hospital in the area of another PCT or a child placed in accommodation in the area of another PCT or Local Health Board) do not apply to IMHA services as IMHA services do not fall within the definition of continuing care.

Andrew Parsons
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Qualifying Patients	Responsible PCT
Qualifying patients registered with an English GP practice	PCT responsible for that GP practice
Qualifying patients not registered with an English GP practice, but who are usually resident in England	PCT for the area in which they are usually resident
Qualifying patients present in England who are not covered by either of the above (e.g. people who are usually resident outside England or who have no place of residence. This includes Scottish, Welsh and Northern Irish patients, as well as patients of foreign nationality)	PCT in whose area they are present
Qualifying patients in Wales not covered by any of the above, but who are treated as being in England for the purposes of IMHA services because they are liable to be detained in a hospital in England	PCT for the area in which the hospital is located

Deprivation of Liberty Safeguards

As you will know, the Deprivation of Liberty Safeguards come into force on 1st April 2009. It is clearly important to ensure that staff are aware of the new regime, in particular, to ensure that there is no unlawful detention (which could then lead to a claim for compensation).

To assist with this, we have prepared a policy for healthcare staff summarising the new law and setting out the steps that need to be taken. This is available for £950 plus VAT.

For more information on Mental Health Law contact Andrew Parsons at RadcliffesLeBrasseur on 020 7222 7040, or email andrew.parsons@rlb-law.com

Out of office emergency advice available 24hrs on 07802 506 306.

Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.

Future editions can be received by email. Please e-mail: marketing@rlb-law.com or telephone 020 7227 7476.