



### Access to Patient Records by Independent Mental Health Advocates

The new statutory scheme for Independent Mental Health Advocates (IMHA) came into force in April 2009. Clearly an effective advocate needs access to information and the Department of Health has recently issued guidance on access to patient records under Section 130B Mental Health Act 1983. Section 130B provides that an IMHA may require the production of and inspect records relating to a patient's detention or treatment and social services records. However, where the patient has capacity, the IMHA can only access the records if the patient has consented.

Where the patient lacks capacity, the records must not be disclosed if consent is refused by the holder of a Lasting Power of Attorney or a deputy appointed by the Court of Protection. Otherwise, where patients lack capacity, the records should be disclosed to the IMHA if this is appropriate and the records are relevant. Refusing disclosure without a reasonable cause can be a criminal offence under Section 129 of the Act.

However, to what extent may the IMHA see information that the patient himself has no right to see and may the IMHA share that information with the patient?

The issue arises because under the Data Protection Act 1998 there are circumstances in which information may be withheld from patients .

However, those restrictions do not expressly apply to IMHAs.

The Department of Health have now issued guidance on this situation. In summary:

- IMHAs must not pass on information which would not have been disclosed to the patient because of the risk of serious harm to the patient or a third party.
- Generally, IMHAs should not pass on information about or relating to third parties without their consent. However, disclosure will depend on the facts of any particular case and in some cases disclosure may be given.

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The Department of Health have issued detailed guidance on this complex issue but where an IMHA indicates that they wish to see information in records which would not be disclosed to the patient under the Data Protection Act, and that record includes third party information, it would be sensible to seek legal advice.

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June 2009

## Further Information

For further information on this or any other mental health issue, please contact Andrew Parsons in our Health department.

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### Disclaimer

This note is for guidance purposes only. RadcliffesLeBrasseur accepts no responsibility or liability whatsoever for any action taken in relation to this note and recommend that appropriate legal and taxation advice be taken having regard to a clients own particular circumstances.

For further information please contact the head of our Healthcare Department, Andrew Parsons, for further information: [andrew.parsons@rlb-law.com](mailto:andrew.parsons@rlb-law.com), 020 7222 7282

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