



ECAY6003: Advocacy: Maintaining Independence in Service Provision

Theme 2: Independence in Advocacy (Part 2) The Mental Health Sector



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Mental Health & Independent Advocacy In Wales

In the field of Mental Health Care in Wales there three forms of Advocacy provided by independent organisations, namely:

**Independent
Mental Health
Advocacy
(IMHA)**

**Independent
Mental Capacity
Advocacy
(IMCA)**

**Community
Advocacy**

What do you understand the differences between these to be?

Who provides these services in your Health Board area?

Group Research Activity: Advocacy in Mental Health

- Over the course of this Theme we consider and critically evaluate the three forms of independent advocacy provision on the previous slides
- Questions we will ask will include the two on the previous slide, namely:
- What do you understand the differences between these to be?
- Who provides these services in your Health Board area?

Group Research Activity: Advocacy in Mental Health

- Further questions we will consider are:
- Do they support the opinion that true independence exists?
- Do they support the opinion that true independence is designed into legislation and systems of care and support?
- Do they support the opinion that true independence is sustainable within current mental health frameworks?
- Can we define what we mean by 'true' independence?

Do you have any initial thoughts on these questions?

Qualifying for Mental Health Advocacy Services

- Statutory 'rights-based' Advocacy
- Rights established by the Mental Health Act 1983 and the Mental Capacity Act 2005
- Advocacy Providers funded and guided by contract for provision linked to Government Funding
- Controlled by Service Level Agreements
- Tender bidding process for contracts



An Advocacy Provider's view

'Although we would like our advocacy to be available to as many people as possible, our services have certain limits which prevent us from working with all those who may want or need an advocate'.

([Advocacy Support Cymru, 2021](#))

- Who are Advocacy Support Cymru?
- What do we need to take into consideration when using them as a source?
- What limits might they be talking about?



Independent Mental Health Advocacy (IMHA): Government Guidance

- Users of mental health services can experience difficulty negotiating with mental health professionals and ensuring that their own point of view is acknowledged.
- These difficulties apply both to the practical activities of daily life as well as help with their mental health problems.
- Service users sometimes have insufficient information about their mental ill-health and the various alternatives which may be available to them in relation to their treatment and care.
- Advocacy seeks to address this imbalance by ensuring that the service user's voice is heard, that they are able to make informed choices, and that their rights are safeguarded.

([Welsh Government. 2011, p.3](#))

Any thoughts on these statements?



Independent Mental Health Advocacy (IMHA): Government Guidance

Professional or representational advocacy

- The model of advocacy discussed in relation to independent mental health advocacy services is that of independent professional or representational advocacy.
- In this model, advocates have paid employment with an independent advocacy service.
- Advocates may support individuals or groups, but their support will be time-limited and focused on dealing with specific issues or problems.
- Wherever possible, advocates will support individuals to develop the skills and confidence to advocate for themselves, but when asked to do so, advocates will represent the views of those they are supporting.

(Welsh Government. 2011, p.4)

Any thoughts on these statements?



Independent Mental Health Advocacy (IMHA): Government Guidance

Professional or representational advocacy

The reasons why this model of advocacy is appropriate for independent mental health advocacy provision are:

- Advocates will be paid employees;
- Advocates will be required to complete specified training and undertake continuous professional development;
- Advocates will maintain a clear focus on the advocacy task;
- Advocates will be held accountable to their manager for delivering advocacy to agreed policies and procedures and to an agreed code of practice (if one is in place);
- Advocates will be required to attend supervision and undergo regular appraisal. (Welsh Government, 2011, p.4)



Independent Mental Health Advocacy (IMHA): Government Guidance

Instructed and non-instructed advocacy



Instructed advocacy

- Wherever possible, advocates will take instruction from the person that they are supporting.
- An advocate may help an individual to obtain information, explore options and carry out action but, throughout this process, the advocate will be directed by the individual and only act on their behalf.
- The advocate's role is to make sure the wishes of the individual are expressed and heard.

(Welsh Government. 2011, p.4)

Any thoughts on these statements?



Independent Mental Health Advocacy (IMHA): Government Guidance

Instructed and non-instructed advocacy



Non-instructed advocacy

- However, advocates also work with people who are unable to express their wishes clearly, or at all, because of a lack of mental capacity to instruct, or communication difficulties of some kind.
- These people are often very vulnerable and in need of an independent presence in decision-making, to safeguard the wishes and feelings that they are unable to express.
- Historically, other people tend to make decisions on the behalf of such individuals, and although they may be surrounded by very skilled and caring professionals and members of their family, there is a risk that the individual's wishes and preferences will be overlooked.

(Welsh Government. 2011, p.4)



Independent Mental Health Advocacy (IMHA): Government Guidance

Non-instructed advocacy (contd.)

When in receipt of care and treatment, people who lack capacity can experience significant disadvantage. For example, they may lack the ability to:

- Refuse treatment;
- Engage with the development of their care plans;
- Decide who will be involved in delivering their care;
- Decide where and with whom they will live;
- Instruct other parties such as advocates, next of kin, solicitors etc in making decisions that affect them.

(Welsh Government. 2011, pp.4-5)



Independent Mental Health Advocacy (IMHA): Government Guidance

Non-instructed advocacy (contd.)

Some of the benefits of non-instructed advocacy are:

- Providing a safeguard against abuse of rights;
- Ensuring that services address every aspect of the person's care and treatment;
- Ensuring parity between people who can instruct advocates and those who cannot;

(Welsh Government. 2011, p. 5)



Independent Mental Health Advocacy (IMHA): Government Guidance

Non-instructed advocacy (contd.)

Advocates have developed a range of approaches to providing this non-instructed support which may involve:

- getting to know the individual over time and learning how to communicate with them;
- learning about their past;
- observation;
- scrutiny of case notes;
- talking with paid carers, families and friends

(Welsh Government. 2011, p. 5)



Independent Mental Health Advocacy (IMHA): Government Guidance

Potential Conflict between the role of an IMHA and an IMCA

- The Independent Mental Capacity Advocate (IMCA) created by the Mental Capacity Act 2005, is another form of statutory advocacy which protects people who lack capacity in specific situations.
- Importantly, not all qualifying patients with mental health problems who lack capacity will qualify for the IMCA service.
- Therefore, knowledge of the interface between the Mental Health Act 1983 and the Mental Capacity Act 2005 will be important both for IMCAs and IMHAs.

(Welsh Government. 2011, p. 5)

Independent Mental Health Advocacy (IMHA): Capacity and Instruction

- Instruction less complicated where the person has capacity
- Civil Procedure Rules (CPR) exist for those lacking the 'capacity to instruct'
- They allow an IMHA to provide 'Non-Instructed Advocacy' which can include
 - Communicating their wishes (as interpreted as being in their best interests)
 - Representing the individual's Rights (can be based on past wishes)
 - IMHA can make 'Best Interests' recommendations

(Ministry of Justice, 2021)

Independent Mental Health Advocacy (IMHA): Triggers for a 'non-instructed' approach

- Patient Unsettled, trying to leave and or refusing to engage
- No change for CPR over a prolonged period
- Mental Health worsening
- Change in treatment
- Family conflicts or disagreements

Independent Mental Capacity Advocacy (IMCA): Government Guidance

Non-instructed advocacy

- The majority of service users who access the IMCA service are people with learning disabilities, older people with dementia, people who have an acquired brain injury or people with mental health problems.
- But IMCAs also act when people have a temporary **lack of capacity** because they are unconscious or barely conscious whether due to an accident, being under anaesthetic or as a result of other conditions.

([Office of the Public Guardian](#) [OPG], 2007, p.8)



Independent Mental Capacity Advocacy (IMCA): Government Guidance

Non-instructed advocacy

- Many have significant barriers to communication and are unable to instruct the advocate themselves. In addition, many people using the service will be unable to express a view about the proposed decision.
- A non-instructed advocate will always attempt to get to know the person's preferred method of communication and spends time finding out if a person is able to express a view and how they communicate. IMCAs are experienced at working with people who have difficulties with communication.

(OPG, 2007, p.8)



Independent Mental Capacity Advocacy (IMCA): Government Guidance

Non-instructed advocacy

- “Non-instructed advocacy is taking affirmative action with or on behalf of a person who is unable to give a clear indication of their views or wishes in a specific situation. The non-instructed advocate seeks to uphold the person’s rights; ensure fair and equal treatment and access to services; and make certain that decisions are taken with due consideration for their unique preferences and perspectives” Action for Advocacy 2006

(Action for Advocacy, 2006 *cited in* OPG, 2007, p.9)



Independent Mental Capacity Advocacy (IMCA): Government Guidance

Non-instructed advocacy

The key principles of non-instructed advocacy

- The client does not instruct the advocate.
- The advocacy is independent and objective.
- People who experience difficulties in communication have a right to be represented in decisions that affect their lives.
- The advocate protects the principles underpinning ordinary living which assumes that every person has a right to a quality life.

(OPG, 2007, p.9)



Independent Mental Capacity Advocacy (IMCA): Government Guidance

Lack of Capacity

- The Mental Capacity Act (2005) requires 'decision-specific' assessments of capacity.
- All staff and all unpaid carers can and should make assessments of capacity for simple decisions - such as whether someone can decide what to wear or eat.
- Of course the more serious the decision, the more formal the assessment of capacity should be.

(OPG, 2007, p.12)



Independent Mental Capacity Advocacy (IMCA): Government Guidance

Lack of Capacity

- A person is assessed as lacking the ability to make a decision, and needing an IMCA, if they cannot do one or more of the following:
- understand information given to them about the decision;
- retain the information for long enough to make the decision;
- use or weigh up the information as part of the decision making process; and
- communicate their decision (by any means, e.g. talking, sign language or blinking).

(OPG, 2007, p.12)



Independent Mental Capacity Advocacy (IMCA): Government Guidance

Lack of Capacity

- The assessment must be specific to the decision which needs to be made, for example, not a generic test of capacity. Whether and how such assessments are recorded may vary according to the seriousness of the decision made.
- An IMCA should be instructed for the specific decisions outlined on the next slide.

(OPG, 2007, p.12)



Independent Mental Capacity Advocacy (IMCA): Government Guidance

Lack of Capacity

An IMCA safeguards the rights of people who:

- are facing a decision about a long-term move or about serious medical treatment;
- lack capacity to make a specified decision at the time it needs to be made; and
- have nobody else who is willing and able to represent them or be consulted in the process of working out their best interests, other than paid staff.

(OPG, 2007, p.12)



Independent Mental Capacity Advocacy (IMCA): Social Care institute for Excellence (SCIE) Guidance

The Role of the IMCA

- The primary foci of IMCAs in safeguarding adults proceedings are the decisions concerning protective measures (including decisions not to take protective measures).
- IMCAs have a statutory role to represent and support the person at risk in relation to these decisions which must comply with the Mental Capacity Act (2005).

(SCIE, 2009)



Independent Mental Capacity Advocacy (IMCA): Social Care institute for Excellence (SCIE) Guidance

IMCAs have a particular responsibility to ensure that the person's feelings and wishes are represented in discussions concerning the protective measures. To do this they will need to:

- interview or meet the person if possible (see 'The IMCA 's contact with the person at risk')
- talk to professionals– paid carers and other people who can give information about the person's wishes and feelings, beliefs and values (see 'The IMCAs contact with family, friends and others').
- access relevant records (see 'Access to information').

(SCIE, 2009)



Independent Mental Capacity Advocacy (IMCA): Social Care institute for Excellence (SCIE) Guidance

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- interview or meet the person if possible
- talk to professionals— paid carers and other people who can give information about the person's wishes and feelings, beliefs and values
- access relevant records (see 'Access to information').

(SCIE, 2009)



Independent Mental Capacity Advocacy (IMCA): Social Care institute for Excellence (SCIE) Guidance

The IMCA's contact with the person at risk

One of the statutory rights of IMCAs is to meet the person where 'practical and appropriate'. When instructed for a person at risk there are a number of reasons why it may not be practical or appropriate to meet the person. These include:

- meeting the person could jeopardise any criminal investigations
- access to the person at risk may be denied by those people accused of abusing or neglecting them
- the IMCA may be putting himself or herself at risk by entering what may be an abusive environment.



Independent Mental Capacity Advocacy (IMCA): Social Care institute for Excellence (SCIE) Guidance

The IMCA's contact with family, friends and others

- The IMCA will want to speak to people who are not part of the safeguarding adults meetings to help identify what the person's views and wishes might be. This includes any family and friends, but also health and social care workers and other professionals.
- The MCA code of practice gives the responsibility of informing relevant people that an IMCA has been instructed to decision-makers. Good practice is for the safeguarding manager to communicate to anyone who needs to be aware of the safeguarding adults proceedings that an IMCA has been instructed to independently represent the person at risk. This may include family or friends.

(SCIE, 2009)



Independent Mental Capacity Advocacy (IMCA): Social Care institute for Excellence (SCIE) Guidance

The IMCA and Access to information

- IMCAs have a right to see, and take copies of, relevant records. This covers all health records, any record of, or held by, a local authority and compiled in connection with a social services function, and any record held by a person registered under Part 2 of the Care Standards Act 2000 (MCA Section 35(6)). It is for the person who holds the records to determine whether they may be relevant to the IMCAs role.
- For safeguarding adults instructions the IMCA will expect to be provided with copies of the alert form, strategy meeting minutes and reports produced as part of the safeguarding adults proceedings.

(SCIE, 2009)



Discussion Point

If a person lacks capacity, how easy is it for an independent advocate to know what is in their 'best interests'?



Community Advocacy

Powys Teaching Health Board (PTHB)

Community Mental Health Advocates

If you receive a secondary mental health service in Powys (e.g. Community Mental Health Services or Crisis Resolution Home Treatment Team Services) you can access the Powys Community Mental Health Service.

A Community Mental Health Advocate will:

- Assist with access to information
 - Help you to understand policies and procedures
 - Give support and representation with your issue
 - Ensure your voice is heard
 - Counteract inequality and discrimination
 - Treat you with respect and fairness
 - Listen to your concerns
 - Signpost you to local and national organisations for assistance and advice
- (PTHB, No Date)



Community Advocacy

Community Mental Health Advocates

- This form of Advocacy is probably the most complex of the three in this Theme.
- In some Health Board areas this service is contracted out to independent advocacy organisations (for example [Advocacy Support Cymru](#))
(ASC, No Date)
- However, in some Health Board areas it would appear that the services are provided by staff within the Health Board itself (for example [Powys Teaching Health Board](#))
(PTHB, No Date)

Any thoughts on these statements?



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