



Department of Health & Social Care

*From Stephen Kinnock MP
Minister of State for Care*

*39 Victoria Street
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By email to: MPs appointed to the Mental Health Bill Public Bill Committee

4 July 2024

Dear Colleagues,

I thank you for the constructive discussion held on the third day of the Committee Stage for the Mental Health Bill, on 17th June 2025.

I am pleased to follow up on the points I said I would address following the debate.

Independent Mental Health Advocates (IMHAs)

Concerns regarding the role of IMHAs in assessing capacity

Under schedule 3, an IMHA is required to interview qualifying patients with a view to determining whether the patient has the capacity or is competent to take a decision about whether to receive help from an independent mental health advocate.

When we engaged with IMHAs whilst developing this policy, they were comfortable that this is within their current skillset. As set out in the Code of Practice, IMHAs carry out both instructed and non-instructed advocacy (when a patient lacks capacity or competence to consent to being represented and supported by an advocate, but this is in their best interests). Currently, after receiving a referral, it is then up to the IMHA to determine whether an individual has the capacity to instruct them about a particular issue and whether to use an instructed or non-instructed approach for that issue.

In addition to the broader training and familiarisation required alongside the reforms for IMHAs, we will further clarify practice in the revised Code of Practice.

Exclusion of Emergency Section Patients

Patients detained under emergency sections (4,5,135,136) are not currently eligible for IMHA support and the Bill does not change this. This is because these are by their nature short-term detentions. These patients will be eligible for IMHA services once detained under a section 2 or 3. Patients subject to guardianship and community patients (subject to a community treatment order) are also eligible. Under the Bill, they will also be eligible for IMHA services if they become informally admitted.

Safeguards for Information Sharing

The requirement for a hospital manager to share written information about an informal patient's right to an IMHA with the nominated person is a reflection of the current right to do this with a nearest relative. The requirement is to share information about the right to an IMHA, not to share information about the patient. Hospital managers also have a duty to give information about the patient to the appropriate advocacy provider as part of the opt out process for detained patients. The information required will be set out in regulations made under section 130CC(4). Information sharing with respect to the nominated person more broadly is subject to the usual confidentiality and data protection rules and a patient can object to their nominated person receiving information.

Monitoring and Accountability

We are confident that uptake of IMHA services will increase as a result of introducing the opt out process.

IMHA services are commissioned by local authorities, and it is up to them to ensure that key deliverables are met, including sufficient provision of advocates to meet the needs of their populations.

IMHA services forms part of the CQC's Monitoring the Mental Health Act annual reporting. CQC reports on mental health hospitals also include IMHA services within their 'responsive services' rating.

Interaction with other types of advocacy

There are already a range of different statutory advocacy services depending on the status of the individual, for example Independent Mental Health Advocates, Independent Mental Capacity Advocates, Care Act advocates, and NHS complaints advocates. Local authorities and the NHS have a duty to ensure that they provide independent advocacy to qualifying individuals.

I hope this letter has provided further clarification on the issues raised in Committee. I am copying this letter to all members of the Committee and will place a copy in the library of the House.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Stephen Kinnock', is written over a light blue grid background.

STEPHEN KINNOCK