

## Advocacy and Suresearch

I am suggesting that Suresearch conduct a mapping exercise of advocacy services for people with mental health issues in their local area.

### Why?

**1** This exercise would enable us to use the strength of Suresearch membership across the west midlands. It would also mean we would have a data base of member's mental health trusts and local authorities.

**2** It could also serve as something we could put in our "shop window", that is our website, to show the type of work we can do.

**3** It may be possible to "sell" this exercise to a body (such as the Strategic Health Authority) once it is underway. However, I am not suggesting we try and get it commissioned before starting the exercise, mainly because of points **1** and **2**.

**4** It would be a very useful source of information that could be used by mental health service users/survivors, carers and allies.

I have been undertaking this task in Birmingham for the Birmingham LINK and it is amazing how much I have learnt in doing the work.

## Introduction

In June 2009 I volunteered to undertake a mapping exercise of advocacy services for people with mental health issues in Birmingham. This was carried out for the Birmingham LINK Mental Health Working Group. The report was completed in December 2009 .

There are four categories of advocacy services for people with mental health issues.

- Independent Mental Capacity Advocates (**IMCA's**). Established under Section 35 of the Mental Capacity Act 2005, came into effect April 2007. A related but different role is that of the Relevant Person's Representative (**RPR**) which was established in April 2009 as a result of the Deprivation of Liberty Safeguards (DOLS), Mental Health Act 2007 amendments to the Mental Capacity Act 2005.
- Independent Mental Health Advocates (**IMHA's**). Established under Section 130A-D of the Mental Health Act 1983, (as amended by the Mental Health Act 2007) came into effect April 2009.
- General mental health advocacy. This can be regarding any issue depending on the advocacy service. It may be: crisis; long term; citizen; peer, or group advocacy.

Only advocacy services that explicitly state that they include people with mental health issues as one of their target groups have been included in this exercise. This decision probably means some services that, because of

location or reputation, do provide significant advocacy to people with mental health issues are not included. However, this seemed the only way to keep the mapping exercise within a reasonable time scale and clearly focussed. I have not included services that only give advice. However, the line between some advice services and some advocacy services is a fine one. Again this decision was taken for both for pragmatic reasons of time and to try and keep a tight focus to the exercise.

- Legal advocacy. For people detained under the MHA 1983 solicitors (and others, including barristers) play a key advocacy role, at First Tier Tribunals (Mental Health), Reviews of Detention by Hospital Managers and in other legal proceedings. The Law Society has an accredited panel of solicitors and others who specialise in mental health law.

With both **IMCA's** and **IMHA's**, where certain criteria are met, there is a statutory duty to provide advocates. With general mental health advocacy there is a power to provide advocacy.

This report covers the first three of the above categories. Its findings are presented in two parts.

**Part One** provides an overview of the arrangements in Birmingham for each type of advocacy.

**Part two** summarises the advocacy arrangements in the independent sector, that is, registered establishments which can take patients detained under the Mental Health Act 1983.

## **Part one**

### **The IMCA and RPR services**

When a person is assessed as not having capacity to make a decision about serious medical treatment or a change of accommodation (including going to hospital for at least 28 days) and they do not have friends, family or unpaid carers able and willing to be consulted then an **IMCA** must be involved. Following the implementation of the Deprivation Of Liberty Safeguards (DOLS), introduced by the Mental Health Act 2007 as an amendment to the Mental Capacity Act 2005 (in April 2009), there is also an obligation to appoint an **IMCA** when a person lacking capacity does not have friends, family or unpaid carers able and willing to be consulted, and a deprivation authorisation is sought.

There must be a consideration of whether to call the **IMCA** when a person without capacity does not have friends, family or unpaid carers able and willing to be consulted when that person is having their residential placement reviewed, or when

there is an adult protection concern about somebody and either the subject or the alleged perpetrator is assessed as not having capacity.

Many of the early referrals were inappropriate, as they did not fit the categories for which **IMCA's** were able to operate (see the figures for Birmingham below from the First National Report on **IMCA's**). However the providers believe that the situation is improving as people become more familiar with the **IMCA** role

The "First National Report on the **IMCA** service April 2007-March 2008" gave the following figures.

Year total 7,336 referrals.

Of which 5179 were eligible and 2157 were ineligible (page 22).

Birmingham had a total of 126 referrals, of which 75 were eligible and 51 were ineligible.

According to the "Nature of Client's Impairment" breakdown, 658 or 12.7% had "mental health problems" while a further 1,919 or 37.1% had dementia (page 25). So presumably the former figure relates to so called "functional mental health problems". The total therefore is 49.8% of people referred had either "functional" or "organic" "mental health problems". Referrals for Birmingham from April 2008-March 2009 have almost tripled.

Following the implementation of the Deprivation Of Liberty Safeguards (DOLS) an amendment to the Mental Capacity Act 2005, by the Mental Health Act 2007, a new role has been established. This is the Relevant Person's Representative (**RPR**). This RPR can be paid or unpaid and has been described as "akin to an advocate", (Blackstone's Guide to The Mental Capacity Act 2005, Peter Bartlett, Oxford 2008, para 4.17).

## **The IMHA service**

Any service user who is detained under: Section 2; Section 3; Section 35; Section 36; Section 37; Section 38; Section 45A; Section 47; Section 48 or Section 51 of the Mental Health Act 1983, becomes a qualifying patient entitled to the **IMHA**. As are people on Section 7 (Guardianship), Section 17A (Community Treatment Orders) or conditionally discharged under Section 42, Section 73 or Section 74 MHA 1983. Informal patients also qualify if a Section 57 treatment is being considered or an informal patient under 18 years if Section 58A (ECT) treatment is being considered.

## **General mental health advocacy service**

This is commissioned both by the PCT's and the Local Authority.

## **Part two**

### **Independent Hospitals**

There are 4 independent hospitals in Birmingham that are registered with the Care Quality Commission and can take patients detained under the Mental Health Act 1983. They all state that they have an independent advocacy service.

**Alex Davis, December 2009**