

Independent Mental Health Advocates

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EXECUTIVE SPONSOR	Director of Corporate Affairs
POLICY AUTHOR	Mental Health Law Practice Development Manager

Key policy issues:

Policy and procedure to cover the statutory role of the Independent Mental Health Advocate (IMHA), including rights of certain groups of patients to receive support from the IMHA service and the responsibility of staff to refer certain groups of patients to the service.

If you require this document in another format such as large print, audio or other community language please contact the Corporate Governance Team on 01903 843041 or email policies@sussexpartnership.nhs.uk

CONTENTS

1.0	Introduction	3
1.1	Purpose of policy	3
1.2	Definitions	3
1.3	Scope of policy	4
1.4	Principles	5
2.0	Policy Statement	5
3.0	Duties	5
4.0	Procedure	6
4.1	Who is eligible for IMHA support?	6
4.2	Role of the IMHA.	6
4.3	Duty to inform qualifying patients about the availability of IMHA services	7
4.4	IMHA's access to the patients and professionals	8
5.0	IMHA's access to the patient's integrated health record	9
5.1	Information that should not be disclosed to the patient	9
5.2	Access to the integrated health records	9
5.3	Withholding information that may cause serious harm.	10
5.4	Third party information	11
6.0	When to refer to the IMHA service	11
7.0	Correspondence between patient and IMHA service	12
8.0	Development, consultation and ratification	12
9.0	Equality and Human Rights Impact Assessment (EHRIA)	12
10.0	Monitoring Compliance	12
11.0	Dissemination and Implementation of policy	12
11.1	Dissemination	12
11.2	Training	12
12.0	Document Control including Archive Arrangements	13
13.0	Reference documents	13
14.0	Cross Reference	13
15.0	Appendices	
	Appendix A – West Sussex/Brighton & Hove (MIND) consent form	14
	Appendix B – East Sussex (PoHWER) referral form	16
	Appendix C - East Sussex (PoHWER) consent form	17
	Appendix D – IMHA referral process (flowchart)	18
	Appendix E – IMHA access to notes process (flowchart)	19

1.0 INTRODUCTION

Section 130A provides qualifying patients the right to seek support from an Independent Mental Health Advocacy Service.

IMHAs are specialist advocates who have received training to work within the framework of the Mental Health Act ("the Act") to provide support to qualifying patients.

Guidelines within this policy apply to "qualifying patients" detained under the Act.

1.1 Purpose of Policy

This document outlines the right of qualifying patients to request an IMHA, the responsibilities of staff to refer for an IMHA, and the procedure to follow.

This policy will enable staff to:

- Understand the rights of qualifying patients to request IMHA support;
- Understand the role of the IMHA;
- Understand the duty to inform the patient about the availability of IMHA services;
- Understand when an IMHA must be given access to the patient's integrated health record;
- Understand when to refer a qualifying patient to the IMHA service;
- Contact their local IMHA service.

1.2 Definitions

AWOL	Absent without Leave
Capacity	<p>This is time and decision specific. The person is able to:</p> <ul style="list-style-type: none">- understand the relevant information;- retain the relevant information for long enough to make the decision;- weigh the information as part of the decision making process;- communicate their decision in any way.
Court appointed Deputy	A person appointed by the Court of Protection who is given decision making powers on behalf of a person who lacks capacity to make a decision.
ECT	Electro-convulsive therapy
IMHA	Independent Mental Health Advocate
Informal patient	A voluntary patient, not detained under the Mental Health Act.
Lasting Power of Attorney	Someone with Lasting Power of Attorney for Health & Welfare has the legal power to make decisions in the patient's best interests where the patient is assessed as lacking capacity to make that decision.

RC/AC	Responsible Clinician / Approved Clinician – the clinician in charge of the treatment of the patient. This need not necessarily be a doctor, but must be someone approved to act as an Approved Clinician.
Qualifying patient	<p>All patients detained under the Mental Health Act (see exceptions below), including those on section 17 leave, liable for detention or absent without leave.</p> <p>A qualifying patient includes patients subject to a conditional discharge, guardianship or a community treatment order.</p> <p>It does NOT include patients subject to sections 4, 5(4), 5(2), 135 or 136.</p> <p>A qualifying patient includes an informal patient who is being considered for a treatment to which section 57 applies.</p> <p>It also includes an informal patient who is under the age of 18 years who is being considered for ECT treatment.</p>
Nearest Relative	A person defined by the criteria set out in section 26 of the Mental Health Act. The nearest relative has specific rights and powers conferred on them.
Section 132 of the Mental Health Act	The patient's right to be advised both orally and in writing of their detention, the reasons for it, their rights of appeal and other support available to them.
Section 57 type treatment	Any surgical operation for destroying brain tissue or for destroying the functioning of brain tissue, and such other forms of treatment as may be specified by regulations made by the Secretary of State. The patient consent and a second opinion are required for this treatment to be given.
Section 58A type treatment	ECT treatment
Tribunal	Mental Health Tribunal

1.3 Scope of Policy

This policy applies to all clinical staff working within Sussex Partnership NHS Foundation Trust.

1.4 Principles

IMHA services support patients to exercise their rights and ensure they can participate in decisions that are made about their care and treatment. They do not replace any other advocacy or support services and work in conjunction with other services. They help qualifying patients to obtain relevant information and to understand their position including their rights and aspects of their treatment.

The Trust is committed to ensuring that all people accessing its services are treated with respect and dignity. This includes having regard to gender, race, disability, sexual orientation, marriage & civil partnership, gender identity, pregnancy & maternity, age and religion & belief.

This policy should not impact in any different way on different racial or ethnic groups, and care should be taken to ensure that the provisions are not operated in a manner that discriminates against particular racial or ethnic group. Similarly, the policy should not discriminate on grounds of gender and marital status and reasonable adjustments should be made.

Guidelines within this policy apply to all qualifying patients. Where a patient may have additional needs related to their religion, disability, gender, sexual orientation, marriage & civil partnership, gender identity, pregnancy & maternity, age, race and culture, staff should make reasonable adjustment when making assessment/decisions.

2.0 POLICY STATEMENT

This policy is to ensure compliance with the MHA 1983 and associated Code of Practice 2015.

Sussex Partnership staff will adhere to the legal requirements outlined in this document and will support qualifying patients in appointing an IMHA.

Staff will also ensure timely compliance with the process and procedures required to ensure IMHAs gain access to patient records within the timescales set at 5.2.7 and 5.2.8. below and in Appendices C and D.

3.0 DUTIES

Director of Corporate Affairs

To ensure a policy is in place outlining the circumstances in which visits to patients may be restricted.

General Managers / Lead Clinicians

Ensure that this policy and procedure is adhered to within their area of accountability.

Matrons, Ward Managers and Team Managers

To raise awareness of this policy with clinical teams.

Qualified nurses

To make themselves aware of the content of this policy.

Medical staff / Approved Clinicians

To make themselves aware of the content of this policy.

All doctors / approved clinicians and qualified nurses should have read and understood Chapter 6 (Independent Mental Health Advocates) of the Code of Practice.

4.0 PROCEDURE

4.1 Who is eligible for IMHA support?

The Act calls patients who are eligible for the support of an IMHA “qualifying patients”.

A patient is a qualifying patient, irrespective of their age, if they are:

- detained under the Act;
- liable to be detained under the Act, including those on leave of absence, or absence without leave (AWOL), or those for whom an application of court order for admission has been completed;
- conditionally discharged restricted patients;
- subject to guardianship; or
- patients subject to community treatment orders (CTOs).

In addition, other patients are considered to be “qualifying patients” if they are not detained (informal patients) and :

- are being considered for a treatment to which section 57 applies
- under 18 years of age and being considered for electro-convulsive therapy (ECT) or any other treatment to which section 58A applies.

For these purposes, detention does not include being detained:

- on the basis of an emergency application (section 4) until the second medical recommendation is received;
- under the “holding powers”, Sections 5(4) and 5(2); or
- in a place of safety under section 135 or section 136.

4.2 The role of the IMHA

The Act says that the support which IMHAs provide must include helping patients to obtain information about and understand the following:

- their rights under the Act;
- the rights which other people (e.g. the nearest relative) have in relation to them under the Act;

- the particular parts of the Act which apply to them (e.g. the basis on which they are detained) and which therefore make them eligible for advocacy;
- any conditions or restrictions to which they are subject (e.g. as condition of leave of absence from hospital, as a condition of a CTO, or as a condition of conditional discharge);
- any medical treatment that they are receiving or might be given;
- the reasons for that treatment (or proposed treatment), and
- the legal authority for providing that treatment, and the safeguards and other requirements of the Act which would apply to that treatment.

The IMHA can represent the patient and speak on their behalf, e.g. by accompanying them to review meetings or hospital managers' hearings.

IMHAs support patients in a range of other ways to ensure they can participate in the decisions that are made about their care and treatment, including by helping them to make applications to the Tribunal.

The involvement of an IMHA does not affect a patient's right (nor the right of their nearest relative) to seek advice from a lawyer. Nor does it affect any entitlement to legal aid. IMHAs may, if appropriate, help the patient to exercise their rights by assisting patients to access legal advice and supporting patients at Tribunal hearings.

4.3 Duty to inform qualifying patients about the availability of IMHA services

Set out in the following table are people who have a duty to take whatever steps are practicable to ensure that patients understand that help is available to them from IMHA services, and how they can obtain that help, as set out in the following table.

Type of patient	Steps to be taken by	When....
Detained patients (qualifying patients)	the qualified nurse advising the patient of their rights under s.132 (Rights Recording)	as soon as the patient becomes liable to be detained under a qualifying section.
Community patients (subject to CTOs)	the care co-ordinator advising the patient of their rights under s.132 (Rights Recording)	as soon as the patient becomes a community patient.
Conditionally discharged patients	the patient's responsible clinician	the patient is conditionally discharged
Informal patients	the doctor or approved clinician who first discusses with the patient the possibility of them being given the section 57 / 58A treatment in question	at the time of first discussion, and repeated as needed.

The person responsible for taking steps identified in the table above should be aware that certain patients within each of the patient "types" may need particular encouragement and assistance to seek the support of an IMHA. This would include people who lack or only have limited capacity (where an IMHA should be introduced to the patient – see para 6.0

below), have sensory impairments, are from minority ethnic communities, or are under 18 years of age.

The information must be provided to the patient both orally and in writing.

If the patient wishes to refer themselves to the local IMHA service, ward staff must ensure they are given every support to do so.

The IMHA information leaflet relevant to your local service provider, must be made available to the patient:

- MIND provide the IMHA services in West Sussex and Brighton & Hove.
- PoHWER provide the IMHA service in East Sussex.

Contact details and referral forms for local IMHA services can be accessed here:

<http://staff.sussexpartnership.nhs.uk/i-need-help-with/mental-health-act/patient-information-and-advocacy>

4.4 IMHAs access to patients and professionals

Patients should have access to a telephone on which they can contact the IMHA service and talk to them in private.

IMHAs must be able to:

- access wards and units on which patients are resident;
- meet with the patients they are helping in private, unless the patient objects or it is otherwise inappropriate (for example where the risk is too great);
- attend meetings between patients and the professionals involved in their care and treatment when asked to do so by patients.

When instructed by a patient, the nearest relative, an AMHP or the responsible clinician, an IMHA has the right to meet the patient in private.

IMHAs also have a right to visit and speak with any person who is currently professionally concerned with a patient's medical treatment, for the purpose of helping the patient as their IMHA.

Professionals should remember that the normal rules on patient confidentiality apply to conversations with IMHAs, even when the conversation is at the patient's request.

Professionals should be careful not to share confidential information with IMHAs, unless the patient has consented to the disclosure or the disclosure is justified on the normal grounds (see also chapter 10 of the Mental Health Act Code of Practice "Confidentiality and information sharing").

5.0 IMHAs' access to the patient's integrated health record

IMHAs have the right to access clinical or other records relating to the patient's detention or treatment in hospital, or relating to any after-care services provided to the patient, including records relating to the patient held by a local social services authority.

IMHAs are bound by common law duties of confidentiality in respect of such information. IMHAs must also ensure that, where applicable, they keep and use such information in accordance with data protection legislation.

In general, the IMHA should share information with the patient as part of their statutory duty to help and support the patient. The IMHA should not disclose information to the patient if there are legal reasons that would prevent this.

5.1 Information that should not be disclosed to the patient

- 5.1.1 Before IMHAs ask to see records which might include information that would not be disclosed directly to the patient, they should explain to the patient that such material might exist, and specifically ask the patient whether they consent to the IMHA seeing it. In doing so, they should explain to the patient that they will generally not be able to pass that information on, or even tell them that it exists.
- 5.1.2 IMHAs should tell the record holder whether they wish to see information that would not be disclosed directly to the patient.
- 5.1.3 The above describes the duty to inform patients of the IMHAs right to access information that must not be disclosed to patients and the responsibilities of the IMHAs in this regard. However, the IMHA service providers to Sussex Partnership NHS Foundation Trust have requested that they are only given access to information that would be made available to the patient and that they will not be requesting access to records that would be withheld from the patient.

5.2 Access to the integrated health records

- 5.2.1 Where the patient has capacity to consent and is consenting, the IMHA has the right to see the patient's clinical records. Written confirmation of the patient's consent must be provided on the IMHA service providers consent form and will include the reason(s) for requesting access to the records.
- 5.2.2 Where the patient lacks capacity to consent; the IMHA must be allowed access to the records, but only if the following criteria are applied:
 - the record holder must ask the IMHA to explain what information they consider to be relevant to enable them to provide support to the patient,;
 - the IMHA must explain why they consider it to be appropriate to have access to the records;
 - the record holder must believe it is appropriate that the records are relevant.

- 5.2.3 The MHA does not define what is meant by access being appropriate, so the record holder needs to consider all the facts of the case. However, the starting point should always be what is best for the patient and not (for example) what is most convenient for the organisation holding the record.
- 5.2.4 The consideration will therefore be whether the disclosure is in the patient's best interests. That decision should be taken in accordance with the Mental Capacity Act 2005 (or for children under 16, the common law), like any other decision in connection with the care or treatment of patients who cannot make the decision for themselves.
- 5.2.5 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.
- 5.2.6 The requested records will be made available to the IMHA as soon as is practicable and will normally be within 72 hours of the request for access being made. However, where the 72 hours includes a weekend and/or bank holiday(s) it may be necessary to allow further time for access to be arranged taking into account the restricted availability of relevant personnel during that period.
- 5.2.7 If it is believed that the records will not be available within 72 hours, this must be explained to the IMHA giving the reasons why and when they are expected to be ready. Any parts of the record that could be released more quickly should be made available and the rest of the records released to the IMHA as soon as possible thereafter.
- 5.2.7 Refusing disclosure without a reasonable cause is a criminal offence under section 129 of the Act.

5.3 Withholding Information that may cause serious harm

- 5.3.1 IMHAs' right of access to relevant records includes information which would have been withheld from the patient under the Data Protection Act 1998 where it may be considered to cause serious harm to the physical or mental health or condition of the patient or any other person, if shared with the patient.
- 5.3.2 The record holder must make the IMHA aware of any information that would have been withheld from the patient for this reason, so the IMHA knows what should not be disclosed to the patient.
- 5.3.3 Where the record holder has made the IMHA aware of information that would have been withheld from the patient because it may cause serious harm to the physical or mental health or condition of the patient or any other person, the IMHA must not disclose this information to the patient.
- 5.3.4 The above describes the legal right to access information that must not be disclosed to patients and the responsibilities of the IMHAs in this regard. However, the IMHA service providers to Sussex Partnership NHS Foundation Trust have requested that they are only given access to information that would be made available to the patient

and that they will not be requesting access to records that would be withheld from the patient.

5.4 Third party information

5.4.1 Where an IMHA is given access to information relating to, or provided by, another individual who can be identified from that information, i.e. a third party, IMHAs need to decide whether to disclose this to the patient, as they would with information from or about third parties they had acquired in any other way. In deciding that, IMHAs need to consider any third party rights to privacy or confidentiality that may arise.

5.4.2 Where the information relates to the patient but disclosure would also provide information relating to or provided by a third party, the IMHA should not disclose this information to the patient unless in the case of information from the patient's health records, the third party is a

- health professional who has compiled or contributed to the health records or who has been involved in the care of the patient;
- the third party gives their consent to the disclosure of that information; or
- it is reasonable in all the circumstances to dispense with that third party's consent.

5.4.3 In considering whether it is reasonable in all the circumstances to disclose the information, the IMHA should have regard to the following factors:

- any duty of confidentiality owed to the third party;
- any steps taken to try to get the consent of the third party;
- whether the third party is capable of giving consent; and
- any express refusal of consent by the third party.

6.0 When to refer a qualifying patient to the IMHA service

6.1 Responsible clinicians should consider requesting an IMHA to visit a qualifying patient if they think that the patient may benefit from an IMHA's visit but is unable, or unlikely, for whatever reason, to request an IMHA's help themselves. If a patient lacks capacity to decide whether to seek help from an IMHA, an IMHA should be introduced to the patient.

6.2 Before requesting an IMHA to visit a patient, they should, wherever practicable, first discuss the idea with the patient, and give the patient the opportunity to decide for themselves whether to request an IMHA's help.

6.3 Responsible clinicians should not request an IMHA to visit where they know, or strongly suspect, that the patient does not want an IMHA's help, or the help of the particular IMHA in question.

6.4 All assessments and decision making must be recorded in the patient's integrated health record.

- 6.5 Patients may refuse to be interviewed and do not have to accept help from an IMHA if they do not want it. Equally, a patient may choose to end the support they are receiving from an IMHA at any time.
- 6.6 Hospitals should not provide the IMHA service with a blanket list of all qualifying patients on the ward for the purpose of the IMHA service making a general visit. If a responsible clinician considers that a particular patient may benefit from IMHA support, they should follow the steps in paras 6.1 to 6.3 above. See paragraph 4.1 for a list of qualifying patients.

7.0 Correspondence between a qualifying patient and the IMHA service

Correspondence between a patient and an IMHA cannot be withheld under s.134 of the Mental Health Act.

8.0 DEVELOPMENT, CONSULTATION AND RATIFICATION

Policy and Procedure reviewed and amended by the Mental Health Act Services Team in consultation with operational teams and the IMHA service providers. To be ratified by the Professional Practice Forum.

9.0 EQUALITY AND HUMAN RIGHTS IMPACT ASSESSMENT (EHRIA)

The policy has been equality impact assessed in accordance with the Procedural Documents Policy.

10.0 MONITORING COMPLIANCE

Compliance with this policy will be monitored via the regular liaison meetings with the IMHA service providers and Sussex Partnership.

Key Performance Indicators to be set by the service providers.

11.0 DISSEMINATION AND IMPLEMENTATION OF POLICY

11.1 Dissemination

This policy will be uploaded onto the Trust website by the Governance Support Team. Publication will be announced via the Communications e-bulletin to all staff.

11.2 Implementation

Clinical staff who undertake the Responsible Clinician role must brief themselves on the content of the policy.

Ward Managers must ensure this policy is cascaded to qualified ward staff.

12.0 DOCUMENT CONTROL INCLUDING ARCHIVE ARRANGEMENTS

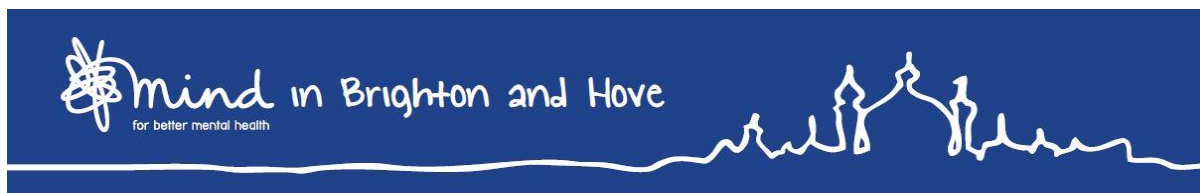
This policy will be stored and archived in accordance with the Trust Procedural Documents Policy.

13.0 Reference Documents

- Chapter 6 MHA Code of Practice 2015
- Chapter 34 – MHA Reference Guide
- IMHA Engagement protocol
- IMHA supplementary guidance on access to patient records under section 130B of the MHA 1983, Gateway reference 11715

14.0 Cross Reference

- Information for detained patients policy (Section 132)



CLIENT CONSENT FORM

I agree for Mind IMHA Service to advocate on my behalf ☐

Please specify and details

.....

.....

.....

.....

I agree to Mind IMHA Service receiving and keeping information about me ☐

I understand that Mind IMHA Service will share with me any information received ☐

I understand that Mind IMHA Service will not share information with anyone else without my permission unless I or someone else is at risk. I understand that where possible you will try to discuss this with me first. ☐

Signed _____ Date _____

Name

Address

.....

Phone number

For the purposes of data protection, the name of the Data Controller is: Sarah Danily,
Director of Mind in Brighton and Hove

Optional: Consent to access medical records

I give consent to the Mind IMHA Service to access the following
medical records on my behalf:

Please specify and details

.....

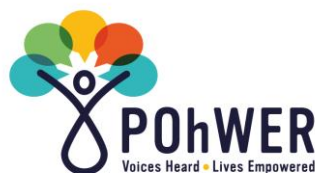
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.....

.....

Print name: _____

Signed: _____ Date _____



IMHA 3RD Party Referral Form

(Details on the IMHA role can be found in sections 130A – 130D of the Mental Health Act 1983 and chapter 20 of the MHA 1983 Code of Practice)

This form is for third parties, including professionals, carers and family members. Before requesting an IMHA to visit a patient, professionals should, wherever practicable, first discuss the idea with the patient, and give the patient the opportunity to decide for themselves whether to request an IMHA's help.

Patient Information

Name:	
Date of Birth:	
Permanent Address:	
Post Code:	
Telephone No.	

Where Is the Patient Currently Detained/Residing?

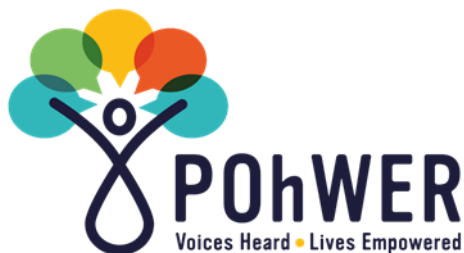
Ward:	
Hospital/Care Home:	
Address:	
Post Code:	
Telephone No:	

How Does the Patient Qualify for IMHA?

(Please tick✓ and provide relevant date)

The patient is detained under section 2 of the MHA 1983		Section start date:	
The patient is detained under section 3 of the MHA 1983		Section start date:	
The patient is detained under part 3 of the MHA 1983 ('forensic' / 'forensic restricted' patients) <i>(specify section with issue details below)</i>		Section start date:	
The patient is subject to a Community Treatment Order (CTO) under the MHA 1983:		Order start date:	
The patient is subject to a Guardianship Order under the MHA 1983:		Order start date:	
The patient is a voluntary / 'informal' patient who may be given Section 57 treatment under the MHA 1983			

For What Issue/s Is An IMHA Being Requested?



APPENDIX C

Consent Form / Advocacy Agreement

CLIENT NAME	
ADVOCATE NAME	

I give consent to POhWER the Advocacy Agency to undertake the following work and contact the following people on my behalf:

ACTION	DATE

I understand that all information that the advocate receives will be strictly confidential to POhWER and to me as POhWER's client.
Other parties will only see this information with my consent.
I will also see all information that the advocate receives on my behalf.

NAME	SIGNATURE	DATE

For more information about our Privacy Policy, please see our website:
<https://www.pohwer.net/privacy-data-protection-and-your-records>

Or contact our Information, Advice and Advocacy Support Centre on:
 Telephone: 0300 456 2780
 Email: helping@pohwer.net
 Post: **POhWER, PO Box 14043, Birmingham B6 9BL**

Referrals to the Independent Mental Health Advocacy (IMHA) service

Is the patient detained on a “qualifying” section of the Mental Health Act, ie Section 2, 3, 35, 36, 37, 47, 48 or subject to a conditional discharge, community treatment order or guardianship?

Is the patient an informal patient who is being considered for a treatment to which section 57 (treatment requirement consent and a second opinion) applies?

Is the patient an informal patient who is under the age of 18 years who is being considered for ECT treatment?

If YES – the patient must be advised of their right to seek support from an IMHA.

The IMHA information leaflet must be offered to the patient.

If NO – the patient is not entitled to IMHA support, but may wish to consider support from general advocacy services.

If patient wishes to request support from an IMHA – the ward staff must provide support for the patient to contact the IMHA.

If patient does not request support from an IMHA - the Responsible Clinician (RC) must consider whether the patient is unable to/it is unlikely that they will request IMHA support, or whether the patient lacks capacity to make a decision about IMHA support.

In this instance the RC must consider requesting an IMHA to visit the patient.

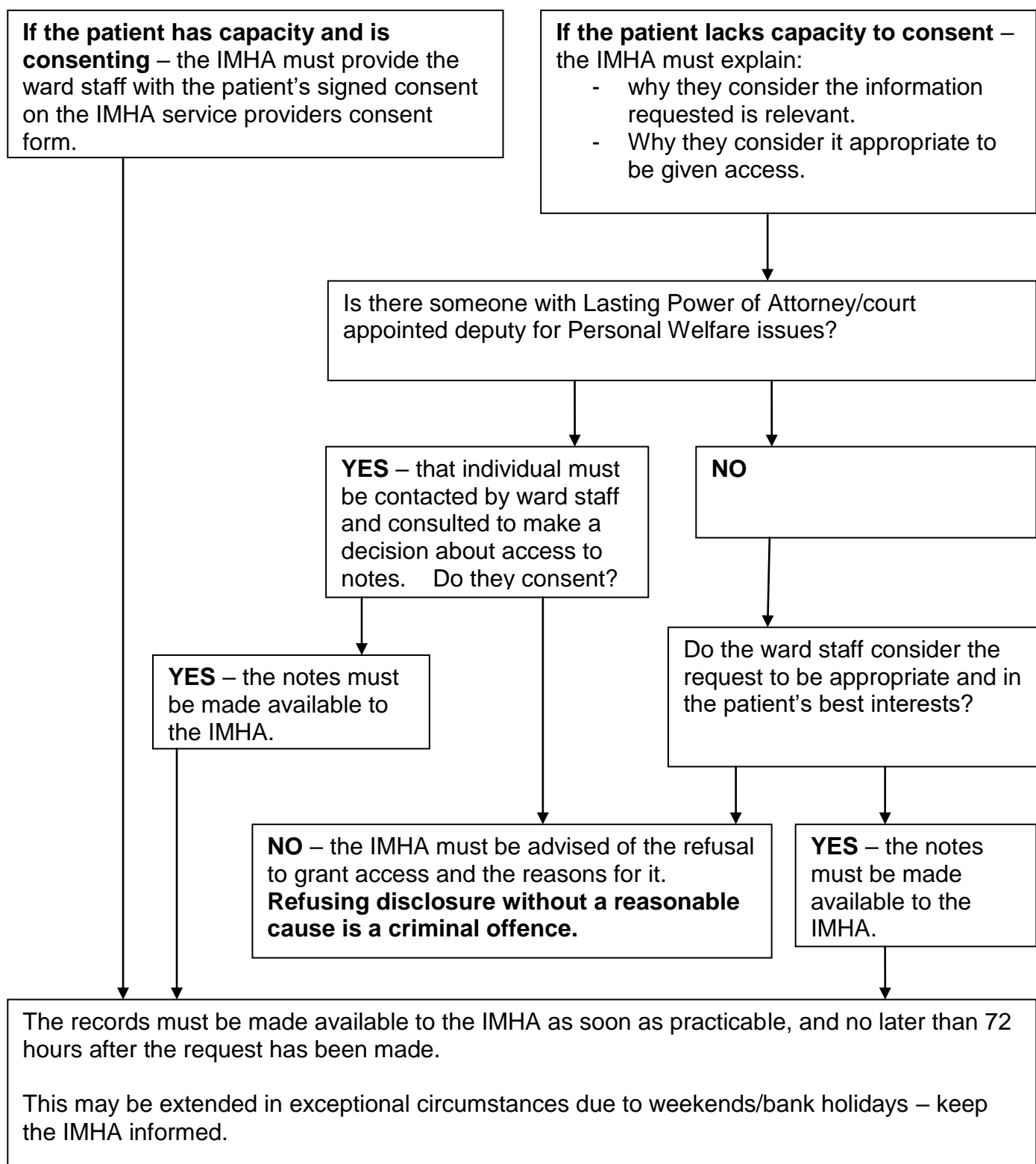
Note – before requesting a visit, the RC must first discuss the idea with the patient, where practicable and give the patient the opportunity to decide for themselves.

RC's must not request an IMHA where they know or strongly suspect that the patient does not want help from an IMHA.

Remember!

All discussions with the patient and decisions regarding the appropriateness (or not) of a referral to the IMHA service must be documented in the notes.

IMHA Access to notes

**Remember!**

IMHA service providers (Sussex) have requested that they are not given access to information that cannot be disclosed to the patient.