



INforMHAA: Interpreter-mediated Mental Health Act Assessments

Best practices for Approved Mental Health Professionals and Interpreters working together

Part 2. Context and key roles

Introduction

Part 2 of the guidance provides a brief overview in lay terms of the context of the Mental Health Act (MHA) 1983, MHA assessments (MHAAs), and roles associated with Approved Mental Health Professionals (AMHPs) and interpreters in conducting a MHAA. **It is particularly intended for interpreters new to working in this context** but may be helpful to AMHPs unfamiliar with working with interpreters to get a better understanding of the role of interpreters in this context.

The MHA and mental health interpreting

Even if an interpreter has experience of working in mental health settings, they may not have experience of working in assessments under the MHA and may not realise the significance of doing so. It is not just another mental health assignment. Rather, the MHA is the piece of legislation that is in place to allow, with appropriate safeguards, compulsory detention in hospital for



assessment and/or treatment if an individual is seriously mentally unwell and poses a risk to themselves or others, as further explained in Part 3. Although it is the AMHP's responsibility to make every effort to check whether the person could be admitted informally the consent of the individual is not required. It is a strong legal power. Consequently, working as an interpreter in this situation is a very serious undertaking as ensuring good communication between all parties will be vital to safeguarding the individual undergoing assessment and upholding both their rights and those of the state. As such, interpreters need to be aware of the weight of their role and familiarise themselves with the fundamentals of the legal framework and the sensitivity needed to work in this context.

Legal provisions, the MHA and interpreter use

The MHA and Code of Practice

The MHA requires that the interview of the individual that forms part of the MHAA is carried out in a "suitable manner" (Section 13(2) MHA, 1983, DoH 2015 para 14.49 p. 121). Guidance that accompanies the MHA, known as a Code of Practice, explicitly highlights the need to ensure appropriate communication for groups who might have difficulties in communicating effectively. There are separate Codes for England and Wales. In England, paragraphs 4.4 p. 36 and 14.42 p. 120 (DoH 2015) safeguards the rights of individuals whose first or preferred language may not be English and to prevent the possibility of unlawful detention based on ineffective communication during the assessment process. Reasons that someone might struggle to understand what is happening in a MHAA might include physical, sensory or cognitive disabilities or simply the fact that they use a different language.

The Equality Act 2010

Language use per se is not a protected characteristic under the Equality Act. However, the Act (see: <https://www.gov.uk/guidance/equality-act-2010-guidance>) states that it is a legal obligation on all service providers to implement measures or enact "reasonable adjustments" to prevent placing disabled individuals at a significant disadvantage. This is an anticipatory duty, meaning that provision must be made in advance of a need arising. Consequently, AMHPs can access established services that provide interpreters of all

languages, when required, in order to fulfil this duty. Race, religion or belief is also a protected characteristic under the Equality Act and will overlap with language provision in some cases.

British Sign Language (Scotland) Act 2015 and British Sign Language Act 2022

British Sign Language (BSL) is a protected language under the BSL (Scotland) Act and the BSL Act in England. Both Acts assert the right for deaf people to have access to services through BSL. AMHPs also have access to professional BSL interpreters when needed, in order to fulfil the obligation to conduct a MHAA in a suitable manner.

The Welsh Language (Wales) Measure (2011)

The Welsh Language (Wales) Measure 2011 states that the Welsh language has equal legal status with English and must not be treated less favourably. A strategic framework in Wales [More than just words \(gov.wales\)](https://gov.wales) published in 2016 provides recognition that use of Welsh language is not just a matter of choice but of need. It proposes the 'Active offer' whereby a service is provided in Welsh without having to ask for it.

Human Rights Act 1998

The Human Rights Act protects all individuals living in the UK including foreign nationals, refugees and asylum seekers and people detained in hospital. This also relates to people who are not English users, including deaf BSL users. Each right is referred to as an article. It is pertinent to the exercise of the MHA and the use of interpreters because, for example, *Article 2: The right to life* places a duty on the state to protect an individual who is at risk of suicide. *Article 5: The right to liberty and security* is superseded by detention under the MHA provided that detention is lawful.

Section 13G of the National Health Service Act 2006 (see: <https://www.legislation.gov.uk/ukpga/2006/41/section/13G/2013-10-25>) emphasises the need to reduce inequalities in access to health services and the outcomes achieved by those services. Inequalities arising from language use and lack of interpretation are covered by the Health and Social Care Act (2022) and National Health Service Act (2006).

Who is involved in a MHAA?

All MHAAs are coordinated by an AMHP and will usually involve two medical practitioners (sometimes referred to as Section 12 doctors after the part of the MHA that specifies their role and accredits them to perform it). An AMHP is also required to consult a Nearest Relative. In some instances, an assessment may be an emergency and the Police are involved too (See Part 3 Legal decision making). The MHA allows for the involvement of spoken and/or signed language interpreters to enable appropriate communication. It is a common error for AMHPs and other professionals to refer to interpreters as 'translators'. Interpreters generally deal with real-time communication, making on-the-spot decisions about how best to convey information between parties and represent each to the other (see Part 7 Types of interpreting). Translators generally work asynchronously having time to consider and edit their translations and typically work between written texts or written and signed texts, as opposed to between spoken languages, a spoken and a signed language, or between two signed languages.

The specific role and legal responsibilities of the AMHP and others is set out in the Brief introduction for interpreters and the Brief introduction for AMHPs. Here we emphasise:

- The role, responsibility and duties of the AMHP are prescribed under law. Consequently, the interpreter will be working with AMHPs to fulfil these to the best of their abilities.
- The rights, protections and safeguards of someone being assessed are prescribed under law. Consequently, the interpreter has a key role in ensuring these are fulfilled through ensuring good quality communication between all parties.
- The interpreter does not have a role in decision making within the assessment but can be very helpful to AMHPs in their decision making.
- Good quality interpreting within MHAAs and particularly within the interview component is a vital contributor to best outcome for the person being assessed.
- There should be parity in assessment under the MHA for people being assessed with the support of an interpreter and people for whom this is not required.

Interpreter's role in MHAAs

Interpreters facilitate communication between an AMHP (and other professionals), and a person assessed when they do not share a language. They must ensure that all information discussed is conveyed between all parties involved. Interpreters should minimise their input to the assessment and avoid influencing the conversation, focusing only on mediating the interaction between the AMHP and the service user. The interpreter monitors understanding and might interrupt a speaker/signer if clarifications are needed to support understanding. They do not advocate for the person being assessed. An AMHP may engage the interpreter to clarify points about the character of a person's communication or issues of cultural understanding. The interpreter may also advise the AMHP if they feel the person being assessed does not understand. This is discussed in Part 9 (Cultural sensitivities and cultural brokering).

Person-centredness in MHAAs

AMHPs often refer to the notion of 'the person at the centre' when undertaking their role and in particular the interview component of the MHAA. In interpreting, it is more common to refer to person-centredness which includes an emphasis on consent and lack of coercion, bias or undue influence. This does not apply in the same way in MHAAs which are statutory and can commonly include the detention of someone on a formal basis. Nonetheless, an individual's needs and preferences are at the forefront of an assessment, and it is within the interpreter's role to ensure that this occurs through providing good quality communication between parties.

Of particular note, is the role of the interpreter to ensure the 'voice' of the person being assessed remains clear throughout. This refers to their capacity to express themselves and their ability to communicate their thoughts, feelings, preferences, and wishes during the assessment process. The person assessed might feel like their 'voice' is diminished in these assessments, particularly if experiencing mental distress. The interpreter can play their part alongside the AMHP in ensuring they have every opportunity to be seen and heard during the assessment.

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