



## **Adult Social Care**

# **Independent Advocacy Practice Guidance**

**Version 5**

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## 1. Introduction

The [Care Act 2014](#) brought about a change of approach for people who have eligible social care needs, from primarily providing services to promoting people's individual wellbeing. This means understanding their views and involving them in every decision made about them. However, some people may struggle to be fully involved in important decisions about their lives and will need support. Where no appropriate support is available from within their informal support networks, it is essential that they have access to independent advocates to assist in this.

For the first time, the Act places a duty on local authorities to arrange an independent advocate to support a person in their assessment, in the preparation of their care and support plan, and in the review of their care plan. They will also be supported in safeguarding enquiries if the following two conditions are met:

*1. That if an independent advocate were not provided then the person would have substantial difficulty in being fully involved in these processes.*

*And:*

*2. There is no appropriate individual available to support and represent the person's wishes who is not paid or professionally engaged in providing care or treatment to the person or their carer." (page 113, Section 7.4, Care and Support Guidance).*

The role of the independent advocate is to support and represent the person and to facilitate their involvement in the key processes and interactions with the local authority.

This guidance intends to assist Adult Social Care workers to determine when an independent advocate will be required to support someone's involvement in their assessment, in the preparation of their care and support plan and in the review of their care plan, as well as in safeguarding enquiries.

## 2. Legal Context

The statutory duties and responsibilities around eligibility are set out in:

- [The Care Act 2014 \(Section 67 & 68\)](#)
- [Care and Support Statutory Guidance](#)

Links to other legislation are:

- [Mental Capacity Act 2005, \(amended 2007\)](#)
- [Mental Health Act 1983](#)
- [Children Act 1989](#)
- [Children and Families Act 2014](#)
- [Human Rights Act 1998](#)
- [Equality Act 2010](#)

## 3. Advocacy and the Duty to Involve

The Care Act (2014) requires local authorities to help people to understand how they can be

involved, how they can contribute and take part and sometimes lead or direct their care and support planning process. No matter how complex a person's needs, local authorities are required to involve people, to help them express their wishes and feelings, to support them to weigh up options, and to make their own decisions.

The duty to involve applies in all settings, including for those people living in the community, in care homes, hospitals and in prisons. Adult Social Care workers must form a judgment about whether a person has substantial difficulty in being involved with these processes and whether there is an appropriate person to support their involvement.

The Equality Act (2010) requires that reasonable adjustments should be made to ensure that disabled people have equal access to information and advice services. Provision of such adjustments, for example providing information in different formats, adjusting the pace of the assessment, taking time to explain processes to a person's carer, may reduce or remove a substantial difficulty a person may have in being involved.

The ultimate aim is for people's wishes, feelings and needs to be at the heart of the assessment, care planning and review processes. This also needs to be just as true for those who are the subject of a safeguarding enquiry or safeguarding adult review (SAR).

Once the need has been established for an independent advocate, they may support and represent the person with the following:

- a needs assessment under section 9 of the Care Act (2014)
- a carer's assessment under section 10
- the preparation of a care and support plan or support plan under section 25
- a review of care and support plan or support plan under section 27
- a child's needs assessment under section 58
- a child's carer's assessment under section 60 (therefore some people below 16 years of age)
- a young carer's assessment under section 63
- safeguarding under section 68

Independent advocacy under the duty imposed by the Care Act (2014) is similar in many respects to independent advocacy under the Mental Capacity Act (2005).

Regulations have been designed to enable independent advocates to carry out both roles. However, the duty to provide independent advocacy under the Care Act (2014) is broader and applies in a wider set of circumstances, providing support to people:

- who have capacity but have substantial difficulty in being involved in the care and support process
- in relation to their assessment and/or care and support planning regardless of whether a change of accommodation is being considered for the person
- in relation to the review of a care and/or support plan
- in relation to safeguarding processes (though independent mental capacity advocates may be involved if the authority has exercised its discretionary power under the Mental Capacity Act)

- who have someone who is appropriate to consult for the purpose of best interests decisions under the Mental Capacity Act (2005), but where that person is not able or willing to assist with advocacy in any other capacity

There are likely to be people who qualify for advocacy under the Care Act (2014) but not for an independent mental capacity advocate (IMCA). However, most people who qualify for independent advocacy under the Mental Capacity Act (2005) will also qualify for independent advocacy under the Care Act (2014).

Independent mental health advocates (IMHAs) are advocates who support people detained under the Mental Health Act (1983), whether they are in hospital or on a community treatment order. If someone has previously had access to an IMHA and is being jointly assessed by the NHS and local authority (often under what is called a care programme approach) they should continue to receive the IMHA's support.

Only those who do not retain the right to an IMHA should be considered for an advocate under the Care Act (2014).

To enable a person to receive seamless advocacy and not to have to repeat their story to different advocates, the same person can provide support in all three roles, provided they are trained and qualified to do so.

#### 4. Judging 'Substantial Difficulty' in Being Involved

Adult Social Care workers must consider for each person, whether they would have substantial difficulty in engaging with the local authority care and support processes.

The Care Act (2014) defines four areas in any one of which a substantial difficulty might be found, which are set out below.

The first area to consider is '*understanding relevant information*'. Many people can be supported to understand relevant information, if it is presented appropriately, at a pace that suits and if time is taken to explain it. Some people, however, will not be able to understand relevant information, for example if they have mid-stage or advanced dementia.

The second area to consider is '*retaining information*'. If a person is unable to retain information long enough to be able to weigh up options and make decisions, then they are likely to have substantial difficulty in engaging and being involved in the process.

The third area is '*using or weighing the information as part of the process of being involved*.' A person must be able to weigh up information, in order to participate fully and express preferences for a choice between options. For example, they need to be able to weigh up the advantages and disadvantages of moving into a care home or terminating an undermining relationship. If they are unable to do this, they will have substantial difficulty in engaging and being involved in the process.

The fourth area involves '*communicating their views, wishes and feelings*'. A person must be able to communicate their views, wishes and feelings whether by talking, writing, signing or any other means, to aid the decision-making process and to make priorities clear. If they are unable to do this, they will have substantial difficulty in engaging and being involved in the process.

For example, a person with mid-stage or advanced dementia, significant learning disabilities, a brain injury or mental ill health may be considered to have substantial difficulty in communicating their views, wishes and feelings. But equally a person with Asperger's may be considered, as may a frail older person who does not have any diagnosis but is confused as a result of an infection, or a person who is near the end of their life and appears disengaged from involvement and decision-making. Within this context, it is the person's ability to communicate their views, wishes and feelings which is fundamental to their involvement rather than the diagnosis or specific condition.

Equality and human rights issues need to be addressed as an integral part of your practice.

## 5. Judging an 'Appropriate Person' to be Involved

Adult Social Care workers must consider whether there is an appropriate individual who can facilitate a person's involvement in the assessment, planning or review process, and this includes four specific considerations. The appropriate individual **cannot** be:

- already providing care or treatment to the person in a professional capacity or on a paid basis
- someone the person does not want to support them
- someone who is unlikely to be able to, or available to, adequately support the person's involvement
- someone who wishes to provide advocacy, but the local authority believes there is a clear conflict of interest
- someone implicated in an enquiry into abuse or neglect or who has been judged by a safeguarding adult review to have failed to prevent abuse or neglect

The role of an 'appropriate individual' under the Care Act (2014) is potentially fuller and more demanding than that of an individual with whom it is 'appropriate to consult' under the Mental Capacity Act (2005). Under the Care Act (2014) the appropriate individual's role is to facilitate the person's involvement and help them to express their views, wishes and feelings not merely to be consulted about it.

Sometimes the local authority will not know at the point of first contact or at an early stage of the assessment whether there is someone appropriate to assist the person in engaging. As a result, an advocate may be appointed only for it to be discovered later that there is an appropriate person available. The appointed advocate can at that stage 'hand over' to the appropriate individual. Equally, it is possible that the local authority will consider someone appropriate who may then turn out to have difficulties in supporting the person to be involved in the process. At that point arrangements for an independent advocate must be made.

## 6. Exceptions

There are times when an independent advocate should be provided for a person who has substantial difficulty even though they have an appropriate individual (family member, carer, or friend) to support them. These are:

- where a placement is being considered in NHS-funded provision in either a hospital (for a period exceeding four weeks) or in a care home (for a period

of eight weeks or more), and the local authority believes that it would be in the best interests of the individual to arrange an advocate

- where there is a disagreement between the local authority and the appropriate person whose role it would be to facilitate the individual's involvement, and the local authority and the appropriate person agree that the involvement of an independent advocate would be beneficial to the individual

## 7. Supporting the Advocate

The local authority is expected to recognise that an advocate's duty is to support and represent a person who has substantial difficulty in engaging with the local authority processes. Adult Social Care workers must consider any representations made by an advocate. Adult Social Care workers must provide a written response to a report from an advocate which outlines concerns about how the local authority has acted or what decision has been made or what outcome is proposed. Adult Social Care workers should understand that the advocate's role incorporates 'challenge' on behalf of the individual.

Adult Social Care workers should take reasonable steps to assist the advocate in carrying out their role. For example, they should let other agencies know that an advocate is supporting a person, facilitating access to the person and to the records. They should propose a reasonable timetable for the assessment and the care and support plan (taking into consideration the needs of the person), and where the advocate wishes to consult family, friends or paid staff, the timetable should allow this. They should keep the advocate informed of any developments and of the outcome of the assessment and the care and support plan.

Adult Social Care workers may make reasonable requests to the advocate for information or for meetings both in relation to particular individuals and in relation to the advocate's work more generally, and the independent advocate should comply with these.

## 8. Continuing Health Care

The advocacy duty in the Care Act (2014) applies equally to those people whose needs are being jointly assessed by the NHS and the local authority, or where a package of support is planned, commissioned, or funded by both a local authority and a clinical commissioning group (CCG), known as a 'joint package' of care. The local authority which is carrying out the assessment, or review of the plan is responsible for considering whether an advocate is required. In the case of a person who is receiving care and support from one local authority and decides to move and live in another authority, the responsibility will move with the care and support assessment. For a person whose care and support are being provided out of area (e.g., residential home) it will be the responsibility of the authority in which the person is ordinarily resident to arrange any advocacy. Understanding of local communities may be an important consideration, so the advocate should wherever possible be from the area where the person is resident at the time of the assessment or review.

## 9. Availability of Advocacy Services

All local authorities must ensure that there is sufficient provision of independent advocacy to meet their obligations under the Care Act (2014). There should be enough independent advocates available for all people who qualify, and it will be unlawful not to provide someone

who qualifies with an advocate.

Cloverleaf Advocacy is the Independent Advocacy Provider in Derbyshire, delivering:

- Independent Care Act advocacy
- Independent Mental Health Advocacy
- Independent Mental Capacity Advocacy
- NHS Independent Complaints Advocacy
- Independent Non-Statutory advocacy

To access all Independent Advocacy provision, contact Cloverleaf Advocacy:

- download an [advocacy referral form](#)
- telephone: [01924 454875](tel:01924 454875)
- email: [referrals@cloverleaf-advocacy.co.uk](mailto:referrals@cloverleaf-advocacy.co.uk)
- visit: [advocacy support in Derbyshire](#)

## 10. Related Documents and Information

- Government website for [Care Act 2014](#)
- Government website for [The Care and Support Statutory Guidance](#)
- [Social Care Institute for Excellence](#)
- [Skills for Care](#)



## Approval and Authorisation History

### Approval and Authorisation History

Name	Job Title	Date
Approved by Phil Wall	Social Care Communicator	April 2015
Approved by Sharon O'Hara	Service Manager – Information	April 2015
Authorised by Quality Assurance Group		May 2017

### Change History

Version	Date	Name	Reason
Version 1	April 2015	Phil Wall	Introduction of new guidance due to Care Act (2014)
Version 2	May 2017	Sue Whetton	Updated contact details of new provider
Version 3	May 2019	Sue Whetton	Review. No changes required
Version 3a	December 2020	Sue Whetton	Review. No changes
Version 4	August 2023	Sue Whetton	Review. No changes
Version 5	April 2024	Sue Whetton	Contact details for Independent Advocacy provision added