

Care Act 2014

Independent advocacy under the Care Act 2014

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Advocacy and the duty to involve

Local authorities must involve people in decisions made about them and their care and support. No matter how complex a person's needs, local authorities are required to help people express their wishes and feelings, support them in weighing up their options, and assist them in making their own decisions.

When does the advocacy duty apply?

The advocacy duty will apply from the point of first contact with the local authority and at any subsequent stage of the assessment, planning, care review, safeguarding enquiry or safeguarding adult review. If it appears to the authority that a person has care and support needs, then a judgement must be made as to whether that person has **substantial difficulty** in being involved and if there is not an **appropriate individual** to support them. An **independent advocate** must be appointed to support and represent the person for the purpose of assisting their involvement if these two conditions are met and if the individual is required to take part in one or more of the following processes described in the Care Act:

- a needs assessment
- a carer's assessment
- the preparation of a care and support or support plan
- a review of a care and support or support plan
- a child's needs assessment
- a child's carer's assessment
- a young carer's assessment
- a safeguarding enquiry
- a safeguarding adult review
- an appeal against a local authority decision under Part 1 of the Care Act (subject to further consultation).

Judging 'substantial difficulty'

Local authorities must consider, for each person, whether they are likely to have substantial difficulty in engaging with the care and support process. The Care Act defines four areas where people may experience substantial difficulty. These are:

- understanding relevant information
- retaining information
- using or weighing information
- communicating views, wishes and feelings.

Who is an 'appropriate individual' to assist a person's involvement?

“If the person being supported doesn't want that person to support them, that's not an appropriate adult. You can't force an advocate on someone.”

Co-production workshop participant

Local authorities 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 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 is potentially fuller and more demanding than that of an individual with whom it is 'appropriate to consult' under the Mental Capacity Act (MCA). Under the Care Act the appropriate individual's role is to **facilitate** the person's involvement, not merely to consult them and make decisions on their behalf.

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. Alternatively, the local authority may agree with the person, the appropriate individual and the advocate that it would be beneficial for the advocate to continue their role, although this is not a specific requirement under the Care Act. Equally, it is possible that the local authority will consider someone appropriate who may then turn out to have

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difficulties in supporting the person to be involved in the process. At that point arrangements for an independent advocate must be made.

Information and advice

The Care Act places a duty on local authorities to ensure that all adults in their area have access to information and advice on care and support, and to keep them safe from abuse and neglect. Prior to making contact with the local authority, there may be some people who require independent advocacy to access information and advice. This need should be built into any analysis of demand that you make.

Continuing health care

The advocacy duty in the Care Act applies equally to those people whose needs are being jointly accessed 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. Historically this arrangement has often been difficult for people who use services, their carers and friends to understand and be involved in. Local authorities and clinical commissioning groups will therefore want to consider the benefits of providing access to independent advice or independent advocacy for those who do **not** have substantial difficulty and/or those who have an appropriate person to support their involvement. Effective joint commissioning arrangements would involve:

- dealing with the person holistically, providing a seamless service and avoiding duplication
- reducing communication breakdown
- the involvement of the person, their family and carers
- effective partnership working between health and social care, addressing needs together
- improved communication and continued care to achieve joint outcomes.

Independence

The independence of the service is an important consideration for all commissioners. For services to be meaningful and acceptable to those they are designed to support they must have the confidence of individuals, carers and the public. Anything compromising that independence could easily undermine confidence.

The Care Act regulations for independent advocacy are clear: providers of advocacy must be independent of the local authority, with their own constitution, code of practice and complaints procedure. Advocates under the Care Act will be managed by, and primarily accountable to, the advocacy organisation that recruits and employs them, thereby maintaining their independence from the local authority.

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:

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- 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.

Prisoners

From April 2015 local authorities will also be responsible for assessing and meeting the social care needs of adult prisoners (not just on discharge from prison but also while in custody). All prisoners will be treated as if they are resident in that area for the purposes of the Care Act and for as long as they reside in that prison. Prisoners will be entitled to the support of an independent advocate in the same circumstances as people in the community. You should therefore work with custodial managers to ensure there is a sufficient supply of advocates for this environment. Local authority areas containing prisons should build this into their plans for meeting the requirements of the Act.

Training

Once appointed, all independent advocates under the Act should work towards the National Qualification in Independent Advocacy (City & Guilds, level 3) within a year of being appointed, and achieve it in a reasonable amount of time thereafter. The qualification is competency-based. To successfully complete the four core units (301–304) candidates are required to provide evidence of real work practice.

In addition, given the role of the advocate under the Care Act and the close relationship with the Mental Capacity Act and independent mental capacity advocacy (IMCA), you may wish to encourage advocates to complete unit 305 (providing independent mental capacity advocacy) and unit 310 (Deprivation of Liberty Safeguards).

In addition to completing the Independent Advocacy qualification, providers should be expected to ensure that all independent advocates have access to further relevant training. This may cover:

- good practice in safeguarding adults
- non-instructed advocacy
- care and support planning (or person-centred planning)
- good practice in challenging decisions or the decision-making process effectively
- supported decision-making (how to effectively support an individual who is experiencing difficulty with decision-making).

For more detailed guidance, please see the [Care and Support Statutory Guidance](#).

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