

# Advocacy under the Care Act

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# Essentially, its promoting a person's voice

**Supported Decision  
Making**

**Representation**

**Practical Support**

**Self advocacy**

**Information**

**Choices**

**Listening**

**Protection of  
Rights**

**Promoting Wishes  
& Feelings**

# Essentially its promoting a person's voice

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# Advocacy under the Care Act

The duty to provide independent advocacy applies to:

- Adults who need care and support
- Carers of adults (including young carers)
- Children who are approaching the transition to adult services
- Carers of young people in transition

during the processes of assessment, care and support planning, care and support review, safeguarding enquires and safeguarding adult reviews

# Advocacy under the Care Act

But not everyone is entitled to an independent advocate. Two conditions must be met:

- The person has **substantial difficulty** in being fully involved within assessment, care and support planning and review or safeguarding **AND**
- There is no one appropriate and available to support and represent their wishes

# Substantial Difficulty

The Care Act defines four areas, in any one of which, substantial difficulty might be found. These are:

- understanding relevant information
- retaining information
- using or weighing up the information (as part of being involved in the key process)
- communicating their views, wishes and feelings.

# Appropriate to support?

The local authority must decide if the individual has anyone who can facilitate their *active* involvement within the decision making process.

It is not enough to know the person well, or to love them deeply, the role of the appropriate person is to support their active involvement.

People paid to offer care and support to the individual cannot undertake this role.

# Appropriate to support?

The following may be reasons a person is not appropriate to support:

- They don't know them very well
- They don't agree to offer this support
- They are not able to offer this support (they themselves could have a learning difficulty or dementia which prevents them from offering support)
- They are suspected of abusing the person)
- They are not able to help the person put forward their own view (they do not support the person to express their aspirations)
- The person does not agree to them offering support



# Offering advocacy

If the person is eligible, you **MUST** offer independent advocacy

- If the person has capacity, they decide
- If the person lacks the capacity to instruct an advocate, you must make a best interests decision

Question:

If you decide the person isn't eligible – how do you record this and support the person to challenge this if they disagree?

Is the person:

- an adult with care and support needs?
- a carer of those adults?
- a young person approaching transition?
- a carer of a young person approaching transition?

**AND**

Going through any one of the following processes?

- Assessment
- Care and support planning
- Review
- Safeguarding

**YES**

Is there a likelihood they have substantial difficulty in being fully involved in the process?

**YES**

Does the person have anyone appropriate to support them through the process?

**YES**

**NO**

Has the appropriate person agreed they are willing to take on the role AND  
Has the individual agreed they want them to provide this support?

Does the person have capacity to instruct an advocate?

**YES**

**NO**

**YES**

**NO**

Person chooses their *natural ally* (the appropriate person) to support them through the decision making process

Independent Advocacy **MUST** be offered

The LA must appoint an independent advocate if it is in the persons best interests

# Should advocacy be offered?



Frank is 64, single with no children. He lost contact with his family about 10 years ago. He has been a successful business man all of his running his own company. 5 years ago he developed Parkinson's which increasingly affects his mobility. He has had a series of serious falls and his communication is affected (he finds it difficult to write and speak clearly).

Frank has a positive relationship with his neighbour Mags. She tells the social worker 'He can't live like this any longer, he can't cope you know. I'm really worried he's not eating properly, he needs some help. He really needs to go into a care home now, that house is just too big for him to cope with'.

# Should advocacy be offered?

Quentin provides a lot of personal care for his wife Elizabeth (married for 45 yrs). Elizabeth has advanced dementia and has significant problems with memory. She can become very confused and frightened at times.

They have a joint personal budget which is being reviewed as Quentin has recently suffered a stroke which has impacted on his ability to care for Elizabeth. It has also affected his ability to process information.

They have a son, who strongly believes they both need to move into residential care and the house should be sold. He has voiced this very strongly and will consider nothing else.



# Should advocacy be offered?

Lindsay is 55. He is estranged from his wife and children and has no other family.

He is currently detained under s3 of the Mental Health Act however the mental health team have begun to arrange aftercare support under s117. He has been assessed as lacking the capacity to make decisions about where he can live and what package of care and support might be included within the aftercare support.



# Should advocacy be offered?

Jasper is 15 and helps care for his mother who has multiple sclerosis. He helps with shopping, cooking and cleaning around the house.

Jasper and his mother live on their own – there are no extended family. Jasper is a private young man and has 2 very close friends who occasionally call round to his house. Apart from his 2 friends, and two teachers, no-one else at school knows about his mum.

Jasper is very shy and finds it difficult to express himself – he tends to put his mother's needs first. His mother is having an assessment.



# The Advocacy Role

Independent advocates will offer support to the person in:

- Understanding processes
- Understanding rights
- Making decisions
- Communicating views, wishes and feelings
- Understanding plans
- Challenging decisions
- Accessing records

# Modern Context of Advocacy

Children and Adoption Act  
2002

- Right when making a complaint under the Children Act 1989

Mental Capacity Act 2005

- Duty to instruct to represent a person lacking capacity and unbefriended

Mental Health Act 2007

- Offers support to 'qualifying patients'

Deprivation of Liberty  
Safeguards (2009)

- IMCA instructed to represent a person subject to DoLS authorisation

NHS complaints

- Right when accessing and using the NHS complaint system

Care Act 2014

- Available to people who face substantial difficulty and have no-one appropriate to support

Non statutory advocacy

- Advocacy has a long tradition of supporting vulnerable or seldom heard groups (carers, people from BME groups, LD etc)



# When is an IMCA instructed?

The LA/NHS **must** consult the IMCA where

- a decision is being made about either serious medical treatment or long term moves **and**
- the person does not have capacity to make that decision **and**
- there are no family or friends appropriate to consult

The LA/NHS **may** consult an IMCA where the person does not have the capacity to agree to the arrangements for;

- accommodation reviews where there are no family or friends able to support and represent the person
- adult protection proceedings, for victim or alleged perpetrator regardless of family/friend involvement

# Advocate under the Care Act

Assessment

Planning

Review

Safeguarding

If any  
lead to:

Long term  
Change Of Accommodation

Deprivation of Liberty  
Safeguards

Independent Mental  
Capacity Advocate

Advocate under the  
Care Act

Independent Advocate

Independent Mental  
Capacity Advocate

Cecil is 72 and lives in his own home. He has dementia and the local authority are looking at his care needs. He has recently had a series of falls which have left him with physical injuries and there are concerns that he can no longer look after himself at home. He does not have any family or friends who can support him to make decisions about his care and support needs.

The Local Authority have arranged to complete an assessment of his care and support needs.

*If Cecil faces substantial difficulty at being involved within the assessment process and does not have anyone appropriate to support him, the Local Authority must offer him an Independent Advocate (under the Care Act).*

*The role of the advocate is to help Cecil understand and influence the assessment process.*

The assessment process establishes that Cecil has eligible needs for care and support that will be met by the Local Authority, including the option of Cecil moving out his home and into residential care. The social worker has also completed an assessment of capacity test and established that Cecil lacks capacity to make the decision on where he can live.

*The Independent Advocate offered under the Care Act will remain involved to help Cecil understand the outcome of the assessment and to participate within the development of his care and support plan.*

*If Cecil cannot clearly instruct his Independent Advocate on what he wants in his plan, the advocate will use Non Instructed Advocacy to gather information about Cecil's likely views, preferences and choices to inform the care and support plan.*

As there is now a decision on where Cecil should live – which may lead to a change of accommodation - and Cecil lacks the capacity to make the decision (and does not have any family or friends who can represent him in this decision), the social worker MUST instruct an IMCA to support and represent Cecil through the decision.

*The IMCA will focus exclusively on the change of accommodation decision, gathering information to produce a written report on what is important to Cecil and checking the decision making process is in line with the Mental Capacity Act.*

*It is possible for the same advocate to provide both IMCA and Care Act support.*

Following the submission of the IMCAs report, the decision maker (social worker) identifies that it is in Cecil's best interests to move into a care home that can meet his needs.

*The Advocate offered under the Care Act will remain involved to help and represent Cecil as the care and support plan is developed. This will include checking the plan meets Cecil's eligible needs in ways that are appropriate and person centred to Cecil and promote his wellbeing. The advocate will support and represent Cecil through the 6-8 week 'light touch' review of his plan and at every subsequent review.*

# Tips in working with advocates

Explain advocacy to people who could benefit

Refer... early

Know when there is legal duty to instruct an advocate

Respond to advocates' representations

Facilitate advocacy (space, time)



# Common myths

The advocate is the decision maker

The advocate can mediate or resolve differences or problems

The advocate can advise

The advocate can explain decisions

# Commissioning

- How to commission fluidly across advocacy provision
- Co-production
- Monitoring
- Anticipated increase in intake
- Equality (responding to people from groups with protected characteristics)

# Thank you!

Keep in touch:

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