

Briefing Note: Independent Advocacy under the Care Act 2014 - Care and Support Providers

Introduction

From 1 April 2015, the Care Act 2014 places a new duty on local authorities to provide access to independent advocacy to those who would have **substantial difficulty** in being involved in care and support ‘processes’ and have no appropriate individual(s) – carer, family or friend – who can support their involvement.

It applies to adults and also applies to children who are coming up to ‘transition’ to adult care and support from children’s services.

Under the Care Act, independent advocacy means a service that is independent of the local authority

When it applies

The duty to consider an independent advocate applies to a person’s involvement in care and support processes including:

- an adult’s needs assessment
- a carer’s assessment
- the preparation of an adult’s care and support plan or support plan
- a review of an adult’s care and support plan or support plan
- a child’s needs assessment as they transition towards adult care
- a child’s carer’s assessment (therefore some people below 16 years of age)
- a young carer’s assessment
- a safeguarding enquiry or safeguarding adults review

How it applies

From the first and following contacts with a person the local authority must act to involve that person and any other person that they wish in these social care processes. Whether raised by the person themselves or otherwise, the local authority must consider whether a person would have ‘substantial difficulty’ in any one of the following areas:

- understanding relevant information
- retaining that information
- using or weighing that information as part of the process of being involved;
- communicating the individual’s views, wishes or feelings (whether by talking, using sign language or any other means)

For some people it will be possible to help and support their direct involvement through making reasonable adjustments, as required by the Equality Act, providing information in accessible formats or facilitating the use of video in a needs assessment for example.

When it is considered that a person would have substantial difficulty in being involved in the ‘process’ the local authority needs to consider whether there is a carer, relative or friend (an appropriate individual) who can support their involvement. If not, and if the person wants it, the local authority must arrange for an independent advocate to support them.



The Regulations and Guidance sets out some rules about who can be judged as an ‘appropriate individual’, for example it should be someone who the person wants to support them and it cannot be someone who is already providing the person with care or treatment in a professional capacity or on a paid basis.

A person’s wish not to be supported by that individual should be respected. Where a person does not wish to be supported by a relative, for example, perhaps because they wish to be moving towards independence from their family, then the local authority cannot consider the relative appropriate.

Independent advocacy under the Care Act, Mental Capacity Act and Mental Health Act

There will be circumstances under which a person must have a referral to an independent mental capacity advocate under the Mental Capacity Act. There are also circumstances where a person may have access to an independent advocate under the Mental Health Act. These rights are not affected. Alternatively, there will be circumstances under which a person is part of a social care ‘process’ but may not have access to an independent advocate under the Mental Capacity Act or the Mental Health Act. The duty under the Care Act will increase the availability of independent advocacy to them.

For example:

Section 117 of the Mental Health Act places a duty on the NHS and local authorities to provide aftercare and this will usually involve a joint assessment (often under the Care Programme Approach) including an assessment of the person’s care and support needs, a care and support or support plan and subsequent review (which may reach a decision that a person is no longer in need of aftercare). Those people who do not retain a right to an Independent Mental Health Advocate (IMHA), whose care and support needs are being assessed, planned or reviewed should be considered for an advocate under the Care Act and judgements made by the local authority on whether they have substantial difficulty in being involved and if there is an ‘appropriate individual’ who can support their involvement.

Independent advocates

The Care Act Regulations set out the experience, training and characteristic that an independent advocate should have as well as the role they should perform. An Independent Advocate’s role is to support and represent the person, always with regard to their wellbeing and interests, including helping a person to:

- Understand the process
- Communicate their wishes, views and feelings
- Make decisions
- Challenge those made by the local authority if the person wishes
- Understand their rights
- When appropriate, support and represent them in the safeguarding process

Where an independent advocate is provided the local authority must still consult with those friends or family members when the person asks them to.



Providers of advocacy services

It is important that all current and potential providers of advocacy are aware of the requirements of the Care Act and that **all** local authorities in England will be taking actions locally to commission or develop local appropriate advocacy services. Advocacy providers will wish to:

- be aware of the advocate's role under the Care Act and what the regulations say about it
- make contact with local authorities in the area they cover to understand how services are developing locally
- consider the opportunities that the local commissioning of advocacy services under the Care Act may present
- talk with other providers in their area about the potential for a joint response to any local procurement of advocacy services

There are other, various actions which providers of care and support can take to help ensure that the independent advocacy provisions in the Care Act begin to make a positive difference. These include:

- Raising awareness of staff
- Ensuring that people using services, family members, friends, carers and social care, health and other professionals are aware of them.
- Drawing to the attention of the Local Authority, and NHS and CCGs where a person is being jointly assessed, people who may be entitled to an independent advocate when that person is due to have an assessment, care or support plan, review or is subject to a safeguarding enquiry or review.
- For organisations - providing training and awareness raising for their members of staff on the Care Act 2014 and the independent advocacy provisions (see Learning and development materials below).

Additional Information

Care Act 2014 Statutory Guidance:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/366104/43380_23902777_Care_Act_Book.pdf

Final negative Regulations in part 1 of the Care Act:

<https://www.gov.uk/government/consultations/updating-our-care-and-support-system-draft-regulations-and-guidance>

Care Act 2014:

<http://www.legislation.gov.uk/ukpga/2014/23/contents/enacted/data.htm>

Care Act learning and development materials:

<http://www.skillsforcare.org.uk/Standards/Care-Act/Learning-and-development/Learning-and-development.aspx>

Guidance for commissioners:

<http://www.scie.org.uk/care-act-2014/advocacy-services/index.asp>

The development of training for advocacy under the Care Act:

[Kate Mercer Training](#) have been engaged to develop training resources which will involve pilot training courses in early 2015 and an additional module on advocacy under the Care Act for qualifications in Independent Advocacy accredited by City & Guilds.