

A ROUGH GUIDE TO INDEPENDENT ADVOCACY UNDER THE CARE ACT 2014

Introduction

The duty to appoint an independent advocate flows from the Care Act's creation of a statutory duty to people involve in the assessment, care and support planning and review and safeguarding processes and the recognition that some people may experience 'substantial' difficulty in being involved and have no appropriate person to represent them. In other words, independent advocacy is not an end in itself; it is the means of delivering the duty to involve by securing people's full and proper involvement in key social care processes that critically effect them.

This rough guide independent advocacy tries to make clear what independent advocacy involves by posing and answering a few key questions. The first of these concerns the duty to involve.

1. What is the duty to involve?

"Local authorities must involve people in decisions made about them and their care and support or where there is to be a safeguarding enquiry or SAR. Involvement requires the local authority helping people to understand how they can be involved, how they can contribute and take part and sometimes lead or direct the process. People should be active partners in the key care and support processes of assessment, care and support and support planning, review and any enquiries in relation to abuse or neglect. 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, Care Act Statutory Guidance, paragraph 7.6

The duty to involve applies in all settings and runs from the point of first contact throughout the individual's journey along the entire service pathway. The duty is important because it is the unlocks the delivery of person centred adult social care practice, personalised services and provides the people who use these services with the voice they need if they are to exercise choice and control over them.

2. What is the relationship between independent advocacy and the duty to involve?

Under the Care Act the whole point of independent advocacy is to enable people who would otherwise experience 'substantial' difficulty in being involved to actively shape and lead decisions about their care and. Where a person seems to have 'substantial' difficulty and there is no appropriate individual (see below) to facilitate their involvement, then the local authority must arrange for an independent advocate to support and represent the person

3. Determining when independent advocacy should be provided: The decision tree

This section provides a graphical overview of the decision tree which can be used to determine whether, or not, someone should be provided with independent advocacy.

Rough Guide 4.

Is the person (the service user or carer) undergoing any of the following...

STAGE 1



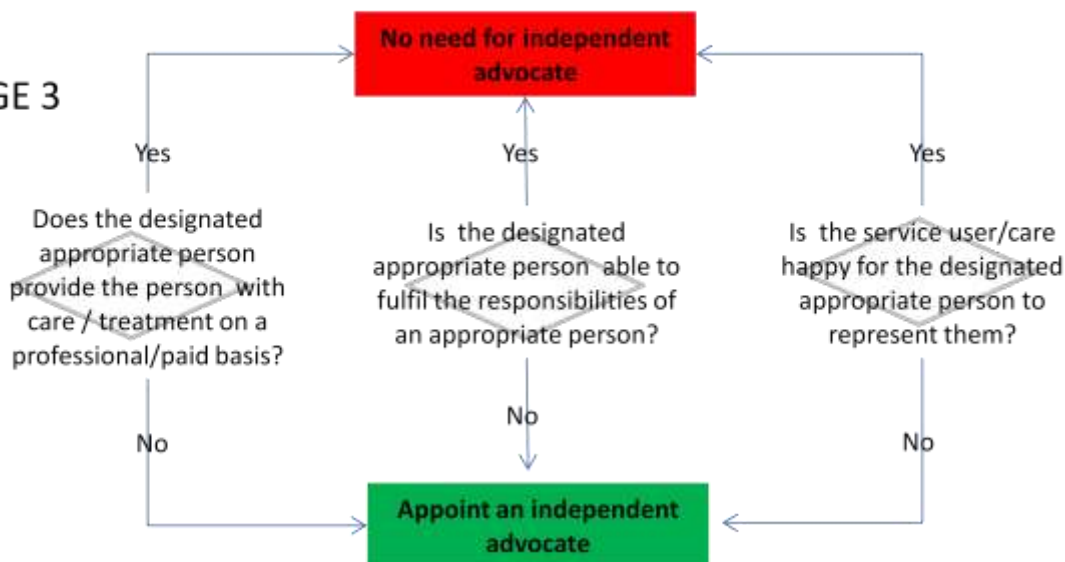
Does the person have substantial difficulty with any of the following...

STAGE 2



Is there an appropriate person?

STAGE 3



Note Stage 1: One 'yes' response is sufficient to progress to stage 2.

Note Stage 2: One 'yes' response is sufficient to progress to stage 3.

Note Stage 3: One 'no' response indicates that an independent advocate should be appointed.

4. When does the duty to provide independent advocate apply?

If a person experiences 'substantial' in engaging with the assessment process, then the local authority must consider whether there is anyone appropriate who can support the person be fully involved. This might for example be a carer (who is not professionally engaged or paid), a family member or friend.

If there is no one appropriate, then the local authority must arrange for an independent advocate. The advocate must support and represent the person in the assessment, in the care and support planning, and the review.

The situations in which the duty to provide an advocate applies are:

- needs assessments;
- carer's assessments;
- the preparation of a care and support plan for service users or support plans for carers;
- reviews of care and support plans for service users and support plans for carers;
- child's needs assessments;
- child's carer's assessments;
- young carer's assessments, and;
- safeguarding, including safeguarding reviews.

5. How to judge if someone has 'substantial' difficulty in being involved?

The Care Act defines four main areas to be considered when judging whether, or not, someone is likely to have 'substantial' difficulty in being involved. These areas, when phrased as questions, are the tests of 'substantial' difficulty and problems in any one area may lead to a determination of 'substantial' difficulty.

Tests of 'substantial' difficulty: Four questions



- Does the person have difficulty in *understanding relevant information*?
- Does the person have difficulty in *retaining information*?
- Does the person the person have difficulties in *using or weighing information as part of engaging*?
- Does the person have difficulties in *communicating their wishes and feelings*?

It should be noted that:

Rough Guide 4.

- Many people who qualify for advocacy under the Care Act also qualify under the Mental Health Act 2005. The same advocate may represent a person under both Acts. This allows for seamless advocacy and saving people from having to repeat their stories to different advocates.
- The Care Act and Mental Capacity Act use the same test to determining whether, or not, someone is likely to have 'substantial' difficulty in being involved.

6. How does the duty to appoint an independent advocate apply to safeguarding?

The local authority must arrange, where necessary, for an independent advocate to support and represent an adult who is the subject of a safeguarding enquiry or a safeguarding adult review. Where an independent advocate has already been arranged under Care Act or under Mental Capacity Act then, unless inappropriate, the same advocate should be used.

If a safeguarding enquiry needs to start urgently then it can begin before an advocate is appointed but one must be appointed as soon as possible. All agencies need to know how the services of an advocacy can be accessed and what their role is.

The statutory guidance regards it as crucial that adults who are the subjects of safeguarding enquiries or Safeguarding Adults Reviews are supported in what may feel a daunting process which may lead to some very difficult decisions. An individual who is thought to have been abused or neglected may be so demoralised, frightened, embarrassed or upset that independent advocacy help them to be properly involved in the process.

7. Independent advocacy for people living out of area

If the duty to provide independent advocacy applies to a person living out of area and the Council still retains responsibility for that person consideration should be given to obtaining an independent advocate from the area in which the person lives. Understanding of local communities may be an important consideration, so the advocacy/advocate should wherever possible be from the area where the person is resident at the time of the assessment, planning or review.

8. Care and support reviews

The local authority must involve the person, their carer and any other individual that the person wants to be involved in any review of their care and support plan, and take all reasonable steps to agree any changes

Local authorities must consider whether an advocate is required to facilitate the person's involvement in the review of a care and support plan and, if appropriate, appoint an advocate. This applies regardless of whether an advocate was involved at an earlier stage. Examples of when an advocate may be appointed at this stage despite not previously being involved include:

- The person's ability to be involved in the process without an advocate has changed.

Rough Guide 4.

- The circumstances have changed (e.g. the person's involvement was previously facilitated by a relative who is no longer able to perform that role).
- An advocate should have been involved at the care and support planning stage and was not.
- The requirement to involve an advocate at the care and support planning stage did not exist at that time.

9. How to judge if someone is an appropriate individual to facilitate a person's involvement?



- Three considerations:
 - An appropriate person can't 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 represented by a particular individual *must* be respected.
 - An appropriate person has to be able to support, represent and facilitate an individual's involvement in relevant adult – not everyone has the necessary skills and/or knowledge.

It will clearly *not be suitable* for a person to be regarded as an appropriate individual where they are implicated in any enquiry of abuse or neglect or have been judged by a SAR to have failed to prevent an abuse or neglect.

Sometimes the local authority will *not know* whether there is someone appropriate to assist the person in engaging. They may need to appoint an advocate, and find later that there is an appropriate person in the person's own network. The advocate can at that stage 'hand over' to the appropriate person.

It is possible that the local authority will consider someone appropriate who may then turn out to have difficulties in supporting the person to engage and be involved in the process. The local authority *must* at that point arrange for an advocate.

There may also be some cases where the local authority considers that a person needs the support of *both a family member and an advocate*; perhaps because the family member can provide a lot of information but not enough support, or because while there is a close relationship, there may be a conflict of interest with the relative, for example in relation to inheritance of the home.

If the local authority decides that they are required to appoint an independent advocate as the person does not have friends or family who can facilitate their involvement, the local authority *must* still consult with those friends or family members when the person asks them to.

It is the local authority's decision as to whether a family member or friend can act as an appropriate person to facilitate the individual's involvement. It is the local authority's

Rough Guide 4.

responsibility to communicate this decision to the individual's friends and family where this may have been in question and whenever appropriate. The overall aim should be for people who need advocacy to be identified and when relevant, receive consistent support as early as possible and throughout the assessment, the care and support planning and the review processes.

The local authority may be carrying out assessments of two people in the same household. If both people agree to have the same advocate, and if the local authority consider there is no conflict of interest between the individuals or either of the individuals and the advocate, then the same advocate may support and represent the two people. For example, if they both wish to be supported to live together in their own home, then it may make sense for one advocate to support both

10. Can an independent advocate be appointed even where a person has family or others who can facilitate the person's involvement?

A person will be eligible for independency advocacy, although they an appropriate person, where:

- assessment or planning might result in placement 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;
- there is a disagreement, relating to the individual, 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.

11. Who can act as independent advocate?

Advocates must:

- not be working for the local authority, or for an organisation commissioned to carry out assessments, care and support plans or reviews on its behalf;
- have a suitable level of appropriate experience;
- have appropriate training – all advocates should be working towards the National Qualification in Independent Advocacy (level 3) within a year;
- have competency in the task;
- have integrity and be of good character;
- have the ability to work independently of the local authority or bodies working on its behalf;
- receive regular supervision from a person with a good understanding of independent advocacy who



can guide the advocate's practice and the development of competence.

12. What's the role of an independent advocate?

An advocate will assist a person who has 'substantial' difficulty in engaging with care and support or safeguarding processes to:

- understand the assessment, care and support planning and review and safeguarding processes;
- communicate their wishes views and feelings to staff carrying out an assessment or developing a care or support plan or reviewing an existing plan or to communicate their views, wishes and feelings to staff carrying out safeguarding enquiries or reviews.
- understand how their needs can be met by the local;
- make decisions about their care and support arrangements;
- understand their rights under the Care Act, and;
- challenge a decision or process made by the local authority.

In terms of safeguarding there are some particular important issues for advocates to address. These include assisting a person to:

- decide what outcomes/changes they want;
- understand the behaviour of others that are abusive/neglectful;
- understand which actions of their own may expose them to avoidable abuse or neglect;
- understand what actions that they can take to safeguard themselves;
- understand what advice and help they can expect from others, including the criminal justice system;
- understand what parts of the process are completely or partially within their control;
- explain what help they want to avoid reoccurrence and also recover from the experience.