**Independent Advocacy under the Care Act 2014**

**Referral Guidance**

The Care Act 2014 introduces new duties for the local authority to involve independent advocates in supporting people’s involvement in assessment, planning, care review and safeguarding processes.

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. The duty to involve applies in all settings, including those who live in the community, care homes or prisons, for example.

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 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.

It will be **unlawful** not to provide someone who qualifies with an advocate.

In what circumstances do I need to instruct an Independent Advocate?

* A needs assessment under section 9 of the Care Act;
* A carers 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 60;
* A child’s carers assessment under section 62;
* A young carer’s assessment under section 65.

If the referral is for a young person or child under the age of 16 in Devon please contact NYAS, tel: 0808 808 1001, email: [help@nyas.net](mailto:help@nyas.net).

Judging ‘substantial difficulty’ in being involved

The local authority must consider for each person whether they would have substantial difficulty in engaging with the local authority care and support processes, areas where a substantial difficulty might be found include:

* Understanding relevant information
* Retaining Information
* Using or weighing the information as part of engaging
* Communicating their views, wishes and feelings

How to identify an appropriate individual to support someone

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 the Independent Advocate

An Independent Advocate’s role is to support and represent the person, 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

If you have any questions about Independent Advocacy under the Care Act or to make a referral please contact Devon Advocacy Consortium on **0300 343 5707** or email [dac@seap.org.uk](mailto:dac@seap.org.uk).

If you require this guidance sheet in an alternative format please contact Heather Blease, Devon Advocacy Consortium Co-ordinator, on 01392 459222 or email [heather.blease@livingoptions.org](mailto:heather.blease@livingoptions.org).

**FAQs**

**Am I the right person to make a referral?**

Referrals for Independent Advocacy under the Care Act should be made by local authority staff.

Referrals should be made as soon as it is clear that someone will have substantial difficulty being involved and no appropriate individual has been identified to support them. Advocacy should be considered from the first point of contact, request or referral (including self-referral) and at any subsequent stage of the care and support process.

If a referral is not made immediately, perhaps because advocacy was not required at that time, a referral can be made at any stage in the care and support process.

**I need to make a referral for an out of area client, what do I do?**

The advocate should wherever possible be from the area where the person is resident at the time of assessment, planning or review. Therefore please contact the local authority where the person is resident who will be able to direct you to the appropriate advocacy provider.

**What happens after I make a referral?**

We will respond to your referral within 2 working days. If the referral is deemed eligible for a service we will allocate the referral to one of our providers who will contact you. We will seek to attend any upcoming meetings provided appropriate notice has been given.

**What if the referral is about an assessment for Health and Social 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.

It also applies to those people undergoing joint assessments as part of section 117 aftercare under the Mental Health Act (1983) (often under the Care Programme Approach).

**What happens if the person does have family/friends that can facilitate their involvement?**

The person may still be entitled to an Independent Advocate, in cases where:

* The exercising of the assessment or planning function 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 person 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;

**What are the statutory powers of the Independent Advocate?**

The Care Act allows advocates to examine and take copies of relevant records in certain circumstances.

There will be times when an advocate will have concerns about how the local authority has acted or what decision has been made. The advocate **must** write a report outlining their concerns for the local authority. Where the individual does not have capacity, or is not otherwise able to, challenge a decision the advocate must challenge any decision if they believe it to be inconsistent with the local authority’s duty to promote the individual’s wellbeing.

**How is the service commissioned?**

The advocacy service is commissioned through Devon County Council and Torbay and Southern Devon Health and Care NHS Trust.