

Help Managing Your Affairs and Decision Making Factsheet

Advocacy and Advocates

The Care Act says the council must involve people when decisions are made about their care and support. Advocacy is there to represent you.

What is an independent advocate?

An advocate is a person who supports you and helps explain and say what you want to say. They help ensure your views are heard, so that your problems can be sorted out. They can:

- Help put your views and feelings across about decisions that are being made about your life.
- Speak on your behalf if that is what you want.
- Give information and advice about your rights and any worries you have as well as help you make choices about what is best for you.
- Help make a complaint.

In order to be able to support you express your wishes and feelings or represent your views, advocates will need to spend time with you to build up an understanding.

Advocacy supports those at greatest need who have difficulty in understanding information, retaining information, using and weighing that information and in expressing their wishes and feelings. Advocacy is provided free of charge providing a person meets the below statutory eligibility criteria. This could apply to any adult and older person, any carer, young people in transition from Children's Services to Adult Services and young carers.

Advocacy can provide independent help and support with:

- Wellbeing assessments and reviews
- Carer's assessments
- Keeping safe from harm (safeguarding)

How do you get an independent advocate?

A social care worker will identify if you meet the qualifying criteria under the Care Act, Mental Health Act or the Mental Capacity Act you can have access to help from an independent advocate.

The following conditions must be considered appointing an independent advocate:

- The person would have substantial difficulty in being fully involved in key processes if an advocate was not provided.
- There was no appropriate individual available to support and represent the person's wishes who is not paid professionally, engaged in providing care and treatment to the person or their carer.

Where required, independent advocacy will be arranged through a person's social care worker and a personal budget can be used to pay for independent advocacy. Alternatively, you can find an advocate by contacting Swan Advocacy on the details below.

Address: Swan Advocacy, Quay House, The Quay, Newport, Isle of Wight, PO30 2QR

Telephone: 03333 447928

Email: IoW@swanadvocacy.org.uk

Web: www.swanadvocacy.org.uk/iow

Mental Health Act 1983 (Amended 2007)

People who are subject to the Mental Health Act are entitled to support from an Independent Mental Health Advocate (IMHA). An IMHA is a specialist mental health advocate. The IMHA is not meant to replace existing advocacy, legal advice or support, but will work alongside these services. This service is free and confidential.

The role of an IMHA is to:

- Help the person understand information about Mental Health legislation, any conditions and restrictions on them, and their rights.
- Help them get information about and understand medical treatment (e.g. medication, therapies).
- Support them to take part in care planning.
- Support for them to apply to, prepare for and attend Hospital Managers Hearings and Mental Health Review Tribunals and to understand the decisions that are made.
- Discuss aftercare and access support and services.
- Raise concerns about their experiences of care and support.

Patients are eligible for support from an IMHA, irrespective of their age, if they are:

- detained under the Act
- liable to be detained under the Act, even if not actually detained, including those who are currently on leave of absence from hospital or absent without leave, or those for whom an application or court order for admission has been completed (but not those listed in the paragraph below)
- conditionally discharged restricted patients
- subject to guardianship, or
- patients subject to community treatment orders (CTOs).

For these purposes, detention does **not** include being detained:

- on the basis of an emergency application (**section 4**) until the second medical recommendation is received
- under the 'holding powers' in **section 5**, or
- in a place of safety under **section 135 or 136**.

Other voluntary patients are eligible if they are:

- being considered for a treatment to which **section 57** applies ('a section 57 treatment'), or

- under 18 and being considered for electro-convulsive therapy (ECT) or any other treatment to which **section 58A** applies ('a section 58A treatment').

Mental Capacity Act

The Independent Mental Capacity Advocate (IMCA) service is central to the working of the Mental Capacity Act. The Mental Capacity Act places a responsibility on Local Authorities to ensure that people who are assessed as lacking mental capacity have access to an independent advocate when they are having decisions made about them relating to:

- Serious Medical Treatment (SMT).
- Changes of NHS accommodation for 28 days or more.
- Change of LA accommodation for more than 8 weeks.

Advocates work with someone who lacks capacity to make certain important decisions when they have no one else who can be consulted to try and establish their wishes. People can also access IMCA support for Accommodation Reviews and Safeguarding Adult situations.

IMCA's meet with the person and try to assist them in communicating and being as involved as possible in the decision-making process. The IMCA represent the wishes and feelings of the person and will consult with other people. IMCA's check that those working with the person adhere to the main principles of the Mental Capacity Act and act as a safeguard for the person's rights. IMCA's provide the Decision maker with a written pre-decision report, making recommendations. The IMCA will continue to be involved, if *no agreement* can be made. The Code of Practice refers to the following:

- IMCAs may use complaints procedures as necessary to try to settle a disagreement – and they can pursue a complaint as far as the relevant ombudsmen if needed.
- In particularly serious or urgent cases, an IMCA may seek permission to refer a case to the Court of Protection for a decision. The Court will make a decision in the best interest of the person who lacks capacity.