

## 7-minute briefing Statutory Advocacy

### What is Advocacy?

Advocacy is taking action to help people say what they want, uphold their rights, represent their needs and wishes and support them to access the services they need. Advocacy promotes social inclusion, equality, and social justice. Advocates work with people to help them have the life they want to live by exploring their options and supporting them to make or be involved in decisions that are important. Advocacy is free to anyone who is eligible. Advocates are highly skilled individuals who are impartial and knowledgeable in the Acts and frameworks that aim to promote wellbeing and keep people safe.

### Why is Advocacy important in safeguarding?

Advocates have a significant part to play in safeguarding adults from neglect and abuse. Advocacy is preventative, advocates being involved in decisions and processes helps people to resolve issues and situations before they escalate. In safeguarding enquiries, it is important that the person is supported if they meet the statutory criteria in what can be a worrying process that sometimes requires difficult decisions to be made. An adult who may have been the victim of abuse or neglect may be upset, scared, embarrassed making the process more difficult for them to navigate, so the support of an independent advocate is crucial to help them understand the situation and obtain the outcome they want.

### The Care Act 2014 & Advocacy

The Care Act 2014 Statutory Guidance (7.4) states there is a **duty** to arrange an Independent Advocate for adults to enable those who may otherwise have (1) "substantial difficulty" in being involved if there is (2) "no appropriate individual available to support and represent the person's wishes".

The local authority has a **duty** to instruct an Independent Care Act Advocate if the person meets the criteria above and is going through any of these processes:

- s.9 Needs Assessment.
- s.10 Carer's Assessment.
- s.25 The preparation of a Care and Support Plan or Support Plan.
- s.27 A review of Care and Support Plan or Support Plan.
- s.42 Safeguarding Enquiry.
- s.44 Safeguarding Adults Review (SAR)

### The Mental Capacity Act 2005 & Advocacy

The Mental Capacity Act Code of Practice Chapter 10 states that:

An IMCA **must** be instructed, and then consulted, for people lacking capacity who have no-one else to support them (other than paid staff), whenever:

– an NHS body is proposing to provide serious medical treatment, or  
– an NHS body or local authority is proposing to arrange accommodation (or a change of accommodation) in hospital or a care home, and the person will stay in hospital longer than 28 days, or – they will stay in the care home for more than eight weeks.

An IMCA **may** be instructed to support someone who lacks capacity to make decisions concerning:

– care reviews, where no-one else is available to be consulted

– adult protection cases, **whether or not** family, friends or others are involved

\* It is worth noting that there is no provision under The Care Act for advocacy if the person is the alleged **perpetrator** of abuse or neglect. In this situation, if the person lacks capacity, an IMCA should be instructed.

### **Deprivation of liberty safeguards**

Act or when the DoL has been authorised they can be involved under S39c & 39D.

Relevant Person's Paid Representative (RPR)

Persons being deprived of their liberty have a statutory right to a representative either a family member or friend, or a paid representative, for the life of the authorisation. The Supervisory Body **must** instruct an RPR, and if no appropriate person can be found then they will request that an advocate acts as RPR. RPR's will visit person who is deprived of their liberty and ensure conditions of the DoL are being met, explain the purpose and duration of the DoL to the person, obtain their views, wishes and feelings and request a review or access court if necessary. RPRs can appoint solicitors for s.21a appeals under Schedule A1 of Mental Capacity Act 2005.

### **The Mental Health Act 1983 & Advocacy**

The MHA Code of Practice chapter 6 states: Independent mental health advocates (IMHAs) provide an additional safeguard for patients who are subject to the Act. They support patients to exercise their rights and ensure they can participate in the decisions that are made about their care and treatment. They do not replace any other advocacy or support services and work in conjunction with other services. They help qualifying patients to obtain relevant information and to understand their position including their rights and aspects of their treatment.

The same advocate may be qualified to act as an IMHA and an IMCA though these are different roles. For detailed guidance on the functions of IMCAs see chapter 10 of the Mental Capacity Act 2005: Code of Practice. For guidance on independent advocacy under the Care Act, see chapter 7 of Care and Support Statutory Guidance.

An Independent Mental Health Advocate (IMHA) is an independent advocate who is specially trained to work within the framework of the Mental Health Act to support people to understand their rights under the Act and participate in decisions about their care and treatment. Access to an IMHA is a statutory right for people detained under certain sections of the Mental Health Act.

## **Advocacy Provider in Liverpool**

### **Liverpool Advocacy Hub**

n-compass – contact us:

Tel: 0300 3030 629

Web: [Liverpool Advocacy Hub | n-compass](#)

Email: [referral@liverpooladvocacyhub.org.uk](mailto:referral@liverpooladvocacyhub.org.uk)

Opening hours: 9.00am to 5.00pm Monday to Friday

Making a referral: [Liverpool Advocacy Hub - Referral Form MAY23 -1-.pdf \(n-compass.org.uk\)](#)

Useful links:

[Overview](#) | [Advocacy services for adults with health and social care needs](#) | [Guidance](#) | [NICE](#)

[Safeguarding - SCIE](#)

[New Advocacy Charter - NDTi](#)