

Adult Social Care Policies and Procedures

CARE ACT INDEPENDENT ADVOCACY

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POLICY VERSION CONTROL

POLICY NAME	Care Act Independent Advocacy		
Document Description	This document is to ensure that Council workers fully understand their duties in relation to the provision of Care Act 2014 independent advocacy and to assist them in carrying out these duties.		
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Signed		Date Approved	

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1. POLICY STATEMENT

The Care Act places a duty on a local authority to arrange an independent advocate for all applicable adults. It applies equally to individuals with care and support needs and carers with support needs. It also applies to children who are approaching the transition to adult care and support, when a child's needs assessment is carried out, and when a young carer's assessment is undertaken.

There is also a separate duty to arrange an independent advocate for adults who are subject to a safeguarding enquiry or Safeguarding Adults Review (SAR).

Local authorities **must** arrange an independent advocate to facilitate the involvement of a person in their assessment, in the preparation of their care and support plan and in the review of their care plan, as well as in safeguarding enquiries and SARs if two conditions are met:

1. if an independent advocate were not provided then the person would have substantial difficulty in being fully involved in these processes
2. and, there is no appropriate individual available and willing to support and represent the person's wishes who is not paid or professionally engaged in providing care or treatment to the person or their carer.

The role of the independent advocate is to support and represent the person and their views (where the person is unable to do so effectively) and to facilitate their involvement in the key processes and interactions with the local authority and other organisations as required for the safeguarding enquiry or SAR.

Once a person has contacted the local authority, or come to the local authority's attention as a result of a safeguarding concern, the individual must be actively involved in identifying their needs through assessment, in developing their care and support plan, and in leading their care reviews, where relevant, and being involved in any safeguarding enquiry or SAR.

The aim of the Care Act duty to provide advocacy is to enable people who have 'substantial difficulty' in being involved in these processes to be supported in that involvement as fully as possible, and where necessary to be represented by an advocate who speaks on their behalf.

The Equality Act 2010, requires that reasonable adjustments should be made to ensure that disabled people have equal access to information and advice services. Provision of such adjustments, information in different formats for example, may reduce or remove a substantial difficulty a person may have in being involved. The ultimate aim is for people's wishes, feelings and needs to be at the heart of the assessment, care planning and review processes. This needs to be just as true for those who are the subject of a safeguarding enquiry or safeguarding adult review (SAR).

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 applies in **all settings**, including for those people living in the community, in care homes or, prisons. However the Section 68 duty for advocacy in relation to a safeguarding enquiry and SAR would not apply to prisoners.

Local authorities must form a judgment about whether a person has substantial difficulty in being involved with these processes. If it is thought that they do, and that there is no appropriate individual to support and represent them for the purpose of facilitating their involvement, then the local authority must arrange for an independent advocate to support and represent the person.

Many of the people who qualify for advocacy under the Care Act will also qualify for advocacy under the Mental Capacity Act 2005. The same advocate can provide support as an advocate under the Care Act and under the Mental Capacity Act. This is to enable the person to receive seamless advocacy and not to have to repeat their story to different advocates. Under whichever legislation the advocate providing support is acting, they should meet the appropriate requirements for an advocate under that legislation.

Therefore to fulfil its duty under section 67 and 68 of the Care Act, the Council will deliver, working with its statutory, voluntary and private sector partners, an independent advocacy service relating to care and support that is relevant, coherent, timely and sufficient.

The Council will make all reasonable adjustments to ensure that all disabled people have equal access to its independent advocacy service in the eligibility decision in line with the Equality Act 2010.

The geography and population of Lancashire is diverse and our Adult Social Care Policies and practice will aim to deliver services and supports that are representative of the communities in which we work.

The Council will follow the Care Act and other relevant legislation, policies and guidance to ensure our practice is of high quality and legally compliant. Where our customers or those we come into contact with wish to challenge or raise concerns in regard to our independent advocacy decisions, the Council's complaints procedures will be made available and accessible.

2. KEY DEFINITIONS AND PRINCIPLES APPLICABLE TO THIS POLICY

2.1. Advocacy

This means supporting a person to understand information, express their needs and wishes, secure their rights, represent their interests and obtain the care and support they need.

2.2. Judging Substantial Difficulty

The Care Act defines four areas where people may experience substantial difficulty. These are:

- understanding relevant information
- retaining information
- using or weighing information
- communicating their views, wishes and feelings.

If an individual is unable to do one or more of these areas they would be considered to have substantial difficulty.

2.3. Who is an 'appropriate individual?'

Staff must consider whether there is an appropriate individual who can facilitate a person's involvement. The Act states that an appropriate individual **cannot be someone**:

- already providing care or treatment to the person in a professional capacity or on a paid basis
- the person does not want that individual to support them
- who is unlikely to be able to, or available to, adequately support the person's involvement
- 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 an 'appropriate individual' under the Care Act is potentially fuller and more demanding than that of an individual with whom it is 'appropriate to consult' under the Mental Capacity Act (MCA). Under the Care Act the appropriate individual's role is to **facilitate** the person's involvement, not merely to consult them and make decisions on their behalf.

It may not be clear at the point of first contact, or at an early stage of the assessment, whether there is someone appropriate to assist the person in engaging. As a result, an advocate may be appointed only for it to be discovered later that there is an appropriate person available. The appointed advocate can at that stage 'hand over' to the appropriate individual. Alternatively, the member of staff may agree with the person, the appropriate individual and the advocate that it would be beneficial for the advocate to continue their role, although this is not a specific requirement under the Care Act. Equally, it is possible that the member of staff will consider someone appropriate who may then turn out to have difficulties in supporting the person to be involved in the process. At that point arrangements for an independent advocate must be made.

2.4. Exceptions

There are times when an independent advocate should be provided for a person who has substantial difficulty even though they have an appropriate individual to support them. These are:

- where a placement is being considered 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 it would be in the best interests of the individual to arrange an advocate
- where there is a disagreement between the local authority and the appropriate person whose role it would be to facilitate the individual's involvement, and the council and the appropriate person agree that the involvement of an independent advocate would be beneficial to the individual.

3. PROCEDURES

- a) Council staff will ensure from initial contact and throughout interactions with an individual or carer, that the person is enabled to be fully involved in processes. Staff will ensure that any reasonable adjustments as per the Equality Act 2010 are made to enable an individual or carer to be fully involved in processes.
- b) Following these reasonable adjustments, Council staff will judge if an individual or carer continues to have substantial difficulty with the various stages of social care processes. These include:
 - a needs assessment
 - a carer's assessment
 - the preparation of a care and support or support plan
 - a review of a care and support or support plan
 - a child's needs assessment
 - a child's carer's assessment
 - a young carer's assessment
 - a safeguarding enquiry
 - a safeguarding adult review
- c) If the adult does not have an appropriate individual to assist them, then as per the Care Act **duty** they will advise the adult involved that they **must** refer for an independent advocate to be appointed to offer this assistance.
- d) At each of the steps, it is important that decisions are recorded and actions taken are also recorded. Recording of these decisions should be within systems available to the Council worker for example Liquid Logic assessment documentation, case notes.
- e) Therefore the first step for any Council worker will make a judgement whether the person has 'substantial difficulty' engaging with the process they are to undertake with the individual.

- f) If the answer to the above statement is yes, then consideration needs to be given to any possible reasonable adjustment under the Equality Act 2010, i.e. provision of interpreter.
- g) Once reasonable adjustments have been made, the Council worker will make a judgement whether the person continues to have substantial difficulty engaging with the process they are to undertake with the individual.
- h) If the answer to the above statement is 'yes', then the Council worker will need to consider if the individual has an 'appropriate person' that can facilitate the individual's involvement.
- i) If there is an 'appropriate person' then the Council worker will involve this individual. There is no requirement for an Independent Advocate in these circumstances unless there are 'exceptional circumstances' as above.
- j) If there is **no** 'appropriate person', then the Council worker will advise the individual of the staff member's **duty (must)** to refer for an Independent Advocate. It is important that the Council worker explains the advantages of an Independent Advocate, as this will ensure the individual fully understands their rights and options under the Care Act. Staff member will refer to Advocacy service.
- k) If after 10 working days the Council worker has not had contact from Advocacy Service then then will make contact and ask when this will occur, as it is important that this is not delayed.
- l) If the individual refuses to engage with the Independent Advocate, then the Council worker will review this with the individual. Consideration should be given regarding a joint visit with the Independent Advocate again explaining the advantages of the role to the individual.
- m) If the individual still refuses to engage with the Independent Advocate then Assessment, Care and Support Planning etc. would need to continue.

4. FLOW CHARTS/ DIAGRAMS OR EXAMPLES

Process for determining people who may be eligible for statutory Care Act Independent Advocacy



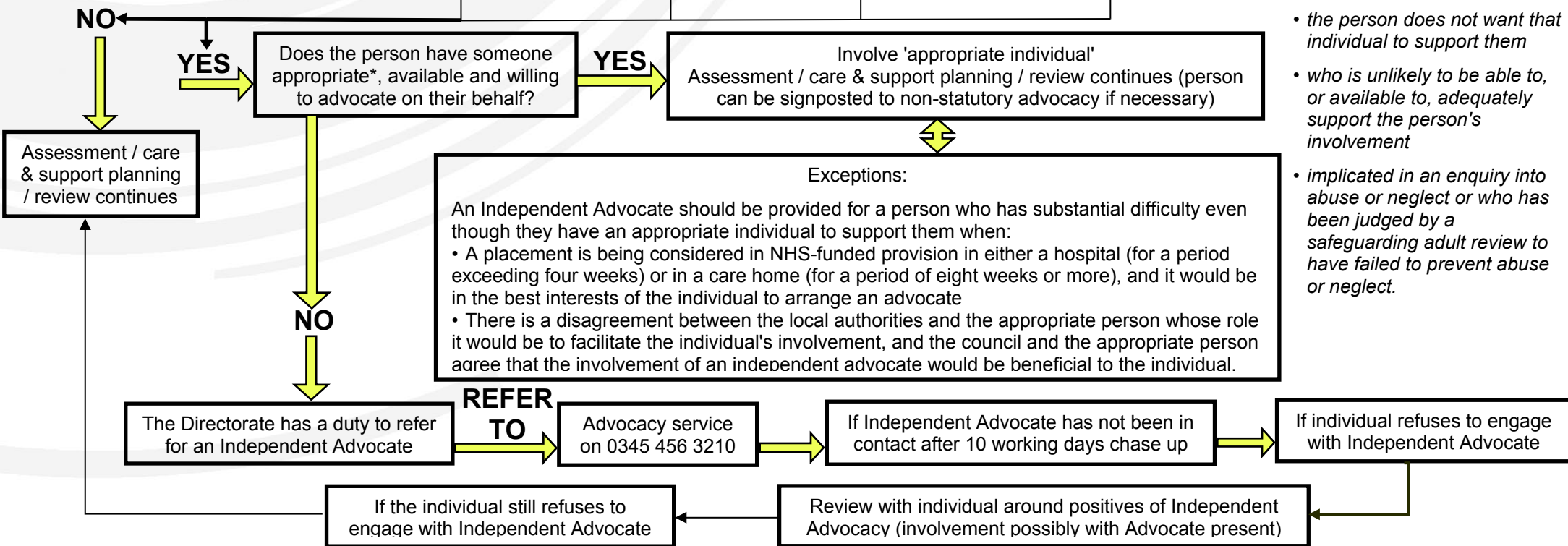
The following should be undertaken at each phase the individual engages with the local authority.
It is an ongoing process
 i.e. the individual may have no difficulty at assessment phase but may have substantial difficulty at care and support planning phase, and therefore require referral at this later phase.

Would the person experience substantial difficulty in doing one or more of the following:



**The appropriate individual cannot be someone:*

- already providing care or treatment to the person in a professional capacity or on a paid basis
- the person does not want that individual to support them
- who is unlikely to be able to, or available to, adequately support the person's involvement
- 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.



5. DOCUMENT HISTORY

RELATED DOCUMENTS	
OTHER RELATED DOCUMENTS	<ul style="list-style-type: none"> • Wellbeing Policy • Needs Assessment Policy • Eligibility Criteria Policy • Care and Support Planning Policy • Review of Care and Support Plans • Continuity of Care Policy • Cross Border Placements Policy • Safeguarding Policy
LEGISLATION OR OTHER STATUTORY REGULATIONS	<ul style="list-style-type: none"> • Care Act Section 67 & 68 • The Care and Support (Independent Advocacy Support) Regulations 2014 • Chapter 7 Independent advocacy Statutory Guidance