

## Guidance Notes for Care Act Advocacy

The Care Act places a duty on local authorities to involve people in decisions made about them and their care and support. The Care Act guidance says that:

“People should be active partners” and “regardless of how complex a person’s needs are, they must be supported to express their wishes and feelings, to weigh-up options and retain information to make their own decisions.”

If the local authority considers that a person would experience **substantial difficulty** in understanding the care and support processes or in communicating their views, wishes or feelings they must consider whether there is an **appropriate individual** to facilitate their active involvement.

### Care Act Advocacy

Care Act Advocacy is a statutory service available for people who may have substantial difficulty in being fully involved with decisions made about them and their care and support. This includes:

- needs assessments and reviews
- carer assessments and reviews
- care and support planning
- safeguarding processes

In order to be eligible for advocacy support a person must also have no one else who is willing and deemed appropriate who could support or represent them through the processes.

If these criteria are met the local authority has a duty to arrange for an independent advocate.

This duty applies in all settings including the community, care homes or prisons.

### Role of a Care Act Advocate

An advocate will support a person to:

- Understand and be involved in a process
- Communicate their views, wishes and feelings
- Understand their options and make decisions about their care and support
- Understand and secure their rights
- Appeal against a decision they are unhappy about

### What is substantial difficulty?

The Care Act defines four areas where substantial difficulty might be found:

- Understanding relevant information
- Retaining that information
- Using or weighing that information as part of engaging
- Communicating their views, wishes and feelings

People can experience substantial difficulty without having a cognitive impairment

## Questions to ask when considering if someone is an appropriate individual

**1** Does the appropriate individual fully understand the local authority's care and support processes or know how to get relevant information?

**2** Does the appropriate individual have sufficient knowledge of local services and support available or is able to get the information the person needs to make an informed decision?

**3** Can the appropriate individual explain and present information in a way that makes it easier for the person to understand?

**4** Can the appropriate individual explain options around specific decisions that need to be made, the likely consequences, including the consequences of not making a decision?

**5** Is the appropriate individual able to put the person's opinions before their own?

**6** If the person is unhappy with a decision, and wants to request a review, or challenge and lodge an appeal, could the appropriate individual support them to do this?

**7** If the person is unhappy with the care and support process or the way a service was provided could the appropriate individual support them to make a complaint?

## Other considerations to take into account

- The appropriate individual identified must be willing and able to support the person
- The appropriate individual cannot be someone who is providing care or treatment in a paid capacity
- If the person being supported has capacity they must agree to the appropriate individual supporting them - sometimes people do not wish to be supported by their family member
- If the person being supported lacks capacity, the local authority must be satisfied that it is in the person's best interests to be supported by the appropriate individual
- Within a safeguarding process the 'person of interest' cannot be an appropriate individual

## **Communicating a decision about an appropriate individual**

It is the responsibility of the local authority to decide whether someone can or cannot act as an appropriate individual and to communicate the decision to the person's friends and family.

It is the responsibility of the local authority to provide information for family on the role and expectations of the appropriate individual within care and support planning processes.

The local authority must ensure that family are notified if they have made a referral for a Care Act advocate and communicate the reasons for this.

## **Exceptions to appropriate individual guidelines**

There are two exceptions where both an appropriate individual **and** an advocate should be appointed:

- When a placement is being considered in an NHS-funded provision in either a hospital (for four weeks or more) or care home (for eight weeks or more) and the local authority believes that it would be in the best interests of the person to arrange an advocate
- Where there is a disagreement between the local authority and the appropriate individual whose role it would be to facilitate a person's involvement and both agree that the involvement of an independent advocate would be beneficial to the person.

## **Making a Care Act Advocacy referral**

Referrals should be made as soon as it is clear that a person will have substantial difficulty being involved and no appropriate individual has been identified to support them.

Advocacy should be considered at the earliest possible stage of a process. However referrals can be made at any subsequent stage of the care and support process.

In addition a referral can be made if the situation changes and where advocacy had previously been deemed as not appropriate.

## **Consent**

It is essential that all information in relation to consent is completed on the referral form.

Advocates must obtain consent from someone who has the capacity to give it in relation to accessing records, consultation and challenging.

Where a person lacks capacity around these issues the Care Act requires advocates to access records and consult as appropriate.

## **Geographical area**

We will provide Care Act Advocacy within the area of Warrington.

Out of area referrals must be made to the appropriate advocacy provider for that area.

Advocacy will be provided to a person who is looking to have ordinary residence in the area or if they have ordinary residence but another authority arranges the care.

## **Restrictions and Deprivation of Liberty**

Advocates must be involved under specific conditions where a proposed care plan may involve restricting a person's liberty to the extent where it may be considered a deprivation of liberty

## **Challenge**

It is within the remit of the advocate to challenge the relevant people where a person's wishes, views values and beliefs are not being properly considered and in order to obtain a more satisfactory outcome for the person. Our aim would be to challenge locally, through communication with the appropriate professionals and via a written report of the concerns. If necessary this may be escalated through the correct processes if the challenge has not been given due consideration.

## **Referral process**

Please complete as the referral form with as much detail as possible. This will ensure the referral is processed quickly and appropriately. If required and where appropriate we will follow up to attain the correct information. However this may cause a delay in actioning the referral.

Referrals should be sent via email (password protected) to [referral@advocacyhub.org.uk](mailto:referral@advocacyhub.org.uk)

An email acknowledgement will be received within 24 hours of receipt during the week, or on the first working day after the weekend or bank holiday.

The referral will be considered in line with eligibility criteria.

Relevant professionals will be informed as soon as possible of the named advocate.

It is Warrington Speak Up's policy that, where appropriate, the same advocate will be allocated if there has been previous advocacy involvement.

Referrals will be prioritised according to factors such as time scale of the decision, the specific care act process involved, urgency of referral, safeguarding issue.

All advocates are experienced and qualified in more than one type of advocacy.

If you are uncertain as to whether a person is entitled to an advocate please contact the duty advocate on 01925 246 888 to discuss further.

## **Additional Information**

The referrer should inform the advocate (if known) whether the person has:

- Made an advanced decision
- Lasting Power of Attorney in place
- Identified someone they would like to represent them

## **Lasting Power of Attorney**

It is an expectation that at the time of the LPA being put in place agreement is made that the person(s) holding the LPA can have a differing opinion to the client.

Therefore, the local authority must be able to evidence and substantiate that the LPA is not diligently and in good faith applying the best interest process and taking appropriate action. The local authority must say why the LPA is not appropriate and not complying with their duties before referring to advocacy.

## **Capacity assessments**

Please note that it is not the role of an advocate to carry out a capacity assessment