

# Advocate Provocateur



Are you using Independent  
Advocacy like you should?

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TRAINING

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# Are you using Independent Advocacy like you should?

## How advocacy can help...

*"George was 7 when school contacted social services. Everyone was concerned because there was a lot of alcohol abuse at home and then things got really bad when his step dad started hitting mum. So a child protection conference was arranged to look at how to keep George safe. When I [the advocate] saw George, he would hardly speak at all. He would look at the ground and only answer questions with a grunt or nod. On my second visit I stopped talking to George about the child protection conference and asked him if he had any pets. George's face lit up. 'Yes' he said, 'Sniggles is my cat'. 'Tell me more about him' I replied... I heard how Sniggles is George's best friend, he sleeps on the bottom of his bed, in fact, George can't go to sleep without him. George hasn't been sleeping well since he had to move to his Nans because she won't let Sniggles come (the teacher had in fact told me he was feeling asleep in lessons and not sleeping because of stress). Sniggles was also 7 and George would talk to Sniggles about his worries: 'Sniggles would keep my secrets and always listen to me. I really miss him' George told me. I asked George if he had asked his mum about seeing Sniggles 'Yeah of course I have. And my social worker. No-one listens... everyone just wants to talk about my dad'. I promised George I would talk to his social worker and mum about having visits with Sniggles.... I totally get why the social worker was focused on the bigger picture but the most important thing to George was his cat, and this was being forgotten. At the end of the conference, contact between Sniggles and*

*George was written into the Child Protection plan. George was really happy"*

"Advocacy is taking action to help people say what they want, secure their rights, represent their interests and obtain services they need. Advocacy promotes social inclusion, equality and social justice". Advocacy Charter

Advocacy can be described as a type of support that many people offer and use every day<sup>1</sup> and is often taken as meaning to speak out or stand up for ones rights as a person.<sup>2</sup> Many people act as advocates on a daily basis; parents listen to the needs and wishes of their children; managers respond to the views of their staff; friends stand by each other and offer support.

This type of "informal" advocacy is a part of everyday life and is a way of empowering people to:

- Articulate their views, wishes and feelings either themselves or through a competent and independent voice;
- Safeguard their rights;
- Ensure that services are accessible and appropriate, and identify gaps in service provision;
- Ensure that the voice of the person is heard, and influences decisions made about him by those in a position of power.



Sometimes though, more formal methods of advocacy are required to support individual people, especially when a person feels that no-one is listening to them or they are having difficulty accessing services and information. This can particularly happen when people receive support from health and social care or mental health services - the individual can feel 'lost' within big institutions and systems that often fail to respond to their individual needs and feelings.

In these situations advocacy can be an important type of support, providing people with an independent service and confidential space where they can work out what they want and how they want it to be achieved.

Independent Advocacy is concerned with working from a person centred perspective. The person is always in control of the advocacy process, including terminating it. This means that an independent advocate:

- Will always plan from the person's definition of the problem;
- Will always work towards an acceptable outcome for the person;
- Will provide information to enable the person to make an informed decision;
- Will help the person to explore their options, and the potential outcomes of particular courses of action, without bias;

- Will work towards an acceptable outcome for the person;
- Recognises the person as having the most specialised knowledge of their life, views, wishes and feelings;
- Will never make decisions about what should happen;
- Will never advise (or persuade) a person to make a particular choice.

### **Who is entitled to an Advocate**

In England, there are a number of advocacy roles that have been introduced for people using health and care services. Do you know about the following roles?

### **Children's Advocacy**

Any young person receiving services under the Children Act can access an advocate if they want support in making a complaint, raising a concern or making any representation about the support they receive.<sup>3</sup> This means that if you work with looked after young people (including care leavers) you should always think about offering an advocate particularly if the young person:

- Is unhappy with any aspect of their care or support;
- Has a review of their care plan and would like support to get involved;



- Wants to change any aspect of their care plan;
- Wants help in stopping, starting or changing things in their life;
- Is going through child protection meetings or family group conferences.

**What does this mean for me:** The law says the local authority has a duty to make advocacy available which means that IRO's, social workers, complaint managers and everyone working in children's services must explain advocacy and help young people access advocacy. Remember that the young person has a choice – it is up to them to decide whether they would like to use advocacy (and you do not need parental permission).

### **Independent Mental Capacity Advocacy (IMCA)**

The right to an IMCA was introduced over 10 years ago! Yes 10 years ago!!!

The Mental Capacity Act 2005 first introduced the statutory role to represent and support people aged over 16 who have been assessed as lacking the capacity to make certain decisions. The aim of the IMCA service is to provide independent safeguards for people who lack capacity to make certain decisions and, at the time such decisions need to be made, have no-one else (other than paid staff) to support them or be consulted (MCA Code of Practice). An IMCA must be instructed and then consulted, when a

decision has to be about Serious Medical Treatment or a long term change of accommodation and the person lacks capacity to make this decision and has no-one else to support them (other than paid staff).

**What does this mean:** If you are responsible for making decisions (about long term change of accommodation or serious medical treatment) on behalf of an incapacitated person you MUST follow the Mental Capacity Act. If the person does not have anyone to represent them then you MUST instruct an IMCA. If you do not, the decision you reach may be unlawful.

### **Deprivation of Liberty Safeguards (IMCA DoLS)**

In 2007, the Deprivation of Liberty Safeguards (DoLS) extended the IMCA role to provide support to people over 18 who fall under the provisions of DoLS. There are three roles an IMCA can provide:

- Section 39A - supervisory bodies must instruct an IMCA when a request has been made for a standard DoLS authorisation and the person has no-one appropriate to consult in determining their best interests.
- Section 39C – if the relevant person's representative (RPR) is no longer able to continue in their role, and there is a gap in appointing a new RPR, the supervisory body must instruct an IMCA for a person subject to a DoLS authorisation to cover this gap, where there is no one appropriate to consult.



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- Section 39D - where the person or their unpaid RPR asks for support through the DoLS process, or if the supervisory body believes that the person or their representative would not be able to exercise relevant rights, for example, the right to challenge the authorisation, without an advocate, then the supervisory body must instruct an IMCA.

## **Independent Mental Health Advocacy (IMHA)**

Mental health advocacy has a long history of supporting people who are staying in hospitals or who are receiving support in the community to access information, understand what is happening, challenge and be part of decisions about their mental health. In 2007, the Mental Health Act introduced the statutory role of Independent Mental Health Advocate (IMHA) for people being treated under specific sections of the Mental Health Act 1983.

In England, this includes people who are:

- Detained under the act (except on the short-term or emergency holding powers such as sections 4, 5, 135 or 136);
- Subject to a community treatment order (sometimes known as supervised community treatment (SCT)) or guardianship;
- A conditionally discharged restricted patient;
- Any other patient being considered for treatment under section 57 ("psychosurgery");

- Any other patient aged under 18 being considered for electro-convulsive therapy or any other treatment to which section 58A applies.

Around 50% of people entitled to receive IMHA support actually do so<sup>4</sup>

**What does this mean to you:** If you are working with people subject to compulsion under the Act (outlined above), you must OFFER IMHA support to them. The person is not under any obligation to accept support from an IMHA, but hospital managers have a duty to arrange IMHA support.

## **NHS complaints advocacy**

Anyone thinking about or making a complaint about the NHS health and care services they received have a right to access independent advocacy support. This can include supporting people find out about options to raise concerns or make a complaint, supporting people to write their complaint and exploring what outcome they would like.

Healthwatch England found that fewer than 1 in 10 people accessing NHS complaints procedures were provided with advocacy support<sup>5</sup>.

**What does this mean to you:** If you are involved in NHS services and complaints processes you must make sure information about advocacy is made accessible to people. This could be by including information on your website, in leaflets or by simply telling people (and signposting) to the advocacy service.



### **Advocacy under the Care Act**

Whenever an adult who needs care and support (or their carer), or a young person who is approaching the transition to adult care and support (or their carer) is going through the decision making processes of assessment, planning, review or safeguarding (adult), the local authority must offer advocacy if the person has substantial difficulty in being fully involved in the key care and support processes of assessment, care and support planning and review, or safeguarding, and there is no one appropriate available to support and represent their wishes.

**What does this mean to you?** If you are responsible for assessing people under the Care Act, are involved in developing and signing off care and support plans (or support plans) or reviewing such plans you must consider who is available to support the person's active involvement in the process. The same goes for Safeguarding. If the person is likely to face substantial difficulty and doesn't have anyone appropriate to support them, you **MUST** offer advocacy to that person. They are not under an obligation to accept the advocacy offer.

### **What to do if the person lacks capacity to decide whether they want an advocate or not?**

If you are working with a person who lacks the capacity to decide whether they want an advocate to support and represent them, you can lawfully substitute their decision for them by following the Mental Capacity Act. This means

following the 5 principles and essentially considering 'is it in this person's best interests to have an advocate?'. If it is, you should refer to the relevant advocacy service.

SCIE produced guidance to support IMHA services offer an opt out referral process. This is relevant to anyone interested in making advocacy services accessible for people who cannot request an advocate

### **What happens if I don't refer?**

If you do not refer to advocacy, the person could lose their legal right to receive independent support in being involved and speaking up. Without this support the person could feel unable to fully participate or even excluded from the decision making process.

Without the full involvement of the person, decisions and plans are going to be of poorer quality than they would be if the person was leading and influencing outcomes. You want decisions and plans to be robust and have the most chance of achieving positive outcomes – which means you will want the person to take ownership and feel that the decisions and plans reached are their decisions and plans.

So if you don't involve advocacy, you run the risk of wasting time making decisions and creating plans that are not as effective as they could be.

And there are more serious consequences



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of not involving advocacy when the person is entitled to this statutory support.

In 2015, the London Borough of Haringey<sup>6</sup> failed to offer an eligible person an advocate which led the judge to rule that the assessment they had completed was invalid!

The person was going through an assessment and met eligibility for advocacy however Haringey did not arrange advocacy because, they argued, demand exceeded supply. The judge held that this did not matter that advocacy is a mandatory duty, ie you must arrange advocacy for an eligible person.

**This means that assessments made without one, when the duty has been triggered, could be declared invalid and you would need to redo the assessment (or plan or review).**

So its in everyone's interest to involve an advocate.

## Want more information?

At Kate Mercer Training our team of experienced trainers can help you learn more about advocacy, how to work with advocates and support you to fully comply with legislative requirements to involve advocacy. In house training, e-learning, blended learning and other resources are available to you now.

For teams that are big on personalisation and making sure health and social care practice is

person centred and promotes peoples choices and rights, we can also help you to develop your own advocacy skills.

## Get in touch today.



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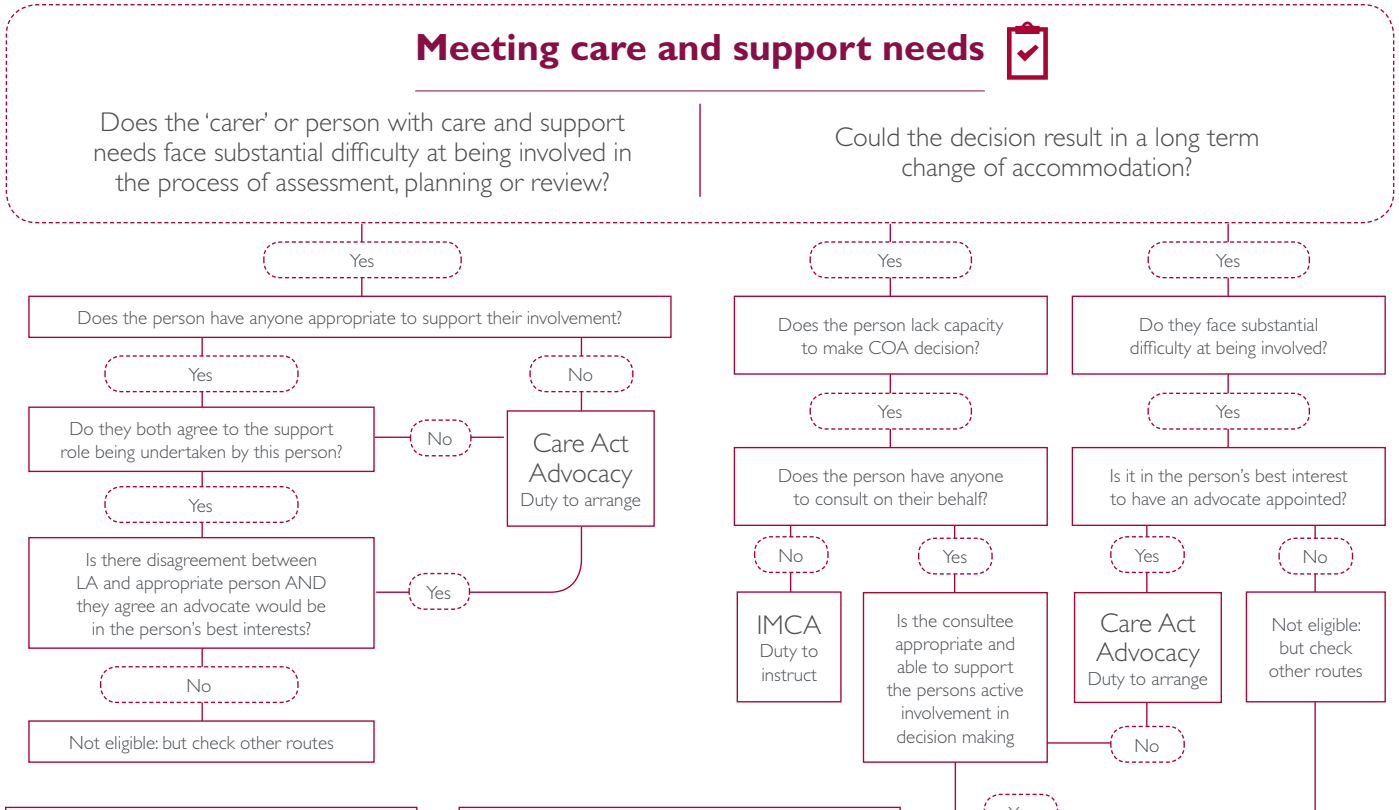
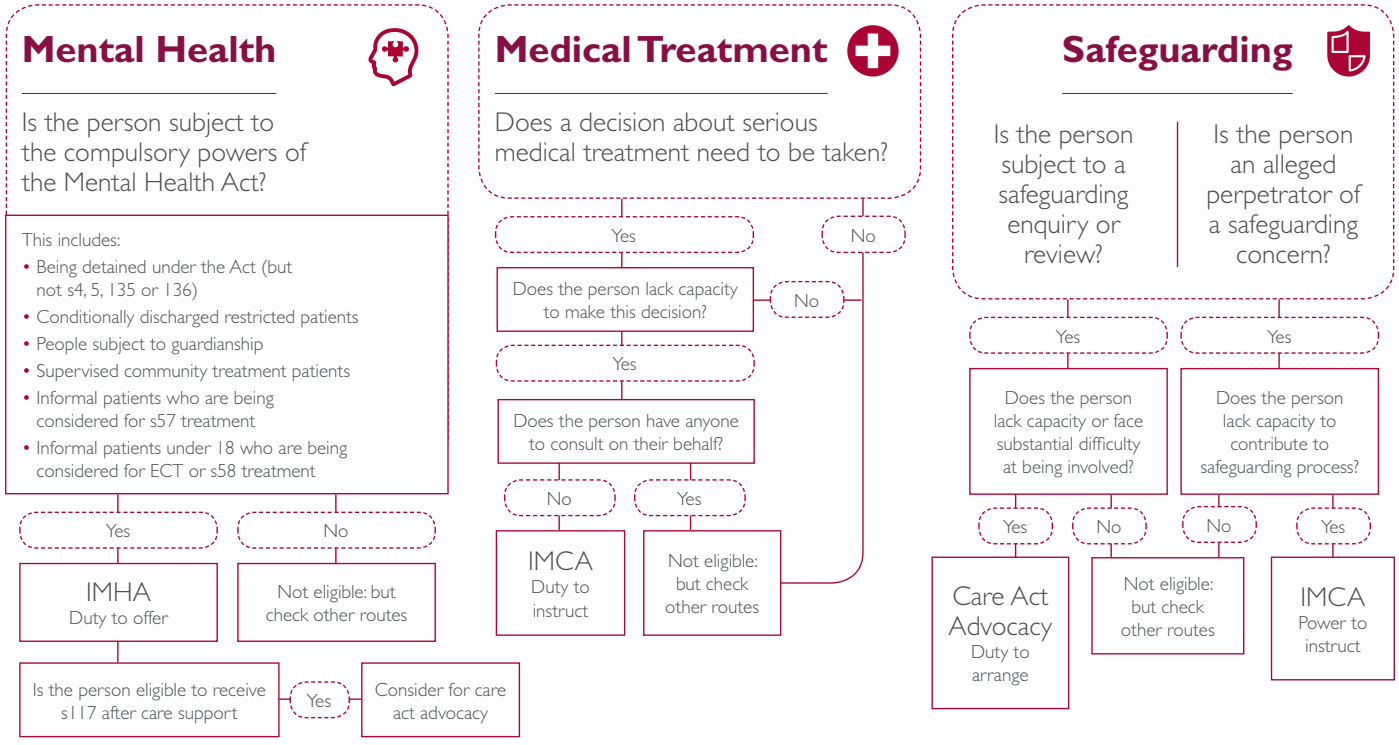
3 See section 26A of the Children Act which places a duty on local authorities in England to provide care leavers, looked-after children and children making or intending to make representations about the services they have received with access to an independent advocate.

4 See UCLAn 'A Right To Be Heard'

5 See Healthwatch England 2014, Suffering in Silence

6 See R (SG) v London Borough of Haringey

# ACCESSING STATUTORY ADVOCACY FLOWCHART



## Key

- Duty to offer** (hospital managers have a legal duty to offer access to IMHA but the person has a choice)
- Duty to arrange** (the LA has a legal duty to arrange advocacy for an eligible person who would like one)
- Duty to instruct** (the decision maker has a legal duty to appoint an IMCA, no consent is required)
- Power to instruct** (the decision maker can appoint an IMCA but they do not need to)
- Long term change of accommodation (COA)**. This is accommodation that is being arranged by the NHS for more than 28 days or by the LA for more than 6 weeks.

## Don't forget....

- People who are undergoing more than one decision making process may be entitled to more than one advocacy referral.
- The same advocate can provide more than one role (providing they meet requirements for training and independence)
- Most people who receive IMCA support for a COA will usually always be entitled to receive advocacy under the care act for their wider care and support planning.
- If a person lacks capacity to consent (or refuse) an advocate, the decision maker must follow the Mental Capacity Act to decide whether it is in the person's best interests to have an advocate appointed.

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