



Care Act training - independent advocacy

Legal duties and impact on individuals

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This theme explores the legal duty of providing an independent advocate, the key role of an appropriate person and the importance of following the legal requirements for both.

This document supports learning from a wider set of resources about the Care Act duties around independent advocacy and impacts on individuals, the training videos can be accessed here: <https://www.scie.org.uk/care-act-2014/legal-impact/independent-advocacy>

Key messages

Independent advocacy – legal duty

- The legal duty is to consider and provide independent advocacy (not just an opinion) if the individual (i.e. adult/carer) has a substantial difficulty in being involved in the process.

“(4)The condition is that the local authority considers that, were an independent advocate not to be available, the individual would experience substantial difficulty in doing one or more of the following—

- (a) understanding relevant information;
- (b) retaining that information;
- (c) using or weighing that information as part of the process of being involved;
- (d) communicating the individual’s views, wishes or feelings (whether by talking, using sign language or any other means).”

(<https://www.legislation.gov.uk/ukpga/2014/23/part/1/crossheading/independent-advocacy-support/enacted>)

- An individual does not have to lack the mental capacity for an Independent Advocate to be considered.

Independent advocacy or appropriate person role

- The main purpose is to maximise individual involvement in the process not to act on behalf of the individual.

When?

- It is applicable as soon as there is an identified appearance of need for care and support.
- The core duties for which it is necessary to consider independent advocacy are assessment of needs, care and support planning, review of care and support plan, and safeguarding.

Appropriate person

- An appropriate person should be considered in the first instance. Appropriate Person is a legal term and should not be replaced with an alternative title or concept (i.e. carer, Next Of Kin).
- An appropriate person is somebody who can support the individual in being involved in the process. And is not somebody who 'merely' speaks on behalf of the individual.

Recording

- Professional decisions based on legal requirements. Record decision-making not just 'yes' or 'no' to the question - does the person require an independent advocate?

Reflective questions

Find below a set of reflective questions that will help you embed the above key messages in your social care practice.

1. Have I professionally considered if the adult/carer has a substantial difficulty getting involved in the process?
2. Have I followed the legal criteria in selecting/agreeing an appropriate person?
3. Have I ensured that the independent advocate/appropriate person have maximised the individual's involvement in the process?

4. Do I know the differences between different types of advocates? Have I found information or reached out to ensure that the adult/carer has the right type(s)?
5. Have I been flexible and open to support the adult/carer with an independent advocate at any stage of the process, and as soon as the need is identified?

Further resources

- Care Act Statutory Guidance - <https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>
- Care Act 2014 - <https://www.legislation.gov.uk/ukpga/2014/23/contents/enacted>