

Commissioning independent advocacy under the Care Act

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social care
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The Social Care Institute for Excellence improves the lives of people of all ages by co-producing, sharing, and supporting the use of the best available knowledge and evidence about what works in practice. We are a leading improvement support agency and an independent charity working with organisations that support adults, families and children across the UK. We also work closely with related services such as health care and housing.

We improve the quality of care and support services for adults and children by:

- identifying and sharing knowledge about what works and what's new
- supporting people who plan, commission, deliver and use services to put that knowledge into practice
- informing, influencing and inspiring the direction of future practice and policy.

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Social Care Institute for Excellence
54 Baker Street, London W1U 7EX

www.scie.org.uk

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Introduction

This resource is aimed at commissioners charged with meeting the duties to provide advocacy under the Care Act 2014. It will help commissioning officers in local authorities think through their duties and understand what they are required to do to comply with the requirements of the Act.

Advocacy duties

This section explains advocacy duties under the Care Act 2014, other advocacy duties local authorities have, and how they might interact. It is not intended as a replacement for detailed, local, legal analysis of the Act, but to help you get to grips with what commissioners need to do.

Advocacy and the duty to involve

Local authorities must involve people in decisions made about them and their care and support. No matter how complex a person's needs, local authorities are required to help people express their wishes and feelings, support them in weighing up their options, and assist them in making their own decisions.

When does the advocacy duty apply?

The advocacy duty will apply from the point of first contact with the local authority and at any subsequent stage of the assessment, planning, care review, safeguarding enquiry or safeguarding adult review. If it appears to the authority that a person has care and support needs, then a judgement must be made as to:

- whether that person has **substantial difficulty** in being involved, and
- if there is an absence of an **appropriate individual** to support them.

An **independent advocate** must be appointed to support and represent the person for the purpose of assisting their involvement if these two conditions are met and if the individual is required to take part in one or more of the following processes described in the Care Act:

- 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

- an appeal against a local authority decision under Part 1 of the Care Act (subject to further consultation).

Judging ‘substantial difficulty’

Local authorities must consider, for each person, whether they are likely to have substantial difficulty in engaging with the care and support process. The Care Act defines four areas where people may experience substantial difficulty. These are:

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

Who is an ‘appropriate individual’ to assist a person’s involvement?

‘If the person being supported doesn’t want that person to support them, that’s not an appropriate adult. You can’t force an advocate on someone.’

Co-production workshop participant

Local authorities must consider whether there is an appropriate individual who can facilitate a person’s involvement in the assessment, planning or review process, and this includes four specific considerations. The appropriate individual cannot be:

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

Sometimes the local authority will not know 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 local authority 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 local authority 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.

Information and advice

The Care Act places a duty on local authorities to ensure that all adults in their area have access to information and advice on care and support, and to keep them safe from abuse and neglect. Prior to making contact with the local authority, there may be some people who require independent advocacy to access information and advice. This need should be built into any analysis of demand that you make.

Continuing health care

The advocacy duty in the Care Act applies equally to those people whose needs are being jointly assessed by the NHS and the local authority, or where a package of support is planned, commissioned or funded by both a local authority and a clinical commissioning group (CCG), known as a 'joint package' of care. Historically, this arrangement has often been difficult for people who use services, their carers and friends to understand and be involved in. Local authorities and clinical commissioning groups will therefore want to consider the benefits of providing access to independent advice or independent advocacy for those who do **not** have substantial difficulty and/or those who have an appropriate person to support their involvement. Effective joint commissioning arrangements would involve:

- dealing with the person holistically, providing a seamless service and avoiding duplication
- reducing communication breakdown
- the involvement of the person, their family and carers
- effective partnership working between health and social care, addressing needs together
- improved communication and continued care to achieve joint outcomes.

Independence

The independence of the service is an important consideration for all commissioners. For services to be meaningful and acceptable to those they are designed to support they must have the confidence of individuals, carers and the public. Anything compromising that independence could easily undermine confidence.

The Care Act regulations for independent advocacy are clear: providers of advocacy must be independent of the local authority, with their own constitution, code of practice and complaints procedure. Advocates under the Care Act will be managed by, and primarily accountable to, the advocacy organisation that recruits and employs them, thereby maintaining their independence from the local authority.

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 (family member, carer or friend) 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 the local authority believes that 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, and both agree that an independent advocate would be beneficial to the individual.

Prisoners

Since April 2015 local authorities are also responsible for assessing and meeting the social care needs of adult prisoners (not just on discharge from prison but also while in custody). All prisoners are treated as if they are resident in that area for the purposes of the Care Act and for as long as they reside in that prison. Prisoners are entitled to the support of an independent advocate in the same circumstances as people in the community. You should therefore work with custodial managers to ensure there is a sufficient supply of advocates for this environment. Local authority areas containing prisons should build this into their plans for meeting the requirements of the Act.

Training

Once appointed, all independent advocates under the Act should work towards the National Qualification in Independent Advocacy (City & Guilds, level 3) within a year of being appointed, and achieve it in a reasonable amount of time thereafter. The qualification is competency-based. To successfully complete the four core units (301–304) candidates are required to provide evidence of real work practice.

In addition, given the role of the advocate under the Care Act and the close relationship with the Mental Capacity Act and independent mental capacity advocacy (IMCA), you may wish to encourage advocates to complete unit 305 (providing independent mental capacity advocacy) and unit 310 (Deprivation of Liberty Safeguards).

After completing the Independent Advocacy qualification, providers should be expected to ensure that all independent advocates have access to further relevant training. This may cover:

- good practice in safeguarding adults
- non-instructed advocacy
- care and support planning (or person-centred planning)
- good practice in challenging decisions or the decision-making process effectively
- supported decision-making (how to effectively support an individual who is experiencing difficulty with decision-making).

For more detailed guidance, please see the [Care and Support Statutory Guidance](#).

Other statutory advocacy duties (not related to the Care Act 2014)

Local authorities have a number of other statutory duties to ensure access to advocacy which are described below. You should work closely with colleagues in assessment and care management as well as accessing legal advice to gain a full understanding of these duties and how they interact.

The Mental Capacity Act 2005

‘Both the Care Act and the Mental Capacity Act recognise the same areas of difficulty, and both require a person with these difficulties to

be supported and represented, either by family or friends, or by an advocate in order to communicate their views, wishes and feelings.'

Care and Support Statutory Guidance

The right to an independent mental capacity advocate was introduced by the Mental Capacity Act 2005. The Act gives some people who lack capacity a right to receive support from an independent mental capacity advocate.

Local authorities have commissioned independent mental capacity advocacy services in England. Responsible bodies, the NHS and local authorities all have a duty to make sure that independent mental capacity advocates are available to represent people who lack capacity to make specific decisions, and so any staff affected will need to know when an independent mental capacity advocate needs to be involved.

For further information see [The Mental Capacity Act 2005: Code of practice](#).

The Mental Health Act 2007

Independent mental health advocacy services were introduced to safeguard the rights of people detained under the Mental Health Act 2007 and those on community treatment orders (CTOs). Independent mental health advocates (IMHAs) aim to enable people to participate in decisions about their care and treatment.

An independent mental health advocate is a statutory advocate, granted specific roles and responsibilities under the Mental Health Act. Their role is to assist people to understand the legal provisions to which they are subject under the Mental Health Act 1983 and the rights and safeguards to which they are entitled. They also assist people to exercise their rights by supporting participation in decision-making.

People are eligible to use independent mental health advocacy services in England if they are:

- detained under the Mental Health Act 1983 (excluding people detained under certain short-term sections)
- conditionally discharged restricted patients
- subject to guardianship
- subject to CTOs.

People who are being considered for treatment requiring consent and/or a second opinion may also qualify for independent mental health advocate assistance.

The Health and Social Care Act 2012

The NHS Complaints Advocacy Service was set up in April 2013, replacing the Independent Complaints Advocacy Service (ICAS), which provided support to people wishing to make a complaint about the NHS. This service was centrally commissioned by the Department of Health on a regional basis, but the new service is now commissioned by local authorities individually or in cooperation with others.

The service aims to provide support to people who want to make a complaint about the NHS, and need some support to do this. Support may range from receiving a self-help pack, information and options, to support from an advocate, depending on needs.

Interactions between statutory advocacy duties

Independent advocacy under the duty imposed by the Care Act 2014 is similar in many respects to independent advocacy under the Mental Capacity Act. Regulations have been designed to enable independent advocates to carry out both roles. However, the duty to provide independent advocacy under the Care Act is broader and applies in a wider set of circumstances, providing support to:

- people who have capacity but have substantial difficulty in being involved in the care and support process
- people in relation to their assessment and/or care and support planning regardless of whether a change of accommodation is being considered for the person
- people in relation to the review of a care and/or support plan
- people in relation to safeguarding processes (though independent mental capacity advocates may be involved if the authority has exercised its discretionary power under the Mental Capacity Act)
- carers who have substantial difficulty in engaging, whether or not they have capacity
- people who have someone who is appropriate to consult for the purpose of best interests decisions under the Mental Capacity Act, but where that person is not able or willing to assist with advocacy in any other capacity.

There are likely to be people who qualify for advocacy under the Care Act but not for an independent mental capacity advocate. However, most people who qualify for independent advocacy under the Mental Capacity Act will also qualify for independent advocacy under the Care Act. To enable a person to receive seamless advocacy and not to have to repeat their story to different advocates, the same person can provide support in both roles, provided they are trained and qualified to do so.

If someone has previously had access to an IMHA and is being jointly assessed by the NHS and local authority (often under what is called a Care Programme Approach), they should be considered for an advocate under the Care Act, if they have substantial difficulty in being involved and if there is no appropriate person to support their involvement.

Local authorities do not have to commission one organisation to provide the different types of advocacy but, over time, there may be advantages to this.

The Care Act extends the range of situations and people to whom there is a duty to make advocacy available. Nothing in the Act prevents advocacy being provided in other circumstances.

Inclusion, empowerment and human rights

This section is informed by SCIE research and the input of people who use services and carers. We've also identified some principles of good practice that can enable commissioners to better understand and specify relevant services. It is intended to give less experienced commissioners a short introduction to advocacy.

'I think advocacy is something about rights. I think it's about people knowing what their rights are and having access to that information and the advocate feeling that they have a role in which they're being heard and have some strength in the wider discussion. People have a right to have their voices heard to the end of their lives.'

Co-production workshop participant

Principles

Advocacy promotes equality, social justice, social inclusion and human rights. It aims to make things happen in the most direct and empowering ways possible. It recognises that self-advocacy – whereby people, perhaps with encouragement and support, speak out and act on their own behalf – is the ultimate aim. This is the goal which underpins all forms of high quality advocacy, as emphasised in the **'Advocacy Code of Practice'**.

'It seems that local authorities have advocacy services for people with learning difficulties, people in the mental health system and so on, and one of the things that I think is really worrying is that people are not just experiencing an individual impairment or illness, they've often got two or three things that are very important and it's understanding that holistic approach to what they might need and how they might need supporting.'

Co-production workshop participant

Self-advocacy

'I have seen in my many years working in self-advocacy that when people with learning difficulties move into self-advocacy they can move away from the family because they start to have more of a voice.'

Co-production workshop participant

Self-advocacy refers to an individual's ability to effectively communicate his or her own interests, desires, needs and rights. It recognises that people are experts by experience and involves them in speaking out for themselves about the things that are important to them. It means that people are able to ask for what they want and need and to tell others about their thoughts and feelings.

The goal of self-advocacy is for people to decide what they want and to carry out plans to help them get it. Self-advocacy differs from other forms of advocacy in that the individual self-assesses a situation or problem and then speaks for his or her own needs. The ultimate aim of all forms of advocacy should be to support people to self-advocate as far as they are able to.

Group advocacy

Group advocacy involves people with shared experiences, positions or values coming together in groups to talk and listen to each other and speak up collectively about issues that are important to them. These groups aim to influence public opinion, policy and service provision. They vary considerably in size, influence and motive. Representatives of local groups are often included on planning committees and involved in the commissioning and monitoring of health and social care services.

Non-instructed advocacy

Non-instructed advocacy is needed when, despite the provision of assistance and support, a person is still unable to give their views and make their own decisions. If this is the case, the independent advocate needs to use the information they have gathered to represent the person. The aim of non-instructed advocacy is to secure the person's rights, promote their wellbeing and ensure their wishes are fully considered.

There are four recognised approaches and providers should endeavour to integrate them all when providing support:

- rights-based approach – we all have certain fundamental human rights that can be defined and measured
- person-centred approach – based on the development of long-term, trusting and mutually respectful relationships between advocates and people
- watching brief approach – placing the person at the centre of thinking about the best way to support them
- witness/observer approach – in which the advocate observes or witnesses the way in which a person leads his or her life.

It is important to remember that an individual's capacity to be involved in decision-making or to instruct an advocate may fluctuate. This provides a further argument in favour of a whole-systems approach to advocacy, which maximises the chances of continuity of support.

Peer advocacy

Peer advocacy refers to one-to-one support provided by advocates with a similar disability or experience to a person using services. Trained and supported volunteers often provide peer advocacy as part of a coordinated project. Peer advocacy schemes argue that they are particularly well placed to empathise with the needs of people, to approach them as their equals and to feel strongly about, and fight hard for, their needs.

Citizen advocacy

Citizen advocacy aims to involve people in their local community by enabling them to have a voice and to make decisions about the things that affect their lives. Citizen advocacy partnerships are long term, not time-limited, and last for as long as the citizen advocate and the individual want them to. Citizen advocates are ordinary members of the local community. They are unpaid and usually operate with support from a coordinated scheme.

Professional advocacy

Paid independent advocates support and enable people to speak up and represent their views, usually during times of major change or crisis. Such advocacy is issue-based and the advocate may only need to work with the person for a short time.

Advocacy principles and standards

Guidance on market shaping and the commissioning of care and support in relation to the Care Act 2014 states that local authorities should take a co-production approach to market shaping and commissioning.

Quality advocacy services are person-centred and developed using a co-production approach that aims to maximise the participation of people who use services and their carers. Co-production means delivering services based on an equal and reciprocal relationship between people who use services, carers and professionals, and results in the provision of support that meets individual goals as well as needs. SCIE has a collection of **co-production resources** if additional support is required.

‘Co-production means that what you have to say as a service user is just as important as what other people have to say about the service you receive.’

Co-production workshop participant

Equality and diversity

Publicly funded advocacy providers must comply with the public sector equality duty (PSED) (Equality Act 2010) by paying due regard, when carrying out their functions, to the need to eliminate discrimination, advance equality of opportunity and foster good relations between people who share a ‘protected characteristic’.

The protected characteristics are:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex and sexual orientation.

For further information on complying with the public sector equality duty please see the **Equality and Human Rights Commission (EHRC) guidance**.

The eight quality areas

The advocacy **Quality Performance Mark (QPM)** is a robust, quality assessment and assurance system for providers of independent advocacy. It is a tool used to benchmark independent advocacy services against a framework. The eight key quality areas that form the Mark are as follows.

Independence

The QPM framework is designed for use by providers of independent advocacy. It is the independence of advocacy that allows services to be led by and responsible to the client. Research shows that independence is one of the key attributes that people coming to advocacy services are looking for.

Clarity of purpose

It is essential that everyone knows what they can expect from an advocacy service. Providing clarity helps in the following ways:

- people can evaluate the support they receive
- advocates are clear about their role and its boundaries
- it is easier for appropriate referrals to be made, and to ensure that funding intended for independent advocacy is used in precisely that way.

Confidentiality

Confidentiality is a cornerstone of independent advocacy. It establishes a relationship of trust that enables people to tell their stories and explore the options available to them. However, confidentiality should not be a barrier to the supervision and support of advocates.

It is essential that services have a clear confidentiality policy which is regularly reviewed. It is equally important that people who come to the advocacy service are given clear information about what confidentiality means and the circumstances under which it will not be possible to maintain confidentiality.

Safeguarding

An additional set of indicators relating to safeguarding has been added to the latest edition of the Quality Performance Mark. This was necessary following the abuse and neglect at the Winterbourne View and Mid-Staffordshire hospitals, to ensure that advocacy providers and advocates are suitably knowledgeable and experienced in identifying safeguarding issues.

Empowerment and putting people first

Advocacy services need to be focused on the person they are working with. One way of achieving this is to ensure that people who do, or may, use the advocacy service have meaningful influence over the direction of that service.

As advocacy is about increasing the amount of control that people have over their own lives, advocacy services need to ensure they are working in a way that fosters independence. It is important to create a culture that promotes individual empowerment and to develop methods to determine outcomes with clients and measure the effectiveness of the advocacy relationship.

Equality, accessibility and diversity

As well as complying with equality legislation (Equality Act 2010 in particular), it is expected that advocacy services take proactive steps to ensure equitable and easy access to them. Having equal opportunities policies is only part of the process. Proactive efforts must be made to implement such policies, remove barriers and deliver accessible and equitable services.

Accountability and complaints

Advocacy services must be held accountable for the work they do and the way they use the funding they receive. Different stakeholders can hold advocacy services to account in different ways. Funders should be able to see that money is being spent wisely by assessing the effectiveness of the advocacy service. The service should be accountable for meeting the needs of its local community, its legal responsibilities and adhering to agreed advocacy principles. Just as importantly, individuals should be able to expect a high quality service and should have a clear and accessible route for complaints if they are unhappy with the service provided. This must include independent support for complainants.

Supporting advocates

Policies, procedures and organisational structure count for nothing if the people delivering advocacy are not adequately trained or supported. Providing training for advocates and ensuring adequate and appropriate supervision are essential if services are to retain skilled advocates and ensure high quality advocacy for people who need it.

Overview of commissioning independent advocacy

This section aims to provide an overview of good practice in commissioning. It draws on work from:

- the Institute for Public Care, Oxford Brookes University
- the Institute of Local Government Studies, University of Birmingham
- the Care Act and Care and Support Statutory Guidance.

'I think sometimes we can get too stuck on, 'Okay, we've commissioned a contract for this through IMCA, commissioned a contract for IMHA, got one for NHS complaints advocacy and now we've got one for Care Act advocacy.' We want to encourage people to think creatively about the different duties.'

Co-production workshop participant

What is commissioning?

'Commissioning' is a broad concept with competing definitions. For our purposes, it represents a systematic approach to planning and resourcing public services. The aim of all social care commissioning activity by local authorities is to achieve the best possible outcomes for the community as a whole and for individuals who require care and support.

This includes people who may need care and support at some time in the future. Commissioning should ensure that there are personalised approaches to meeting people's needs, in all services and settings. It must also achieve the best value and comply with legislation.

'When we say commissioning, we don't always mean buying a new service, but what it might be is looking at a number of different options to fill the demand that might come along with these new duties.'

Co-production workshop participant

Commissioning for better outcomes (TLAP) provides a clear definition of commissioning and **Commissioning and COVID-19** (SCIE) provides guidance for commissioners that may help them support providers during the COVID-19 pandemic.

The Care Act did present local authorities with a number of challenges in relation to commissioning advocacy services, not least ensuring there is enough provision to meet current and future demand, along with making sure that advocacy services can be aligned and developed with other ongoing developments in assessment and review. However, the commitment to commission in asset-based ways presents opportunities to develop statutory duties as well as collaborate to deliver them.

While there are many models of commissioning and purchasing available, they all fundamentally break down into four key areas (illustrated below):

- **Analyse:** understand the values and purpose of the agencies involved, the needs they must address and the environment in which they operate
- **Plan:** identify the gaps between what is needed and what is available, and decide how these gaps will be addressed
- **Do:** secure services and ensure they are delivered as planned
- **Review:** monitor the impact of services and ensure any future commissioning activities take the findings of this review into account.

Importantly, commissioning and procurement are closely linked. Take a look at the illustration below.

Highlighted in the outer circle are commissioning activities. They must inform the ongoing development of procurement activities, which are illustrated in the inner circle.

Each set of activities are grouped against the four elements of the commissioning cycle and are equally important, and these must be equitable and transparent – offering opportunities for all stakeholders to influence the types of service provided.

Market shaping and commissioning for advocacy

The Care Act itself does not specifically mention commissioning, but it is included in the vocabulary of the chapter of the statutory guidance ‘[Market shaping and commissioning](#)’ and is seen as a core part of implementing the changes proposed by the Act.

The Care Act promotes the following commissioning principles:

- focusing on outcomes and wellbeing



- promoting quality services, including via workforce development and remuneration and ensuring appropriately resourced care and support
- supporting sustainability
- ensuring choice
- co-production with partners.

Commissioners may use the Care Act as an ongoing opportunity to review all advocacy services within their area, and to further develop strategies around how best to meet the needs of their local population.

Standards for good commissioning

Here we reproduce the key principles of good commissioning identified by the [Commissioning for Better Outcomes programme](#) at the University of Birmingham in partnership with Think Local Act Personal.

Person-centred and outcome-focused:

- promotes health and wellbeing for all
- delivers social value.

Inclusive:

- is co-produced with people and their communities
- promotes positive engagement with providers
- promotes equality.

Well-led by local authorities:

- demonstrates a whole-system approach
- uses evidence about what works.

An advocate for a diverse and sustainable market:

- ensures diversity, sustainability and quality of the market
- provides value for money.

Commissioning tasks

This section seeks to enable local authorities to think through the commissioning tasks that will help them to ensure that good quality advocacy is available for all adults who are entitled to it under the provisions of the Care Act. It can be used in conjunction with the [commissioning self-assessment tool](#) found to help commissioners think through where they are now and what they need to do.

Analyse

Collect information to understand current and future demand for advocacy

Work closely with local colleagues and stakeholders (researchers, public health, project leads, CCG, VCSE, etc.) to gather information and data about the likely demand for independent advocacy under the duties.

This could include data on population projections, such as your local joint strategic needs assessment or national databases such as **POPPI** and **PANSI**.

The duties of an advocate under the Care Act are also more robust than other kinds of specific engagement. They focus more on enabling involvement, and this in turn may require more time and, therefore, resources.

Analyse information to understand current and future demand for advocacy

Consider demand since Care Act implementation in your analysis. Include any proposed changes in the assessment and care management pathway for people with social care needs (including children in transition to adulthood), and **carers**, along with engagement with **self-funders**, and the likely impact this has had or may have on the uptake of advocacy services.

Take into account the increase in demand on the system that will accompany any implementation of funding reforms, as well as any increase in demand as people have become more aware of their rights under the Act. A good starting point is the government's **impact assessment** of the reforms.

Review current advocacy provision and uptake, considering:

- who currently uses advocacy services
- what local people understand about advocacy services and the potential benefits
- the barriers people currently experience in accessing care, which may best be addressed through improved access to advocacy
- the types of advocacy services people want and need
- how people currently access services
- how they might choose to access services in the future
- what people consider to be a good local advocacy service which meets their needs.

You should analyse demand for Care Act advocacy in conjunction with demand for needs and carers' assessments in line with the duties under the Act.

You may want to test progress locally by undertaking a review of recent assessments or reviews and applying the Care Act provisions to them.

Complete a modelling exercise to confirm practice use

Even though the Care Act should be embedded practice now, modelling and ongoing assessment against the Care Act duties should be based on your understanding of how these variables will affect each area.

You might consider auditing a small sample of assessments, making a judgement about their need for advocacy in light of the changes, then extrapolating these findings. A judgement could then be made about what proportion of assessments may need advocacy in the future.

This modelling exercise should include analysis in conjunction with any proposed redesign of the assessment and care management processes.

Seek out and reflect on research and good practice evidence

Seek out good practice in the form of quality standards to understand the quality of services and decide what mix of services will meet and continue to meet local needs. These include:

- [a quality standards for independent advocacy](#)
- [The 'Advocacy Charter'](#)
- [The 'Advocacy Code of Practice'](#).

Refer to the [SCIE resources on advocacy](#), as well as the e-learning resource. This type of reflection on good practice in advocacy should assist you in specifying the types of services most appropriate to meet demand in your area. It may also help you identify good practice that is already taking place.

Understand the resources available

Ensure any review or evolving plans are linked with overall departmental and corporate aims in relation to Care Act implementation to meet your advocacy duties under the Care Act and project future financial commitments based on likely demand. This is your responsibility as a commissioner of independent advocacy.

Implementation plans should have begun with an analysis of demand (as described above) and commit appropriate resources to ensure compliance with the Act on an ongoing basis.

Benchmark the costs of commissioning plans

Communicate with comparable local authorities to benchmark demand analysis and resource allocations around any areas of commissioning. Seek out support from representatives of different councils through the Local Government Association and the Association of Directors of Adult Social Services if you need to identify potential partner authorities or critical friends to enable ongoing quality improvement.

Develop systematic processes of co-producing commissioning

Refer to [SCIE's guide to co-production](#).

Develop commissioning, purchasing and monitoring activity alongside people who use services and potential users of services to ensure that the supply of advocates meets local need effectively.

Seek to understand current levels of supply

Review what happens locally and seek to understand what works well now and how this could be expanded if required. This includes what currently works well, and where there is over- and under-supply of services.

Map current provision and uptake of services against the current level of demand and the service user pathway to understand fluctuations and barriers to accessing advocacy services.

Analyse and explore the impact of any changes to advocacy services on users, and seek to understand the implications of any changes in line with the Equality Act 2010.

Analyse the local performance and demand of existing advocacy provision

Consider the performance of existing advocacy services in your area (statutory and non-statutory). In light of this analysis, you may decide to review the provision of all services and consolidate them into one contractual arrangement.

Plan

Develop a clear, written strategy

Agree outcomes for the provision of advocacy to meet Care Act duties that signal your future commissioning intentions for the local area.

Integrate the ongoing collection and analysis of demand information, good practice, financial resources, benchmarked costs, co-production and involvement plans as well as a wider analysis of advocacy in the local area to amend and review a clear commissioning strategy and/or plan.

Have a process of engagement with existing and potential providers, as well as local people who use services, around a clear strategy setting out legal duties and intentions of independent advocacy provision under the Act.

Remain vigilant about the risks of not complying with the Care Act or underestimating the possible increases in demand for advocacy services. Review contracting options and consider the use of outcomes-based service specifications that enable more flexible purchasing arrangements with providers. You may want to consider:

- arrangements in which an expected minimum level of support to individuals and core services (including awareness-raising), and a commensurate level of funding, are specified together with additional funding as demand increases
- arrangements for flexibility between different elements of advocacy provision, where these are combined, to allow for peaks and troughs
- arrangements whereby awareness-raising and service delivery are balanced: time can be spent on the former to enable your local authority to meet its duties
- joint commissioning arrangements with NHS colleagues, and with children's services.

Facilitate dialogue with key stakeholders and potential providers

Develop mechanisms for ongoing dialogue with local partners (including the NHS and related local authority services) and existing and potential providers in order to build consensus on the implications of the commissioning plans for your area. These mechanisms might include forums, individual discussions, 'meet the buyer' events and feedback through email or online chatrooms.

It is important to involve potential providers at an early stage of the process. They will provide insight and constructive challenges to your plans.

Develop business cases for the commissioning of advocacy in line with the Care Act duties

Using your needs analysis, continuous assessment and monitoring, you should always model a range of options that will offer a good mix of advocacy services for your area (including maintaining the status quo). Review existing contracts to see how well they align with these models. Seek to understand the financial implications of each model.

Work with decision-makers to ensure they still understand the significance of the changes in the Care Act. Be clear about possible business risks and costs of non-compliance. Develop evidenced cases to present to senior staff and politicians.

Ensure that advocacy forms a key part of the business case and financial planning for ongoing Care Act implementation.

Develop a person-centred approach to commissioning advocacy services

Use co-production to assess and understand how advocacy is working in your area. This enables local people to contribute to the design of services and maximises control over services once they are established. Please see information on [co-production](#) and [commissioning](#).

You should ensure that any current provision or future plans and strategies prioritise the ability of people to choose appropriate and proportionate support at each stage of their care pathway. Establish a clear link with your strategy for delivering Care Act duties to provide information and advice under the Care Act.

Ensure that any potential implications of new services have been analysed in line with the requirements of the Equality Act 2010.

Develop strategies for communicating commissioning issues with a range of stakeholders

Ensure advocacy entitlements are clearly linked with corporate and departmental communication plans for ongoing Care Act implementation. Be clear and consistent about messages to citizens, providers and staff about the process and timescales for commissioning any new service.

Do

Review so that you have a clear picture of local providers and their strengths, weaknesses and future plans

Develop an understanding of providers through:

- market testing/‘meet the buyer’ events
- involving users of existing advocacy services
- site visits
- provider questionnaires.

Continue to influence the local market for advocacy

Engage in regular and productive dialogue with providers that encourages consensus and partnership-orientated relationships to develop services in line with your population needs,

rather than the historical awarding of contracts. Continue to review, reassess and, where necessary, re-commission to meet your population needs.

Using the above mechanisms:

- work with providers to ensure diversity of available services and encourage collaboration where possible to develop the market
- work with people who use services, potential service users and providers to design services that meet the needs identified in the earlier or ongoing analysis.

Build any plans for commissioning advocacy services into market position statements, and work with providers to understand the market and the potential challenges your commissioning plans present.

Consider encouraging the development of partnerships between larger organisations and smaller, local ones. This could be developed through peer-to-peer evaluation and support or more formal consortium arrangements.

Develop service specifications and contracts that are flexible, evidenced-based, specific and outcome-focused

Be clear about the legal requirements for providers (see the sections 'Background' and 'Advocacy duties' in this guide). Consider and specify the requirements for organisations or consortiums to enable them to deliver this service and ensure compliance with your legal duties.

Consider the level of training and expertise individual advocates must have in relation to the wide range of processes through which they will need to support people. You should ensure that contracts allow for sufficient time and adequate arrangements for staff training and support, along with continuing professional development.

Specify the funding model for the service, and use the intelligence from the last few years, considering the growth in demand over the life of the contract and your analysis of demand and available resources. Ensure flexibility and funding stability for providers. Carefully specify the expected outcomes, developed locally with key stakeholders, including potential users of services. Specify a mechanism for ensuring the independence of the service – it is good practice to identify the means of safeguarding independence in funding agreements and contracts. This would include, for example:

- Having a clear system for resolving disputes which could be included in an engagement protocol. For example, this could allow the service to raise issues in relation to independent advocacy referral at a senior level within the local authority.
- The commissioning authority not being involved in any matters of staff deployment or discipline. This would include not trying to determine whether a particular advocate does or does not support and represent a specific individual.

Be clear about the pathway for referral/instruction in any services and about how this fits with any redesign of the assessment and care management processes of your local authority.

Specify the need for clear feedback mechanisms for users of, and referrers to, the new service, to both provider and commissioner for ongoing monitoring and quality improvement.

Specify a clear requirement to collect and provide information about protected groups, in line with human rights legislation.

Specify requirements for any provider to promote and market their service, both alongside the council in its duty to provide information and advice, and independently, particularly within 'seldom heard' groups. Ensure contracts enable access and influence for commissioners in relation to the effective operation of the service and consider the results of feedback from referrers and users of the advocacy service.

Treat all providers equally

Be open and transparent about any communication with potential providers. Ensure you offer the same opportunities for communication to all, and be clear about the requirements of any procurement process you seek to pursue.

Ensure procurement and contract monitoring activities are proportionate

Procurement should be led by the strategic analysis of need over the life of the contract and in terms of the relationship with other services. Consider joint commissioning with other agencies including other local authorities, health services and children's services.

Work with providers to understand how you can build flexibility into the delivery of services and the ability to respond quickly to changes in demand.

Maintain good and consistent dialogue with providers and the users of services so that issues of delivery can be picked up quickly and easily, before they become a contractual issue.

Have effective strategies and plans in place to ensure staff, people who use services and their carers are aware of and understand the advocacy offer.

Training and development for staff should now be embedded as standard so that they are aware of the changes to advocacy arrangements under the Care Act, and how this might impact their roles and responsibilities.

Review the pathways for people using services and ensure that assessment processes are effective in picking up a potential need for advocacy services every step of the way.

Work with people who use services and their carers to test approaches and develop information and support materials to enable people to access services quickly and easily if they are required.

Ensure information and guidance support continues to align with the Care Act advocacy duty.

Review

Bring together relevant data on activity, finance and outcomes for services

To judge whether they give value for money:

- review the service against specified deliverables
- ensure reviews are evidence- and outcome-driven
- consider the development of service user involvement in contract monitoring

- use measures that enable you to assess uptake and demand for services in real time and to work flexibly with providers to help them respond
- use continuous feedback from people and professionals to adapt and make changes as and when required
- create mechanisms or forums for shared learning, if you haven't already.

Develop contract monitoring processes that focus on developing relationships with providers

Ensure that procurement and contract monitoring activities are proportionate to risk and promote the delivery of outcomes.

Work in positive partnership with providers to understand where performance may be falling short and how they might address any issues.

Decommission services where they fail to meet outcomes

Consider decommissioning when services fail to meet outcomes, provide value for money, and where efforts to work in partnership have failed to improve performance. This should be evidence-based with any proposed plans for recommissioning new or different services based on a detailed knowledge of supply and demand and the needs and knowledge of people who use services.

Seek to continuously improve your commissioning arrangements

Keep clear and consistent records of the commissioning activities described above. Work with commissioners in other local authorities and national improvement agencies (e.g. SCIE) to benchmark your own performance and keep up with good practice. Discuss and reflect on your commissioning of independent advocacy under the Act with colleagues.

Self-assessment tool

Complete the [self-assessment tool](#) with the checklists above.

How to use:

- Score yourself green, amber or red under each commissioning area.
- For each area you score green, record your key strengths in this area in the box provided.
- For each area you score amber or red, identify areas for development.
- Once you have completed it, identify actions to address areas for development and how and who will be taking them forward. Prioritise areas you have scored red.
- If you identify an area in which you think your authority is particularly strong, please [share it with SCIE](#).

As well as with the frontline workforce, this assessment may be worth completing with providers, people who use the services and carers.

Compliance with the Equality Act 2010

Public sector equality duty

Local authorities must pay due regard to the public sector equality duty when commissioning advocacy services.

To 'pay due regard' means that when making decisions a local authority:

'must ...have due regard to the need to:

- *eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act*
- *advance equality of opportunity between people who share a protected characteristic and those who do not*
- *foster good relations between people who share a protected characteristic and those who do not.'*

PSED essential guidance

And in order to have due regard:

'Those who exercise its functions must be aware of the general equality duty's requirements. Compliance with the general equality duty involves a conscious approach and state of mind. General regard to the issue of equality is not enough to comply.'

PSED essential guidance

The protected characteristics are:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex and sexual orientation.

Paying due regard

As a commissioner, you should:

- identify the advocacy needs of people who share protected characteristics in the local authority
- undertake analysis of access to, experiences of and outcomes from current advocacy provision and use this analysis to inform your commissioning of future advocacy provision
- ensure contracts with providers are designed in such a way as to meet the advocacy needs of people who share protected characteristics
- include in contracts requirements on providers to monitor access to, experience of and outcomes from service provision for people who share protected characteristics
- engage with users of advocacy services who share protected characteristics and with organisations representing people who share protected characteristics to identify issues regarding access to, experience of and outcomes from commissioned advocacy services for these groups.