

Workshop 3
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Vocal Advocacy

The Care Act: New rights to advocacy

Aims of the workshop

- To discuss links between MCA and Care Act
- To outline new duties of LA's to provide advocacy
- To discuss implications for direct care providers

What is advocacy?

Advocacy is taking action to help people say what they want, secure their rights, represent their interests and get the services they need.

The person may not understand the information given to them or the options open to them- the advocate can help them understand so that they can make an informed decision and may speak up on their behalf, to ensure their decision is heard.

Mental Capacity Act 2005

implemented in Oct 2007

The five statutory principles are:

1. **A person must be assumed to have capacity** unless it is established that they lack capacity.
2. A person is not to be treated as unable to make a decision unless **all practicable steps** to help him to do so have been taken without success.
3. A person is not to be treated as unable to make a decision merely because he makes an **unwise decision**.

MCA principles

4. An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his **best interests**.
5. Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is **less restrictive** of the person's rights and freedom of action

Assessing capacity to decide

Does the person have a general understanding of what decision they need to make and why they need to make it?

- Does the person have a general understanding of the likely consequences of making, or not making, this decision?
- Is the person able to understand, retain, use and weigh up the information relevant to this decision?
- Can the person communicate their decision (by talking, using sign language or any other means)? Would the services of a professional (such as a speech and language therapist) be helpful?

MCA

- Has capacity to decide x
- Lacks capacity to decide x-
- Help offered??
- IMCA appointed to help

The Care Act: **new advocacy duty**

The Care Act 2014 aims to strengthen the voice of people who use services, and their carers, over the process of assessing, planning and safeguarding.

Under the Care Act 2014, 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**, if two conditions are met:

Criteria

- the person has **substantial difficulty** in being fully involved in these processes
- there is **no one appropriate available** to support and represent the person's wishes.

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.

The Care Act 3

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 **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 processes described in the Care Act.

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.

Processes where advocacy is needed

- a needs assessment
- a carer's assessment
- the preparation of a care/ 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

Appropriate individual

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

Appropriate individual 2

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.**

Continuing Health Care

The advocacy duty in the Care Act applies equally to those people whose needs are being jointly accessed 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.

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

Exceptions 2

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 local authority and the appropriate person agree that the involvement of an independent advocate would be beneficial to the individual.

Prisoners

From April 2015 local authorities will also be 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 will be 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 will be entitled to the support of an independent advocate in the same circumstances as people in the community.

Independence

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.

Devon Advocacy Consortium

Advocacy for all needing it over 16 years of age

Central phone number

0300 3435707