

# Entitlements to Independent Advocacy



# Introduction

Independent Advocacy can be accessed in a number of different ways. Historically, it has been developed as part of user led organisations and self advocacy groups, but recently within the last 20 years, the legal right to access Independent Advocacy has meant the Local Authority or NHS have had to specifically commission services.

This information book will tell you about legal entitlements to advocacy in the UK.

# Introduction

Part of completing the qualification is that you are able to show you understand the local landscape of advocacy - statutory advocacy is only one part of this picture. On top of learning about statutory advocacy, make sure you learn about the community advocacy and self advocacy groups in your areas.

# Statutory Independent Advocacy

The phrase 'Statutory Independent Advocacy' describes advocacy that has been introduced within UK legislation. This means that people are legally entitled to access advocacy free of charge in specific situations.

By introducing the right to access advocacy within law, a duty is placed on public bodies to provide advocacy.

There are 6 types of statutory that have been introduced in the last 20 years.

# Children and Young People receiving services under the Children Act 1989

Independent Advocacy is available to children and young people who are making, or thinking about making, a complaint or representation about the services they receive.

This doesn't relate to just complaints - but any aspect of the care and support they are receiving. This means advocates should be offered to young people who want support in attending any meetings that the Local Authority are holding about them (like Family Group Conference's or LAC reviews), when making plans (like child protection plans or care plans) or when accessing complaint processes.

*The Children and Adoption Act 2002 amended the Children Act 1989 by inserting section 26a. This introduced the legal right for children and young people thinking about or making a complaint or representation, to use advocacy.*

# Advocacy with children and young people

Advocates appointed to support children and young people undertake the same advocacy role and activities as all other types of advocacy. It is essentially about empowering them to make sure that their rights are respected and their views and wishes are heard at all times.



It can also be about representing their views, wishes and needs to decision-makers.

# Advocacy with children and young people

The following groups of children and young people all have the legal right to access an advocate under the Children Act (s26a) and the accompanying statutory guidance (Get it Sorted):

- 16 and 17 year olds who are homeless
- Care leavers
- Children and young people who are looked after (this could include children and young people living in foster care and/or residential children's homes)
- Children who are considered to be a 'child in need'
- Children and young people in custody
- Children with special educational needs and disabilities

Children and young people who are:

- detained under the Mental Health Act can also use advocacy (see IMHA)
- 16 or 17 and lack capacity are entitled to advocacy similar to adults (see IMCA)
- transitioning into adult services are entitled to advocacy (see Care Act advocacy)

# Advocacy with children and young people

Advocates find they frequently offer support to children and young people on the following advocacy issues:

- accessing a service
- making choices and decisions about care planning
- attending meetings
- where to live
- issues within the care home (or foster home)
- accessing education - including university
- help with learning independence skills
- school
- bullying
- contact with family and friends
- making a complaint
- safeguarding issues



# IMCA

Independent Mental Capacity Advocates are instructed to support and represent a person who has been assessed as lacking the capacity to make specific decisions. The role is to support and represent the person through the decision making process and make sure that their views and wishes (and anything else that is important to them) are taken into account.

If a person meets the criteria to have an IMCA, then one **MUST** be instructed.

*Independent Mental Capacity Advocacy was introduced in section 35 of the Mental Capacity Act 2005. It was the first type of statutory advocacy for adults in England and Wales.*

# IMCA

There are two types of decisions in which an IMCA must be involved and two additional types where a decision maker can choose to involve an IMCA.

We refer to this as there being a DUTY and a POWER to instruct.



# IMCA - 'DUTY' to instruct

The responsible body has a legal duty to instruct an IMCA for an adult where a decision is being made about serious medical treatment OR a long term accommodation move  
AND

- the person does not have the capacity to make that decision AND
- there are no family or friends who are appropriate to consult with

# IMCA - 'POWER' to instruct

The responsible body also has the power to instruct an IMCA where an adult does not have the capacity to agree to the arrangements for:

- Accommodation reviews, where there are no family or friends able to support and represent the person or
- Adult protection (safeguarding) proceedings (whether there is suffering or causing harm), regardless of the involvement of family or friends who are appropriate to consult with

Since the Mental Capacity Act 2005 brought in IMCA, the Care Act 2014 has introduced much stronger advocacy duties which have largely replaced IMCA instructions within safeguarding. Adults who are subject to safeguarding concerns who were eligible for IMCA are now eligible for Care Act advocacy support much earlier.

# IMCA role

An IMCA is there to **provide support** to the person to help them be involved in the decision making process. This generally means thinking about what information and experiences does the person need to be genuinely involved - for instance making sure accessible information is used to explain choices or support in visiting different home options.

The IMCA also **represents the person** in any discussion about the person's best interests and **provides information** to the decision maker. The IMCA will focus on what the person wants and what is important to them and make sure the decision maker takes this into account when making a best interest decision.

The IMCA will also **raise questions or challenge decisions** where they are concerned the decision is not in the person's best interests or where the decision making process has not followed requirements within the Mental Capacity Act.

# IMCA - DoLS

People going through the Deprivation of Liberty Safeguards process can be supported by an IMCA in the following circumstances:

- if there is an assessment to see if a person should have a DoLS authorisation AND they do not have anyone who can consult on their behalf, then a 39a IMCA will be appointed to support them through the assessment.
- if the DoLS has been authorised and the person's representative can no longer act in this role, a 39c IMCA can be appointed until a representative can be found
- if the person who is subject to the DoLS authorisation OR their representative asks for help (or the supervisory body believes it is helpful) then a 39d IMCA can be instructed to help the person (or their rep) to be involved, raise concerns or challenge the DoLS.

# IMHA

In England, IMHAs are available for people who are detained under the Mental Health Act - except for people held under the emergency powers of section 4, 5, 135 and 136. This includes people who live in the community but are still subject to the compulsory powers of the Mental Health Act (including people on CTO's, Guardianship and Conditionally Discharged patients).

In Wales, however, everyone admitted to a psychiatric hospital, whether voluntary or formally detained, can access an IMHA.

*Independent Mental Health Advocacy was introduced in section 30 of the Mental Health Act 2007.*

# IMHA role

The primary role of the IMHA is to help people (referred to as 'qualifying patients' within the Code of Practice) understand and participate in decisions connected with their mental health care and treatment.

This includes helping people to understand:

- why they are being detained under the MHA and the legal basis (ie what section they are being held under)
- what this means (ie what restrictions and conditions they may be under)
- the rights and safeguards they can access

IMHAs can also get involved in a range of issues connected with the person's stay in hospital and discharge.



# IMHA role

IMHAs spend a lot of time supporting people to

- **access information.** This could be about medication, their rights and entitlements or meetings
- **explore choices and make decisions about medication** - such as what medication they want, dealing with side effects, accessing second opinions.
- develop their **self advocacy** skills by helping them prepare for meetings such as ward rounds or by working out what they want to say.
- **raise concerns** where they are unhappy about any element of their care and treatment
- make decisions about **discharge planning**
- access **Tribunals** to see if they can be discharged

IMHAs can also **represent** people during meetings when agreed and **raise concerns** on their behalf

# NHS complaints advocacy

The Local Authority Social Services and National Health Service Complaints Regulations(England) 2009 introduced the right to access independent advocacy support to people in England who are considering, or wishing to make a complaint about the health and care services they receive

In Wales, local community health councils provide an independent advocacy service on behalf of Welsh ministers to patients aged 18 and over.

# NHS complaints advocacy

The NHS complaints advocate can support anyone wishing to complain about NHS services however most people are happy to be provided with a self advocacy pack which provides information and templates for complaint letters. Some good examples are here:

<https://www.advocacyproject.org.uk/what-we-do/advocacy/nhs-complaints-advocacy/nhs-complaints-pack/>

<https://www.voiceability.org/support-and-help/making-a-complaint-about-your-care>

# NHS complaints advocacy

For other people, they may need or want more intensive 1:1 support. The NHS complaint advocate is there to support people with:

- understanding the process
- making choices about what they would like to happen
- writing letters and making phone calls
- accessing information
- attending meetings
- pursuing other remedies such as signposting to specialist lawyers for legal action or referring to regulatory bodies
- referring to the relevant Ombudsman

# Care Act Advocacy (England only)

The Care Act 2014 outlines how adult social care should be accessed and delivered. Any person, who is likely to face substantial difficulty at being involved within assessment, planning, review or safeguarding processes, AND does not have anyone appropriate to support their involvement can have an Independent Advocate.

This includes:

- the person with the (potential) care and support needs
- their carers (including young carers)
- young people going through transition
- their carers

*Sections 67 and 68 of the Care Act 2014 introduce the legal right to access Independent Advocacy for people accessing adult social care and support.*

# Independent Professional Advocacy (Wales only)

The Act requires that Independent Professional Advocates are made available when a person can only overcome the barrier(s) to participate fully in the assessment, care and support planning, review and safeguarding processes with assistance from an appropriate individual, but there is no appropriate individual available. The advocacy requirements apply to both children and adults going through relevant processes under the Act.

*Independent Professional Advocacy was introduced in Wales through the Social Services and Well-Being Act (Wales) 2014*

# The advocacy role

The role of the advocate is fundamentally the same as within other statutory roles. The advocate is there to ensure the person is supported to participate in key decision making processes and will spend time supporting the person to :

- Understand processes
- Understand their rights
- Make decisions
- Communicate their views, wishes and feelings
- Understand plans
- Access records
- Challenge decisions

# Interplay between the roles

Lots of people will draw on health and care at various points of their life and may find that they are entitled to more than one type of advocacy support:

- a person detained under the Mental Health Act who lacks capacity to make decisions about serious medical (physical health) may have an IMHA and an IMCA
- a person who lacks capacity to make decisions about where they should live may have an IMCA, DOLS IMCA and a Care Act advocate
- a young person going through transition planning may have a Children's Advocate and a Care Act Advocate

The same advocate is able to provide the different roles.



Thank you for reading.  
Please return to the  
e-learning for the next  
section of learning

