

Advocacy

pushing
bullying pinching
withholding food & drink coercion intimidation
hitting isolating
restraint emotional abuse
misusing medication shaking
scalding teasing sexual abuse
leaving on own blaming
stealing money or benefits neglect
leaving on own ignoring needs

Who is This Briefing For?

In 2021 Solihull Safeguarding Adults Board published [Stephen's Safeguarding Adult Review](#). Stephen was described as having cognitive and behavioural issues related to Korsakoff's Syndrome as well as having an acquired brain injury. Stephen died in his flat in 2018 aged 59 years old, having choked on a sandwich.

One of the findings from Stephen's review was that the provisions of the Mental Capacity Act were used poorly at times across all agencies. Without an understanding of Stephen's mental capacity professionals were at risk of misinterpreting his understanding, motivations, or intentions. In addition, had professionals given greater consideration to Stephen's mental capacity, he would have had a 'voice' as part of the assessment and best interest discussions, and potentially an advocate to enable a focus on his past and present wishes.

One of the recommendations from Stephen's SAR was for the Safeguarding Adults Board to promote the positive benefits of the provisions of the Mental Capacity Act, including commissioning advocates.

This briefing is intended to remind professionals of their legal duties to arrange advocacy in certain circumstances. It is also intended to raise awareness of the advocacy services available locally as well as the types of advocacy that can be provided.

What Does the Care Act (2014) Say About Advocacy?

The Care Act 2014 introduced that decisions about people's care must consider their well-being and what is important to them so that they can stay healthy and independent. To do this, it is important for people to be fully involved in decisions about their own care and support needs.

The ultimate aim is for people's wishes, feelings and needs to be at the heart of the assessment, care planning and review processes.

The Act places a duty (section 67) on local authorities to arrange for an independent advocate to support and represent someone when two conditions are met:

- 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.

From the point of first contact, request or referral (including self-referral) for an assessment, the local authority must involve the person.

What is Substantial Difficulty?

The Care Act defines 4 areas in any one of which a substantial difficulty might be found, which are set out below:

Understanding Relevant Information

Many people can be supported to understand relevant information, if it is presented appropriately and if time is taken to explain it. Some people, however, will not be able to understand relevant information, for example if they have mid-stage or advanced dementia.

Retaining Information

If a person is unable to retain information long enough to be able to weigh up options and make decisions, then they are likely to have substantial difficulty in engaging and being involved in the process.

Using or Weighing the Information as Part of Engaging

A person must be able to weigh up information, in order to participate fully and express preferences for, or choose between, options. For example, they need to be able to weigh up the advantages and disadvantages of moving into a care home or terminating an undermining relationship. If they are unable to do this, they will have substantial difficulty in engaging and being involved in the process.

Communicating Their Views, Wishes and Feelings

A person must be able to communicate their views, wishes and feelings whether by talking, writing, signing or any other means, to aid the decision process and to make priorities clear. If they are unable to do this, they will have substantial difficulty in engaging and being involved in the process.

No matter how complex a person's needs, local authorities are required to involve people, to help them express their wishes and feelings, to support them to weigh up options, and to make their own decisions.

A Note on Safeguarding

The Care Act places a duty (Section 68) on the local authority to arrange, where necessary, for an independent advocate to support and represent an adult who is the subject of a safeguarding enquiry or a safeguarding adult review. Where an independent advocate has already been arranged under Section 67 of The Care Act or under the Mental Capacity Act (2005) then, unless inappropriate, the same advocate should be used.

Effective safeguarding is about seeking to promote an adult's rights as well as about protecting their physical safety and taking action to prevent the occurrence or reoccurrence of abuse or neglect. It enables the adult to understand both the

risk of abuse and actions that she or he can take, or ask others to take, to mitigate that risk.

How Do I Decide if Someone is Appropriate to be a Person's Advocate?

Deciding whether there is an appropriate individual (or individuals) who can facilitate a person's involvement in the assessment, planning or review processes, includes 3 specific considerations:

- **It cannot be someone who is already providing the person with care or treatment in a professional capacity or on a paid basis.** That means it cannot be, for example, the person's GP, nurse, key worker or care and support worker.
- **A person's wish not to be supported by an individual should be respected and if the person has capacity, or is competent to consent, the person's wishes must be followed.** If the person has been judged to lack the capacity to make a decision, then the local authority must be satisfied that it is in a person's best interests to be supported and represented by the individual.
- **The appropriate individual is expected to support and represent the person and to facilitate their involvement in the processes.** It is unlikely that some people will be able to fulfil this role easily, for instance a family member who lives at a distance and who only has occasional contact with the person, a spouse who also finds it difficult to understand the local authority processes, or a friend who expresses strong opinions of their own prior to finding out those of the individual concerned. It is not sufficient to know the person well or to love them deeply; the role of the appropriate individual is to support the person's active involvement with the local authority processes

Additionally, it will clearly not be suitable for a person to be regarded as an appropriate individual where they are implicated in any enquiry of abuse or neglect or have been judged by a SAR to have failed to prevent an abuse or neglect.

It is the local authority's decision as to whether a family member or friend can act as an appropriate person to facilitate the individual's involvement. It is the local authority's responsibility to communicate this decision to the individual's friends and family where this may have been in question and whenever appropriate.

What Does the Mental Capacity Act Say About Advocacy?

Sections 35–41 of the Mental Capacity Act set up a new Independent Mental Capacity Advocacy service that provides safeguards for people who:

- lack capacity to make a specified decision at the time it needs to be made
- are facing a decision on a long-term move or about serious medical treatment and

- have nobody else who is willing and able to represent them or be consulted in the process of working out their best interests

Most people who lack capacity to make a specific decision will have people to support them (for example, family members or friends who take an interest in their welfare). Anybody working out a person's best interests must consult these people, where possible, and take their views into account. But if a person who lacks capacity has nobody to represent them or no-one who it is appropriate to consult, an IMCA *must* be instructed in the following circumstances:

- providing, withholding or stopping serious medical treatment
- moving a person into long-term care in hospital or a care home or
- moving the person to a different hospital or care home

Local authorities or NHS organisations are responsible for instructing an IMCA to represent a person who lacks capacity.

The role of the IMCA is to find out as much as they can about the person; their views, wishes, feelings and beliefs and to represent those to the people who are making decisions about the person's life. The information the IMCA provides must be taken into account by decision-makers whenever they are working out what is in a person's best interests.

What Does the Mental Health Act Say About Advocacy?

An Independent Mental Health Advocate (IMHA) is a specialist advocate. The right to an IMHA was introduced in 2007 under amendments to the 1983 Mental Health Act. This gave legal rights to IMHAs which are not available to other advocates. These rights mean that IMHAs may:

- meet qualifying patients in private
- consult with professionals concerned with the patient's care and treatment
- see any records relating to the patient's detention, treatment or after-care, for the purpose of providing help to the patient and where the patient consents
- request access to records where the patient lacks capacity to consent, if accessing the records is necessary to carry out the functions as an IMHA.

IMHAs can help people who use services to understand:

- their legal rights under the Mental Health Act
- the legal rights which other people (e.g. nearest relative) have in relation to them
- the particular parts of the Mental Health Act which apply to them

- any conditions or restrictions to which they are subject
- any medical treatment that they are receiving or might be given, and the reasons for treatment
- the legal authority for providing that treatment
- the safeguards and other requirements of the Act which would apply to that treatment

IMHAs will also help people to exercise their rights, which can include supporting them to self-advocate and/or representing them and speaking on their behalf.

Mental health service staff have a legal duty to ensure that everyone who qualifies is aware of their right to speak to an IMHA. This includes hospital managers, nurses, psychiatrists, administrators, social workers, approved mental health practitioners (AMHPs), community psychiatric nurses (CPNs) and ward managers. This information should be provided verbally as well as in a written format, and consideration given to providing this information more than once.

Case Examples

Case Study 1

M is a young autistic woman who also has a diagnosis of ADHD and a learning disability. When M was referred to us she was living with family and had been having a number of issues related to social media use. M had been exploited and coerced in to sending explicit photographs and was being asked for substantial amounts of money from various men to prevent the images being shared publicly. Police were informed and investigated the allegations.

M's advocate worked closely with M to support her to understand the risks of posting on social media and particularly the risks around posting images of a sexual nature. M was supported by her advocate to understand and navigate through the safeguarding process and was able to express her views and wishes in relation to her safety and use of social media and technology. The advocate supported M to say that she wanted to be safe but felt restricted at home because other family members had more freedom than her because of measures to keep her safe.

As part of the package of support to keep M safe the social worker involved completed capacity assessments and applications to the Court of Protection were made to authorise some emergency restrictions to keep M safe. M was supported to take part in the assessments and to express her wishes in relation to proceedings. The advocate supported M in the capacity assessments and provided information and M's views to the Court of Protection.

M was supported to remain safe whilst alternative accommodation with support that could keep M safe with least restrictions was arranged and is now settled and

happy. M reports that she has a better relationship with her family and feels well supported and safe in her new home.

Multi-disciplinary working between various agencies, good communication and appropriate use of the mental capacity act and legal frameworks enabled M to be safer, remain at the centre of proceedings and to ultimately be happier.

Case Study 2

A was referred to Solihull Action through Advocacy as she was pregnant and there were concerns over her ability to parent as well as that she was vulnerable. A's partner maintained control of all finances and bank cards despite the accounts being in A's name and monitored her whereabouts by tracking her mobile phone. A's partner would also answer A's phone when calls had been arranged with the advocate and other professionals. The advocate kept discussions over the phone very general to ensure A's safety knowing that it was unlikely the conversation would be private.

The advocate worked with A to develop trust and rapport and after some time A was able to be more open and discuss the relationship. A is an individual with capacity so the advocate worked with her to understand some of the indicators of coercive and abusive behaviour.

The advocate was able to support A to consider the benefits and burdens of remaining in the relationship and supported A to make an informed decision to end the relationship. The advocate also supported A in various meetings so that she was able to understand the process and have a voice.

Along with other professionals including the child social worker, Women's Aid and the Health visitor, the advocate worked on ensuring that consistent and clear communication was available for A so that she was able to understand the concerns around her care for her children and consequently A was able to set up a new home and meet the needs of her children with support from her family and professionals.

A now engages positively with support agencies, is confident in speaking up and will say if she does not understand or agree with professionals.

What is Available in Solihull?

Solihull First Advocacy

[Solihull First Advocacy](#) is a partnership between Solihull Action through Advocacy and Independent Advocacy. Together they provide all adult statutory advocacy services for Solihull as well as non-statutory advocacy.

Solihull First
for advice and support

Their services include:

- Independent Mental Capacity Advocacy (IMCA)
- Care Act Advocacy
- Independent Mental Health Advocacy (IMHA)
- Independent NHS Complaints Advocacy
- Non-Statutory Advocacy

You can access the referral forms for any of these services, on the [Solihull First Advocacy website by clicking here](#)

Solihull Metropolitan Borough Council

The referral process for Council staff to refer into the advocacy services is through the [SMBC intranet](#)





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