

# Deputyship and Advocacy

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Solicitor, Partner and Panel Deputy

- Increased population: 10 million in the next 20 years to 74 million
- Aging population: 10% aged over 65 and 2.4% aged 85 and over
- Increase in Dementia: 1 million in 2025 doubling to 2 million in 2050
- Acquired Brain Injuries: someone admitted to hospital with an ABI every 90 seconds

# But I deal with finance?.....

- Many of clients will be the subject of care and support plans
- Many of our clients will be subject to DoLs
- We need to know what is being decided if we are going to fund it.....
- Our clients have a right to be involved in such decisions
- But may need further assistance to be involved....an Advocate can assist in making their views heard

# The Advocacy Spectrum

Statutory Advocacy	Non-Statutory Advocacy
Care Act Advocacy	Peer Advocacy
IMCA	Self Advocacy
IMHA	Issue Based Advocacy
Safeguarding	Group Advocacy

## New statutory responsibility from April 2015 (Care Act 2014)

- Local authorities **must** involve people in decisions made about them and their care and support and in planning and checking their care and support
- From the first point of contact and at any subsequent stage of the assessment the identification of a potential need for independent advocacy may arise from the person themselves, carers, family or others
- If an adult has **substantial difficulty** in being involved in any aspect of the process and where there is no **appropriate individual** to support them an **independent advocate** must be appointed to support and represent them
- Duty to provide an independent advocate to support and represent adult who is the subject of safeguarding enquiry or review

If an individual is required to take part in one or more of the following processes:-

- A Needs Assessment
- A Carer's Assessment
- Preparation of a Care Plan
- Review of a Care Plan
- A safeguarding enquiry
- A safeguarding review

A person is said to have Substantial Difficulty if they are unable to do any **ONE** of the following :-

- Understand Relevant Information
- Retain Information
- Use or Weigh Up that Information
- Communicate their wishes and feelings

If someone has Substantial Difficulty, the Local Authority must....

Ensure that there is an 'Appropriate Person' such as a friend or relative who can facilitate their involvement;

Or

If there is no Appropriate Person to help them, arrange for an Independent Advocate to support and represent them

S.3 states that a person is unable to make a decision for himself if he cannot:-

- U = Understand – understand information relevant to the decision in question
- R = Retain – retain that information
- W = Weigh Up – weigh up or use that information as part of the decision making process
- C = Communicate – communicate that decision (with communication aids if necessary)

U R a Toilet!!

May be used instead of an Independent Advocate if this is the individual's preference and if they and the individual both give consent to them being the Appropriate Person

Could be:-

- A family member
- Friend
- Unpaid carer

Cannot be:-

- A paid carer
- GP / Nurse / Support Worker etc.
- Person alleged to be responsible in current or previous safeguarding enquiry

If no Appropriate Person is available AND the person has Substantial Difficulty, then an Independent Advocate must be appointed.

Their role is to support and represent the individual and facilitate involvement by looking at their records, talking to the individual and those who can help

Advocates should represent the individual, always with regard to their wellbeing and interests, including helping a person to:-

- understand the process
- communicate their wishes, views and feelings
- understand their rights
- make decisions and challenge those made by authority

- Under the MCA 2005, certain people who lack capacity to make a specific decision have a right to receive support from an Independent Mental Capacity Advocate (IMCA)
- IMCA services are independent from Local Authorities and the NHS
- Where there is no one willing or able to represent a person, who lacks capacity at the material time, facing a decision about long term accommodation and/ or serious medical treatment, an IMCA will be appointed to safeguard that persons rights to be represented and consulted.
- IMCAs must be trained; have specific experience, act independently and with integrity

All relevant people involved in the key care and support planning processes and all independent advocates are expected to understand and apply the MCA

They must be able to show:

- evidence that they are implementing the 5 Principles
- they understand supported decision making and the importance of considering least restrictive interventions
- they understand how capacity assessments are made
- they understand how best interest decisions are made
- what a Deprivation of Liberty is

They are expected to have some knowledge of relevant case law and COP principles

- Universal dissatisfaction with present DoLs framework
- Impact of Cheshire West widening the scope of who is subject to Dols
- Swamped Local Authorities
- Mental Capacity (Amendment ) Bill 2018
- Liberty Protection Safeguards (LPS)
  - Consultation with interested parties (you as Deputy) and P
  - Safeguards to apply to all settings and cover 16 and 17 year olds (in line with MCA)
  - **Duty** to appoint an IMCA or Appropriate Person

Introduced to safeguard the rights of people detained under the Mental Health Act and those on Community Treatment Orders

Their role is to assist qualifying patients:-

- understand the legal provisions under which they are subject under the Mental Health Act
- understand the safeguards and rights to which they are entitled

Important to know other parties responsible for the care and wellbeing of a vulnerable client to ensure seamless service for clients and families

Case-Managers

Social Services

Capacity Assessors

Charities

Translators

...and Advocates

# Time for a brew.....



# Contact us

## #heretohelp

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