

6.1 Introduction

Tameside MBC has a duty under sections 67 and 68 of the Care Act 2014 to provide independent advocacy to an individual who would experience substantial difficulty in being involved in a safeguarding enquiry or a Safeguarding Adults Review (SAR).

Adults need to be able to make informed choices from the information they are given. In order to do this they may need support in a variety of ways such as the help of a family member or friend (subject to considerations below), an independent advocate or Independent Mental Capacity Advocate, a language interpreter or other communication assistance or aid.

6.2 When should an advocate be involved in safeguarding?

Individuals must be involved in the decisions where there is to be a safeguarding enquiry or Safeguarding Adults Review (SAR). This requires the Council helping people to understand how they can be involved, how they can contribute and take part and sometimes lead or direct the process. People should be active partners in any safeguarding enquiry. 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.

The advocacy duty will apply from the point of the first contact with the Local Authority and at any subsequent stage of the safeguarding enquiry or SAR. The Local Authority must initially consider the best way of involving the person in the safeguarding enquiry, which is appropriate and proportionate to the person's needs and circumstances.

If it appears to the local authority that the person may have care and support needs and considers that the person has substantial difficulty in engaging with the safeguarding process, then they must consider whether there is anyone appropriate who can support the person to be fully involved.

This might, for example, be a Carer (who is not professionally engaged or remunerated), a family member or friend. If there is no-one appropriate, then the Local Authority must arrange for an independent advocate who must support and represent the person in the safeguarding enquiry.

6.3 Judging Substantial Difficulty

The Care Act 2014 defines four 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 the process of being involved. A person must be able to weigh up information, in order to participate fully and express preferences for or choose between options. 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.

Where an independent advocate has already been arranged under section 67 of the Care Act 2014 or under the Mental Capacity Act 2005 then, unless inappropriate, the same advocate should be used.

Effective safeguarding seeks to promote an Adult's rights as well as 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.

If a safeguarding enquiry needs to start urgently then it can begin before an advocate is appointed but one must be appointed as soon as possible. All agencies should be aware of how the services of an advocacy can be accessed and what their role is.

It is critical that the Adult is supported in what they may feel is a daunting process which may lead to some very difficult decisions. An individual who is thought to have been abused or neglected may be so demoralised, frightened, embarrassed or upset that independent advocacy provided to help them to be involved will be crucial.

6.4 Who is an “appropriate individual” to assist a person’s involvement?

The appropriate individual **cannot** be:

- Someone who is already providing the person with care or treatment in a professional capacity or on a paid basis (regardless of who employs or pays for them). That means it cannot be, for example, the person’s GP, nurse, key worker or care and support worker.
- Someone the person does not wish to support them. The 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.
- Someone who is unlikely to be able to, or available to, adequately 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, a friend who expresses strong opinions of their own prior to finding out those of the individual concerned, or a housebound parent. It is not sufficient to know the person well; the role of the appropriate individual is to support the person’s active involvement with the Local Authority processes.

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.

6.5 The role of the Independent Advocate

Advocates will decide the best way of supporting and representing the person they are advocating for, always with regard to the wellbeing and interest (including their views, beliefs and wishes) of the person concerned.

In addition, where practicable, they are expected to meet the person in private. Where a person has capacity, the advocate should ask their consent to look at their records and to talk to their carer, family, friends, care or support worker and others who can provide information about their needs and wishes, their beliefs and values. Where a person does not have capacity to decide whether an advocate should look at their relevant records or talk to their family and friends, then the advocate should consult the records and the family and others as appropriate, but consulting the family and others only where the advocate considers this is in the person's best interests. The Care Act allows advocates to examine and take copies of relevant records in certain circumstances.

Acting as an advocate for a person who has substantial difficulty in engaging with care and support or safeguarding processes is a responsible position. It includes:

- Assisting a person to understand the safeguarding processes. This requires advocates to understand local authority policies, and other agencies roles, and processes and good practice in safeguarding enquiries and SARs. It may involve advocates spending considerable time with the individual, considering their communications needs, wishes, feelings and their life story, and using all this to assist the person to be involved and where possible to make decisions.
- Assisting a person to communicate their views, wishes and feelings to the staff that are carrying out safeguarding enquiries or reviews.
- Assisting a person to understand how their needs can be met by the local authority or otherwise.
- Assisting the person to understand their rights under the Care Act and assisting the person to understand their wider rights, including their rights to liberty and family life. A person's rights are complemented by the local authority's duties, for example to involve the person, to meet needs in a way that is least restrictive of a person's rights.

- Assisting a person to challenge a decision or process made by the local authority; and where a person cannot challenge the decision even with assistance, then to challenge it on their behalf.

There are some particular important issues for advocates to address in relation to safeguarding. These include assisting a person to:

- Decide what outcomes/changes they want.
- Understand the behaviour of others that are abusive/neglectful.
- Understand which actions of their own may expose them to avoidable abuse or neglect.
- Understand what actions that they can take to safeguard themselves.
- Understand what advice and help they can expect from others, including the criminal justice system.
- Understand what parts of the process are completely or partially within their control.
- Explain what help they want to avoid reoccurrence and also recover from the experience.

6.6 Other Types of Advocates

Independent Mental Health Advocate (IMHA)

Under the Mental Health Act 1983 (MHA) certain people, known as 'qualifying patients', are entitled to the help and support from an Independent Mental Health Advocate (IMHA). Section 117 of the MHA places a duty on the NHS and local authorities to provide aftercare and this will usually involve a joint assessment (often under the Care Programme Approach) including an assessment of the person's care and support needs, a care and support or support plan and subsequent review (which may reach a decision that a person is no longer in need of aftercare).

Those people who do not retain a right to an IMHA, whose care and support needs are being assessed, planned or reviewed 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.

Independent Mental Capacity Advocate (IMCA)

An IMCA must be instructed and then consulted, for people lacking capacity who have no appropriate family, friends, carers (other than paid staff) to support them whenever:

- An NHS body is proposing to provide serious medical treatment (section 37).
- An NHS body or local authority is proposing to arrange accommodation (or a change of accommodation) in hospital or a care home, and the person will stay in hospital longer than 28 days, or they will stay in the care home for more than eight weeks (section 38 & 39). An IMCA may be instructed by the Local Authority to support someone who lacks capacity to make decisions concerning:
 - Care reviews, where no-one else is available to be consulted
 - Adult protection cases, whether or not family, friends or others are involved.
 - Deprivation of Liberty Safeguard (DOLS)
- The safeguards apply to people in England and Wales who have a mental disorder and lack capacity to consent to the arrangements made for their care or treatment, but for whom receiving care or treatment in circumstances that amount to a deprivation of liberty may be necessary to protect them from harm and appear to be in their best interests.

Independent Domestic Violence Advocate (IDVA)

The role of an IDVA, or Independent Domestic Violence Advocate, is to address the safety of victims at high risk of harm from partners, ex-partners or other family members to secure their safety and the safety of their children.

IDVAs are specialist support workers who are legally trained to work with victims of domestic abuse at high risk of serious harm from current or ex-partners or other family member(s). They work from the point of crisis to assess the level of risk and address immediate safety issues.

IDVAs provide support, advice and information about services and options available to them to reduce their risk of further harm and increase their immediate and long term safety. These plans can include other sanctions and remedies available through the criminal and civil courts, housing options and services available through other organisations.