

# **Isle of Wight Council Adult Social Care & Housing's**

# **Appointing Independent Advocates Policy**

**May 2022**

# 1 Document Information

<b>Title:</b>	<b>Appointing Independent Advocates Policy</b>
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<b>Consultation:</b>	Adult Social Care Leadership Group, Principal Social Worker, Group Managers, Consultant Practitioners, Business Development Support Managers and Jane Hughes, Making Connections IOW.
<b>Approved by:</b>	Adult Social Care Leadership Group/Service Board
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<b>Next Review:</b>	May 2023

Version History		
Version	Date	Description
V0.1	February 2015	Initial draft Policy to conform to Care Act
V0.2	February 2015	Amended by Ann O'Brien
V0.3	February 2015	Amended by Ann O'Brien
V0.4	March 2015	Includes comments made by Jackie Raven and Jayne Lee
V0.5	March 2015	Includes addition from Tracey Cartmell on Section 16 and commissioning an advocate.
V1.0	April 2015	Finalised policy
V2.0	March-June 2019	Scheduled review by Catherine Smith-Ivory. Agreed by Leadership Group/Service Board 24/04/19 upon clarifying current contract which was under negotiation May 2019. Confirmed June 2019 Southern Advocacy.

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V3.0	May 2021	Amendment of provider details by Kathryn Glover as new contract awarded to Swan.
V4.0	May 2022	Annual review with minor amendments and updates made including webpage links to iwight beta website.

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### 3. Purpose, Scope and Aims

The Isle of Wight Council (IWC) is committed to involve you in decisions made about you and your care and support. No matter how complex your needs are, the IWC have commissioned independent advocacy services to help you express your wishes and feelings. They will help you weigh up your care and support options to assist you making your own decisions about how you wish to live your life. This policy reflects our statutory duty under the [Care Act](#) to support adults in receipt of Adult Social Care (ASC) services and demonstrates an ongoing commitment to empower people to live fulfilling lives. Social Care will also apply the [Mental Health Act](#) and [Mental Capacity Act](#) as identified below.

The IWC will consider whether there is an appropriate individual who can support you to be involved in the care assessment, planning or review process. The appropriate individual who supports you cannot be:

- Already providing care or treatment to you in a professional capacity or on a paid basis
- Someone you do not want to support you
- Someone who is unlikely to be able to, or available to, adequately support your involvement
- 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.

This policy is relevant to all ASC workers in their professional practice, the people they support who receive a social care service, and/or require a best-interest decision to be made on their behalf and people who fund their own support.

### 4. What is an independent advocate?

An advocate is a person who supports you and helps you to explain and say what you want to say. They help ensure your views are heard, so you can be supported appropriately. Advocates can be used when you have no other appropriate or suitable person to help you. They can help support you with wellbeing assessments and reviews, carer's assessments and keeping you safe from abuse, neglect or harm (safeguarding) to:

- Put your views and feelings across about decisions that are being made about your life.
- Speak on your behalf if that is what you want.
- Secure your rights and represent your interests.
- Help you make a complaint.

In order to be able to support you to express your wishes and feelings or represent your views, advocates will need to spend time with you to build up an understanding

of what you want to say, support you weighing up your options and assist you to make your own decisions.

The Care Act advocacy duty will apply from the point of first contact with the IWC and at any subsequent stage of the assessment, planning, care review, safeguarding enquiry or safeguarding adult review. If it appears to the IWC that you have care and support needs, then a judgement will be made as to whether you 1) have substantial difficulty in being involved and 2) if there is an appropriate individual to support you. An independent advocate will 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 following processes described in the Care Act:

- Care Act Assessment
- Carer's Assessment
- Preparation of a care and support or support plan
- Review of a care and support or support plan
- Safeguarding enquiry
- Safeguarding adult review
- Appeal against a Local Authority decision under Part 1 of the Care Act (subject to further consultation).

Advocacy supports those at greatest need who have difficulty in understanding information, retaining information, using and weighing that information and in expressing their wishes and feelings.

## **5. How to get an independent advocate**

You can ask for an independent advocate at any point to help you express your views and wishes. A social care worker will work with you to identify whether an independent advocate is appropriate and can appoint one at any time during the assessment process. Social care workers will use the Care Act, Mental Health Act, Mental Capacity Act and their professional judgement to identify if you need help from an independent advocate. Social care workers will regularly review your need for an advocate.

Advocacy may be provided by specialist organisations such as those engaged in working with people with a specific diagnosis or situation.

The IWC currently contracts with Swan Advocacy whose details can be found below. However, there are numerous alternative advocacy services available across the Island.

Swan Advocacy, Riverside Centre, The Quay, Newport, Isle of Wight, PO30 2QR  
Telephone: 03333 447928  
Email: [IoW@swanadvocacy.org.uk](mailto:IoW@swanadvocacy.org.uk)  
Web: [www.swanadvocacy.org.uk/iow](http://www.swanadvocacy.org.uk/iow)

## **6. Assessing 'substantial difficulty'**

ASC workers will consider whether you are likely to have substantial difficulty in engaging with the care and support process. The IWC will consider if you have 'substantial difficulty' in:

- Understanding relevant information
- Retaining that information
- Using or weighing information (as part of the process of being involved)
- Communicating views, wishes or feelings (by talking, using sign language or any other means)

Sometimes it will be possible to help and support your direct involvement through making reasonable adjustments, as required by the [Equality Act](#), such as providing information in accessible formats.

## 7. Safeguarding enquiries and safeguarding adult reviews (SAR's)

The IWC has a duty to safeguard you from abuse and neglect. Safeguarding means protecting an adult's right to live in safety, free from abuse and neglect. It is about people and organisations working together to prevent and stop both the risks and experience of abuse or neglect, while at the same time making sure that the adult's wellbeing is promoted including, where appropriate, having regard to their views, wishes, feelings and beliefs in deciding on any action. This must recognise that adults sometimes have complex interpersonal relationships and may be ambivalent, unclear or unrealistic about their personal circumstances

The Care Act requires the IWC must make enquiries, or cause others to do so, if it believes an adult is experiencing, or is at risk of, abuse or neglect. An enquiry should establish whether any action needs to be taken to prevent or stop abuse or neglect and if so, by whom.

The aims of adult safeguarding are to:

- Prevent harm and reduce the risk of abuse or neglect to adults with care and support needs
- Stop abuse or neglect wherever possible
- Safeguard adults in a way that supports them in making choices and having control about how they want to live
- Promote an approach that concentrates on improving life for the adults concerned
- Raise public awareness so that communities as a whole, alongside professionals, play their part in preventing, identifying and responding to abuse and neglect
- Provide information and support in accessible ways to help people understand the different types of abuse, how to stay safe and what to do to raise a concern about the safety or well-being of an adult
- Address what has caused the abuse or neglect

The IWC will arrange, where appropriate, an independent advocate to support and represent any adult who is the subject of a safeguarding enquiry or a safeguarding adult review (Section 69) where the adult has 'substantial difficulty' in being involved in contributing to the process and where there is no other appropriate or suitable adult to assist.

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

In the safeguarding enquiry the independent advocate has the following roles: they need to provide support to assist you to understand the enquiry and ensure your voice is heard and the safeguarding enquiry takes account of your views, wishes and desired outcomes.

As part of the safeguarding enquiry the IWC will ensure any restrictions that need to be placed on your rights or freedom in order to keep you safe are kept to a minimum. Restrictions will be carefully considered and frequently reviewed. Any potential deprivation of your liberty must be authorised either by a Deprivation of Liberty Authorisation through the Supervisory Body (the IWC) or through the Court of Protection under the Deprivation of Liberty Safeguards via the Mental Capacity Act.

More information is available on [Keeping Adults Safe](#).

## **8. Continuing Health Care**

The duty to provide an independent advocate also applies where it appears that a person may be eligible for NHS Continuing Healthcare (NHS CHC). NHS CHC is a package of care fully funded by the NHS regardless of a person's wealth or savings. Continuing Healthcare may be available to you if your main requirement for care is as a result of your health.

Anyone over the age of 18 assessed as having a certain level of care needs may be entitled to NHS Continuing Healthcare. It is not dependent on a particular disease, diagnosis or condition, or who provides the care or where that care is provided. If your needs change then your eligibility for NHS continuing healthcare may change.

To be eligible for NHS continuing healthcare, you must be assessed by a team of healthcare professionals (a multi-disciplinary team).

Where an individual is not eligible for NHS CHC, the IWC still have a duty to carry out an assessment where a person has an appearance of needs and a duty to meet those eligible needs. This guidance applies equally to those people whose needs are being jointly assessed by the Isle of Wight NHS Trust and the IWC or where a package of support is, planned, commissioned or funded by both the IWC and the Isle of Wight Clinical Commissioning Group (CCG), known as a 'joint package' of care.



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## 9. Mental Health Act and Mental Capacity Act

People who are subject to the Mental Health Act are entitled to support from an Independent Mental Health Advocate (IMHA). An IMHA is a specialist mental health advocate. The IMHA is not meant to replace existing advocacy, legal advice or support, but will work alongside these services.

The Mental Capacity Act places a responsibility on the IWC to consult an Independent Mental Capacity Advocate (IMCA) for any person who lacks capacity and does not have a friend or family to support them if there is a significant decision regarding serious medical treatment, long-term changes in accommodation or with regards an assessment for a Deprivation of Liberty Safeguards (DoLS). In other cases instruction of an IMCA is discretionary.

More details on the Mental Health Act and Mental Capacity Act relating to advocacy are available on the [council's website](#).

## 10. 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 for an advocate.
- 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.
- Any Safeguarding concerns about the actions of family members, carers or friends.