

Disability Law Service

Fighting injustice for disabled people

**INDEPENDENT
ADVOCACY SUPPORT
FACTSHEET**

Introduction

This factsheet aims to provide information on the duties of a local authority to provide an independent advocate to individuals who would experience substantial difficulty without one, for example during assessments and reviews under the Care Act 2014.

It is important that a local authority fully considers an individual's need for an independent advocate to ensure that the local authority is fairly assessing the individual's needs.

If an individual is not entitled to an independent advocate under s.67 Care Act, the individual may still be entitled to the local authority making reasonable adjustments for them, taking account of their impairment in accordance with s.20 Equality Act 2010. Reasonable adjustments could include providing information and documents in accessible formats and BSL trained and Deaf aware assessors conducting assessments for Deaf BSL users.

Substantial difficulty criteria

Under s.67 (4) of the Care Act 2014, an independent advocate must be provided if, without support, the individual would experience 'substantial difficulty' in 1 or more of the following:

- Understanding relevant information
- Retaining that information
- Using or weighing that information as part of the process of being involved
- Communicating the individual's views, wishes or feelings

The individual does not need to have been found to not have capacity under the Mental Capacity Act 2005 to meet the criteria.

If the individual does have substantial difficulty, the local authority must find someone appropriate and independent to support and represent the person, for the purpose of facilitating their involvement as per s.67 (2).

Para 6.23 of the Care and Support Statutory Guidance states that the issue of possible advocacy support should be considered at the very early stage of first contact.

In accordance with Regulation 3 of the Care and Support (Independent Advocacy Support) (No 2) Regulations 2014, when deciding if someone would experience substantial difficulty, the local authority must have a particular regard to:

- a) any health condition the individual has;
- b) any learning difficulty the individual has;
- c) any disability the individual has;

- d) the degree of complexity of the individual's circumstances, whether in relation to the individual's needs for care and support or otherwise;
- e) where the assessment or planning function is the carrying out of an assessment, whether the individual has previously refused an assessment;
- f) whether the individual is experiencing, or at risk of, abuse or neglect.

Circumstances in which an independent advocate should be appointed

An independent advocate should be appointed under s.67(3) in the following circumstances if the criteria is met:

- needs or carer's assessments;
- care and support and/or support planning;
- reviews of the care and support and/or support plan;
- carrying out transition assessments-child's, child's carer or young carer;
- safeguarding enquiries or reviews

When the duty to provide an independent advocate does not apply?

The duty to provide an independent advocate does not apply if the local authority is satisfied that there is an appropriate person available to represent and support the individual for the purposes of facilitating the individual's involvement as per s.67 (5). The person must not be engaged in providing care or treatment for the individual in a professional capacity or for payment. The individual must consent to the appropriate person if they have capacity. In the event that the individual does not have capacity, the local authority must be satisfied that the chosen person will act in the individual's best interests.

Legal Disclaimer

Although great care has been taken in the compilation and preparation of this Factsheet to ensure accuracy, DLS cannot accept responsibility for any errors or omissions. All information provided is for education/informative purposes and is not a substitute for legal advice.

Any links to external websites have been carefully selected but are provided without any endorsement of the content of those sites.

**If you wish to contact us for advice or legal aid representation,
[please refer to our website for further details.](#)**

Website: www.dls.org.uk

Legal Aid (you are eligible and require representation)

Tel: 0207 791 9820

Email: legalaid@dls.org.uk

Advice

Tel: 0207 791 9809

Email: helpline@dls.org.uk

Address:

Disability Law Service
The Foundry, 17 Oval Way, London
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Please support the great work that the Disability Law Service does for disabled people and their carers by donating and making sure this service continues. You can donate in the confidence that 97.2% of all money raised is spent on our work.