

9. Advocacy in Safeguarding

9.1 Introduction

Rochdale Borough Council 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.

9.2 When should an advocate be involved in safeguarding?

Rochdale Borough Council must involve people in 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.

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9.3 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.

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

Rochdale Borough Council must consider whether there is an appropriate individual (or individuals) who can facilitate a person’s involvement in the safeguarding processes.

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.

9.5 Appointing an advocate

If an advocate needs to be appointed, they must have:

- **a suitable level of appropriate experience:** this may, for example, be in non-instructed advocacy or in working with those groups of people who may have substantial difficulty in engaging with assessments and care and support planning;
- **appropriate training:** this may, for example, initially be training in advocacy (non-instructed and instructed) or dementia, or working with people with learning disabilities. Once appointed, all independent advocates should be expected to work towards the National Qualification in Independent Advocacy (level 3) within a year of being appointed, and to achieve it in a reasonable amount of time;

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- **competency in the task:** this will require the advocacy organisation assuring itself that the advocates who work for it are all competent and have regular training and assessments of competence;
- **integrity and good character:** this might be assessed through: interview and selection processes; seeking and scrutinising references prior to employment and on-going Disclosure and Barring Service (DBS) checks;
- **the ability to work independently of Rochdale Borough Council or the body carrying out assessments, planning or reviews on Rochdale Borough Council's behalf:** this would include the ability to make a judgement about what a person is communicating and what is in a person's best interests, as opposed to in a local authority's best interests, and to act accordingly to represent this;
- **arrangements for regular supervision:** this will require that the person meets regularly and sufficiently frequently with a person with a good understanding of independent advocacy who is able to guide their practice and develop their competence.

Sometimes Rochdale Borough Council will not know at the point of first contact or at an early stage of the assessment whether there is someone appropriate to assist the person in engaging. They may need to appoint an advocate, and find later that there is an appropriate person in the person's own network. The advocate can at that stage 'hand over' to the appropriate individual.

There may also be some cases where Rochdale Borough Council considers that a person needs the support of both a family member and an advocate; perhaps because the family member can provide a lot of information but not enough support, or because while there is a close relationship, there may be a conflict of interest with the relative.

If the Council decides that they are required to appoint an independent advocate as the person does not have friends or family who can facilitate their involvement, it must still consult with those friends or family members when the person asks them to.

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

Rochdale Borough Council must form a judgment about whether a person has substantial difficulty in being involved with these processes. If it is thought that they do, and that there is no appropriate individual to support and represent them for the purpose of facilitating their involvement, then the Council must arrange for an independent advocate to support and represent the person.

Many of the people who qualify for advocacy under the Care Act will also qualify for advocacy under the Mental Capacity Act 2005. The same advocate can provide support as an advocate under the Care Act and under the Mental Capacity Act. This

is to enable the person to receive seamless advocacy and not to have to repeat their story to different advocates. Under whichever legislation the advocate providing support is acting, they should meet the appropriate requirements for an advocate under that legislation.

9.6 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).

Qualifying patients are:

- People detained under the Mental Health Act 1983 amended in 2007 (even if on leave of absence from the hospital), but excluding people who are detained under certain short term sections (4, 5, 135, and 136)
- Conditionally discharged restricted patients
- People subject to guardianship
- People subject to supervised community treatment orders (CTOs).
- People being considered for S57 or S58A treatment, or Electro-Convulsive Therapy

IMHAs can help people understand their rights and options, have their views and wishes heard in decisions about their care or treatment and help them to participate in decisions about their care or treatment.

People who are not eligible to receive support from an IMHA under the Mental Health Act, may instead be able to receive support under the Care Act.

Care Act advocates support people to understand their rights under the Care Act and to be fully involved in a local authority assessment, care review, care and support planning or safeguarding process. They can provide support when all three conditions apply:

- One of these processes is taking place: social care needs assessment, carers assessment, care planning, care review or S42 safeguarding investigation
- Without support, the person will have substantial difficulty being involved
- There are no appropriate, able and willing family or friends to support the person's active involvement

9.7 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

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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 appears to be in their best interests.

9.8 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.

9.8 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.

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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.

There will be times when an advocate will have concerns about how the Rochdale Borough Council has acted or what decision has been made or what outcome is proposed. The advocate must write a report outlining their concerns for the Council. The Council should convene a meeting with the advocate to consider the concerns and provide a written response to the advocate following the meeting.

Where the individual does not have capacity, or is not otherwise able, to challenge a decision the advocate must challenge any decision where they believe the decision is inconsistent with Rochdale Borough Council's duty to promote the individual's wellbeing.

Where a person has been assisted and supported and nevertheless remains unable to make their own representations or their own decisions, the independent advocate must use what information they have collected and found, and make the representations on behalf of the person. They must advocate on their behalf, to put their case, to scrutinise the options, to question the plans if they do not appear to meet all safeguarding needs or do not meet them in a way that fits with the person's wishes and feelings, or are not the least restrictive of the person's life, and to challenge local authority decisions where necessary. The ultimate goal of this representation is to secure a person's rights, promote the individual's well-being and ensure that their wishes are taken fully into account.

Rochdale Borough Council must provide a written response to a report from an advocate which outlines concerns about how the Council has acted or what decision has been made or what outcome is proposed. Rochdale Borough Council should understand that the advocate's role incorporates 'challenge' on behalf of the individual.

Rochdale Borough Council should take reasonable steps to assist the advocate in carrying out their role. For example, they should let other agencies know that an advocate is supporting a person, facilitating access to the person and to the records, they should propose a reasonable timetable for the advocate to consult family, friends or paid staff. They should keep the advocate informed of any developments and of the outcome of the assessment and the care and support plan.

[Appendix 1 – Advocacy service referral form](#)



Advocacy Referral
Form