

FIFE ADVOCACY

Guidelines for providing advocacy for people with incapacity, dementia or who have communication difficulties.

Introduction

In this document we outline the role played by advocates when dealing with people with incapacity, dementia or communication difficulties. Excerpts from statutes and guidance pertaining to this role are listed under their relevant headings.

The general principles of advocacy

The general principles of advocacy dictate that advocates represent their partners' views to decision makers, but do not make decisions on behalf of their partners.

However, advocates sometimes work with partners who may, at certain times, be unable to communicate their views. In these cases, we at Fife Advocacy are guided by the following codes of practice and statute;

Draft Code of Practice for the provision of Independent Advocacy [Mental Health (Care & Treatment) (Scotland) Act 2003]:

"Where a person has incapacity or communication difficulties, an independent advocate can still support them. The role of an advocate in such circumstances is to safeguard the basic human rights of the person for whom they advocate and ensure that their treatment meets agreed standards of good practice".

"Chapter 7: Access to information for independent advocates

It is quite clear an independent advocate will require access to certain information in order to do their job and thereby make meaningful people's rights of access to independent advocacy. This does not present a problem where the person is able to authorise the release of information to their independent advocate.

Where a person has incapacity and cannot consent to information being shared on their behalf, health and social care staff should make available to the independent advocate such information as is necessary for the advocate to be

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able to undertake their safeguarding role. As a minimum, it would be expected that advocates are informed when:

- A person is admitted to hospital
- There is a review of care or treatment
- Any form of compulsion is considered
- Special treatments are considered (see Sec. 4.3)
- Plans for discharge or transfer are being made.

Giving this information to advocates is permissible under the Data Protection Act 1998 which contains a specific exemption from restrictions on disclosure where the reason for disclosure is to protect a person's vital interests".

Mental Health (Care and Treatment) (Scotland) Act 2003

Section 259, Subsection 4:

"Advocacy services" are services of support and representation made available for the purpose of enabling the person to whom they are available to have as much control of, or capacity to influence, that person's care and welfare as is, in the circumstances, appropriate".

The Human Rights Act 1998

It would be difficult to pick out any specific article of this Act in relation to advocacy issues. However, this is a superior Act which means that all courts and tribunals will have to interpret any other Act in a way that is compatible with the Human Rights Act 1998 as far as possible.

Examples of relevant rights and freedoms are:

- the right to life
- the right to freedom from torture and inhuman or degrading treatment or punishment
- the right to liberty and security of person
- the right to respect for private and family life, home and correspondence
- freedom of thought, conscience and religion
- freedom of expression

Adults with Incapacity Act 2000: the 5 general principles of this act are:

Principle 1 – Benefit

"There shall be no intervention in the affairs of an adult unless the person responsible for authorising or affecting the intervention is satisfied that the

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intervention will benefit the adult and that such benefit cannot be reasonably achieved without the intervention.”

Principle 2 – Minimum Intervention

“Where it is determined that an intervention in the affairs of an adult under or in pursuance of the Act is to be made, such intervention shall be the least restrictive option in relation to the freedom of the adult, consistent with the purpose of the intervention.”

Principle 3 – Take account of the wishes of the adult

“In determining if an intervention is to be made, and, if so, what intervention is to be made, account shall be taken of the present and past wishes and feelings of the adult so far as they can be ascertained by any means of communication, whether human or by mechanical aid (whether of an interpretive nature or otherwise) appropriate to the adult.

NOTE: that it is compulsory to take account of the present and past wishes and feelings of the adult if these can be ascertained by any means whatsoever.

Principle 4 – Consultation with relevant others.

“In determining if an intervention is to be made, and, if so, what intervention is to be made, account shall be taken of the views of:

- the nearest relative and the primary carer of the adult.
- any guardian, continuing attorney or welfare attorney of the adult who has powers relating to the proposed intervention
- any person whom the Sheriff has directed should be consulted and
- any other person appearing to the person responsible for authorising or affecting the intervention to have an interest in the welfare of the adult or in the proposed intervention, where these views have been made known to the person responsible.

in so far as it is reasonable and practicable to do so.

Principle 5–Encourage the adult to exercise whatever skills he or she has.

“Any guardian, continuing attorney, welfare attorney, or manager of an establishment exercising functions under this Act shall, in so far as it is reasonable and practicable to do so, encourage the adult to exercise whatever skills he or she has concerning property, financial affairs or personal welfare as the case may be, and to develop new such skills”

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Codes of Practise for Social Service Workers and Employers

1. "As a social service worker you must protect the rights and promote the interests of service users and carers." This includes:

- treating each person as an individual
- respecting and, where appropriate, promoting the individual views and wishes of both service users and carers
- supporting service users' rights to control their lives and make informed choices about the services they require
- respecting and maintaining the dignity and privacy of service users
- promoting equal opportunities for service users and carers, and
- respecting diversity and different cultures and values

2. "As a social service worker, you must strive to establish and maintain the trust and confidence of service users and carers."

3. "As a social service worker, you must promote the independence of service users while protecting them as far as possible from danger or harm." This includes:

- promoting the independence of service users and assisting them to understand and exercise their rights...

4. "As a social service worker, you must respect the rights of service users while seeking to ensure that their behaviour does not harm themselves or other people."

5. "As a social service worker, you must uphold public trust and confidence in social services.

Nursing and Midwifery Council: Code of Professional Conduct April 2002

UKCC: Guidelines for mental health and learning disabilities nursing 1998 (this document has not yet been updated by the NMC)

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PROVIDING ADVOCACY FOR PEOPLE WITH COMMUNICATION DIFFICULTIES

What we do.

The role of an advocate is to support and assist a person to express their own views or wishes to others. An advocate would always work to the principle that someone can express a view or a wish. Sometimes advocates work with partners who at certain times have difficulty communicating their views or making it clear that they understand something (capacity). This can sometimes happen with people who have dementia. Fife Advocacy believes that everyone has a right to advocacy, so in these circumstances an advocate takes on a 'safeguarding' role. This involves the following:

- Consent
- Communication
- Decision making

Consent

- An advocate always tries to gain consent from the partner that they are happy for the advocate to work with them.
- Gaining consent can be difficult when the partner is unable to communicate or if the advocate is unsure if the partner is giving their informed consent.
- Written consent is not appropriate in these cases. Instead the advocate would try and gain ongoing consent by noting if the partner is accepting of the advocates company by showing positive signs such as;
 - Smiling
 - Recognition
 - Eye contact
 - Relaxed body language.
- If the advocate feels that the partner is uncomfortable in their presence they will always withdraw, and try again another time.
- Ongoing consent will be recorded in writing by the advocate.

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Communication

- An advocate will first try and get to know their partner. If possible, this should happen over a period of time in order to build up a relationship and try and gain an understanding of the partner's ability to communicate.
- The advocate will take account of sensory needs such as hearing or visual impairments.
- If the partner finds communication difficult, and the advocate is unable to understand the partners views, the advocate will seek help from:
 - Family
 - Friends
 - Carers
 - Workers from support agencies
- It is important to be aware that conflicts of interests may arise when consulting relevant others, perhaps due to different priorities and agendas. Views on what relevant people think are best for the partner may differ. The advocate's loyalty will always remain with their partner, guided by principles laid down in the attached extracts of relevant statutes and guidelines.

Decision making

- When a partner has not been able, or not wanted to consent to legal decisions made, for example, interventions under the Adult with Incapacity Act 2000, the role of the advocate is to ensure that all decisions have taken into consideration:
 - Past and present wishes.
 - Any advanced statements made. (In line with the Mental Health (Care & Treatment) Act 2003.
 - Significant issues and preferences.
 - Life history.
 - That all preferred options have been thoroughly pursued.
- An advocate aims to ensure that all decisions are informed by the required standards of relevant legislation and codes of practice. (see attached extracts of relevant statutes and guidelines)

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- If the use of legislation is seen as not appropriate and has not met the above standards, then the option of appeal against this decision could be taken.

If an advocate feels that it is impossible to know the views of their partner, and is therefore carrying out a safeguarding role, they will always inform relevant others involved in the partners care of this.

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