

POLICY TITLE:	Advocacy
Policy Number:	OP17
Version Number:	07
Date of Issue:	08/10/2024
Date of Review:	07/10/2027
Policy Owners:	Kim Forrester, Head of MHA/MCA Operations
Ratified by:	Kathryn Mason, Associate Director of Patient Safety and Experience
Responsible signatory:	Colin Quick, Chief Quality Officer
Outcome:	This policy: <ul style="list-style-type: none"> Aims to ensure that a service user's right to independent advocacy and representation is upheld
Cross Reference:	LE03 Data Protection LE06 Confidentiality OP04 Incident Management, Reporting and Investigation OP05 Mental Capacity OP05.2 MCA Deprivation of Liberty Safeguards (England and Wales) OP05.3 Adults with Incapacity (Scotland) OP05.4 Mental Capacity Act (Northern Ireland) 2016 and Deprivation of Liberty Safeguards

EQUALITY AND DIVERSITY STATEMENT

Priory is committed to the fair treatment of all in line with the [Equality Act 2010](#). An equality impact assessment has been completed on this policy to ensure that it can be implemented consistently regardless of any protected characteristics (age, disability, gender identity and expression, marriage or civil partnership, pregnancy or maternity, race, religion or beliefs, sex, sexual orientation), and all will be treated with dignity and respect.

In order to ensure that this policy is relevant and up to date, comments and suggestions for additions or amendments are sought from users of this document. To contribute towards the process of review, email LegalandComplianceHelpdesk@priorygroup.com

ADVOCACY

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1 SCOPE

- 1.1 This policy applies to all service users and all Adult Care and Healthcare sites and services across England, Scotland, Northern Ireland and Wales. Where there are differences between nations, this will be clearly highlighted.

2 INTRODUCTION

- 2.1 Independent advocacy is needed because some people are unable or unwilling to speak up or feel that others may not be listening to their views and opinions, or they may be unable to communicate their views or opinions due to disability or illness. Professional advocacy supports people to have their voice heard and rights and interests protected. This can be in relation to any aspect of their care/education i.e. support with the complaints procedure, support with upholding rights and entitlements and support and representation in any disagreements.
- 2.2 Advocacy promotes and protects the rights and interests of the individual and supports the individual in making their views heard. There are three types of advocacy:
- (a) Independent Advocacy for the general population of Priory service users, including children and young people:
 - i. In England and Wales: Section 26A of the Children Act 1989 places a duty on every Local Authority to make arrangements for assistance, including representation, to be provided to children and young people in relation to the support for children and families and the care, supervision and protection of children by Local Authorities. This assistance is provided by independent advocacy services who are subject to the National Standards for the Provision of Children's Advocacy Services
 - ii. In Scotland: The Children's Hearings (Scotland) Act 2011 (Children's Advocacy Services) Regulations 2020 provide standards of advocacy services
 - (b) Detained Patients:
 - i. In Scotland: Independent Advocates, provided by a local advocacy service, for those service users detained under the Mental Health (Care and Treatment) (Scotland) Act 2003.
 - ii. In England and Wales: Independent Mental Health Advocates (IMHA), provided by their local commissioning authority, for those service users detained under the Mental Health Act 1983
 - (c) Service Users who lack Capacity:
 - i. In Scotland: When someone is subject to any sort of intervention under Adults with Incapacity (AWI) legislation, it is considered good practice to give them access to Independent Advocacy.
 - ii. In England and Wales: An Independent Mental Capacity Advocate (IMCA) is a requirements under the Mental Capacity Act 2005, for service users who may lack

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capacity to make important decisions about serious medical treatment and changes of accommodation

- 1.2.1 The Mental Capacity Act 2005 and Adults with Incapacity (Scotland) Act 2000 provide a statutory framework to empower and protect people who lack capacity, but do **NOT** apply to people under the age of 16. Someone lacks capacity if they are unable at a given time to make a decision because of an impairment of, or a disturbance in the functioning of the mind or brain, capacity can be subject specific (financial, care needs, etc.) and a lack of capacity can be temporary or permanent. Refer to OP05 Mental Capacity, OP05.3 Adults with Incapacity (Scotland), or OP05.4 Mental Capacity Act (Northern Ireland) 2016 and Deprivation of Liberty Safeguards for more detail.
- 2.2.2 In Scotland: Managing Adults with Incapacity legislation is a complicated process involving many different agencies, and an experienced Advocacy Worker can help make the best of the situation by giving all parties the right information, helping to explore options, and representing interests to the right people at the right time.
- 2.2.3 In England and Wales: An IMCA must be appointed (via the local authorities) if the service user has no family or friends other than paid carers to represent them ('unbefriended') and consulted when certain important decisions are to be made when undertaking an assessment of need under the Care Act.
- 2.2.4 There is a duty to instruct an IMCA in the following prescribed circumstances:
(a) Providing, withholding or stopping serious medical treatment
(b) Moving a person into long-term care in a hospital or care home
(c) Moving the person to a different hospital or care home.
The only exception to this rule is where an urgent decision is needed
- 2.3 All units should provide information regarding independent advocacy services for all its service users. Contact details for several organisations providing independent advocacy services should be readily available to all service users. Within the Healthcare Division sites use the approved contracted providers for general advocacy services.

3 OVERVIEW

- 3.1 Priory colleagues must endeavour to promote and safeguard the service user's interests at all times. Colleagues must not make the assumption that only they know what is best for the service user, as this may have an adverse effect such as creating dependency, hindering teamwork and denying the individual the right to choose.
- 3.2 Care and consideration must to be taken with service users who are highly suggestible and are more likely to agree with suggestions or choices from people who are in a position of authority. This is especially important if service users have been or are suspected of having been abused. Advocacy is about promoting service user rights to choose and giving them the power to decide for themselves.
- 3.3 When caring for, supporting or providing education for service users, it should be established whether they have particular needs which are not being addressed. This will include considering their physical, emotional, cultural and religious beliefs. Being able to identify these needs requires the ability to listen to service users and to respond in the most appropriate way.

4 RESPONSIBILITIES AND ORGANISATIONAL ARRANGEMENTS

- 4.1 **Service Users' Rights** - All service users have the right to access the support of an independent advocate.

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- 4.1.1 All service users have the right to expect clear and legible information on independent advocacy in the form of:
- (a) Leaflets explaining how to access independent advocacy
 - (b) Posters detailing how to access independent advocacy
- For Information leaflets in minority languages, Braille and on audiotape/CD, or other appropriate format, contact the relevant advocacy service.
- 4.1.2 All service users have the right to be accompanied by their independent advocate to meetings at which decisions about their care, support or education are being discussed and decisions being made. Any specific needs of the service user must be taken into account to facilitate their full inclusion in meetings.
- 4.1.3 All service users will receive adequate notice of meetings at which decisions about their care, support or education are being discussed and decisions being made, so that their independent advocate is able to attend with the service user's permission. Where advocates are required but unable to attend, and where possible, the meeting will be rearranged to ensure the advocate can attend.
- 4.1.4 Healthcare Division: If a service user is subject to Level 3 or 4 observations when the advocate is meeting with them, there must be clarity reached between all parties about the potentially confidential nature of the conversation and how this will be recorded or otherwise.
- 4.2 **The Rights of Independent Advocates** – With the consent of the individual, the independent advocate is entitled to raise with relevant persons or organisations, including appropriate professionals, any issue that affects the service user's needs, wishes and requirements. The independent advocate has the right and duty to represent only the individual's views.
- 4.2.1 Advocates are entitled to be informed of, and attend, any formal/informal meetings where decisions about changes in the service user's circumstances are being discussed, and any specific needs will be taken into account to facilitate the inclusion of the advocate and service user in the meeting. There will be agreement wherever possible between the service user and the advocate about attendance at meetings. If professionals feel that it is inappropriate for an advocate or the service user to be involved, this will be fully discussed with the advocate and the service user in advance and justified reasons given. The outcome of this discussion will be put in writing by all parties and be recorded, and communicated in an appropriate format to all parties. This should be a last resort as the advocate is entitled to attend if the service user wishes them to.
- 4.2.2 Independent advocates have the right to ask for suitable arrangements to be made to enable them to consult with their advocacy partners in confidence.
- 4.2.2.1 However, if serious safeguarding concerns become apparent during discussions with a service user, the advocate follows the advocate is obliged to share information in accordance with safeguarding procedures and the Data Protection Act. (Refer to LE03 Data Protection)
- 4.2.3 **Access to records** – for those service users detained under the Mental Health legislation, and with the service user's consent, the advocate has a right to access and inspect any records held for the purposes of providing help to the service user. Advocates should not be informed of third party information where they cannot pass this onto the service user.
- 4.3 **Site/Service Managers Responsibilities** – Managers of sites and services have a duty to:
- (a) Ensure that all colleagues are made aware of the role of independent advocacy services and their responsibilities in relation to the provision of independent advocacy and have access to awareness raising training
 - (b) Ensure that colleagues are aware of local arrangements for accessing appropriate advocacy

- (c) Ensure that the information is available and readily accessible to service users and their carers. This will include the provision of independent advocacy information leaflets and posters displayed in appropriate clinical, ward, Home or other areas accessed by service user, and that it can be made available in other formats
- (d) For the safety of both service users and advocates, ensure that the advocates receive an appropriate induction to the area, a thorough briefing on risk at each visit, and that their health and safety is monitored as with any visitor

4.4 **Colleagues Responsibilities** - All colleagues have a duty to:

- (a) Ensure that service users are made aware of independent advocacy organisations and their right to access advocacy support, and local arrangements for contacting appropriate advocacy services.
- (b) Include details of the service user's independent advocate in service user's records
- (c) Where possible, and if necessary, the Advocate should support the service user to be involved in drawing up of their care plan or contract
- (d) Ensure that the service user is aware of their statutory right to have their advocate informed of, and attend review meetings, and mental health tribunals and hearings.
- (e) Recognise that carers can have a need for advocacy support and make carers aware of services that can provide this.

4.5 **Safeguarding** - Local Authorities have 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).

4.5.1 This requires the Local Authority 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.

4.5.2 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.

4.5.3 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 may, 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.

5 **ADVOCACY FOR FAMILY MEMBERS**

5.1 In the event of a very serious incident for example the unexpected death or very serious injury consideration must be given to offering advocacy to family members in respect of liaising with the serious incident investigation team for example the preparation and ratification of terms of reference and reviewing and responding to the final draft of the investigation report. This arrangement will be overseen by the Chief Quality Officer and as required in conjunction with the Director of Quality.

6 **LOCATING INFORMATION ABOUT SERVICE USER RIGHTS, THEIR CARE, TREATMENT, EDUCATION AND OBTAINING OTHER INDEPENDENT ADVOCACY**

6.1 Service user information leaflets and information guides should be made available for all service users, families and carers.

- 6.2 Details of local independent advocacy services should be made available and displayed on notice boards where appropriate.
- 6.3 All units should determine how any service user requesting assistance in accessing advocacy services will be supported.

7 REFERENCES

7.1 Legislation

Adults with Incapacity (Scotland) Act 2000
 Care Act 2014
 Children Act 1989
 Children’s Hearings (Scotland) Act 2011
 Data Protection Act 2018
 DH (2015) Mental Health Act 1983: Code of Practice
 Independent Mental Health Advocates: Supplementary guidance on access to patient records under section 130B of the Mental Health Act 1983
 Mental Capacity Act 2005
 Mental Capacity Act 2005 (Independent Mental Capacity Advocates) (Wales) Regulations 2007
 Mental Health (Care and Treatment) (Scotland) Act 2003
 Mental Health (Independent Mental Health Advocates) (Wales) Regulations 2011
 Mental Health Act 1983
 Regulation and Inspection of Social Care (Wales) Act 2016
 The Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017

7.2 Guidance

CQC (2015) Specialist Mental Health Services: Provider handbook
 CQC (2015) Residential Adult Social Care Services: Provider handbook
 DHSSPSNI (2015) Care Standards for Nursing Homes
 DHSSPSNI (2011) Residential Care Homes Minimum Standards
 Scottish Government (2018) Health and Social Care Standards: My support, my life

8 EQUALITY IMPACT ASSESSMENT

8.1

How is the policy likely to affect the promotion of equality and the elimination of discrimination in each of the groups?			
Protected Characteristic (Equality Act 2010)	Impact Positive/ Negative/ None	Reason/ Evidence of Impact	Actions Taken (if impact assessed as Negative)
Age	Positive	The policy is accessible to all and offers support for all service users to access independent support and protect their rights. The procedures within are applied with equality and follow the national guidance for the nation and sector they are relevant within.	
Disability	Positive	The policy signposts to resources to help	

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		provide additional support for needs, including those related to physical or mental health needs.	
Gender identity and expression	None	No impact identified	
Marriage or civil partnership	None	No impact identified	
Pregnancy or maternity	None	No impact identified	
Race	Positive	Other languages and formats are available on request at site level.	
Religion or beliefs	None	No impact identified	
Sex	None	No impact identified	
Sexual orientation	None	No impact identified	
Other, please state:			
EIA completed by:			
Name:	Kim Forrester		
Role/Job Title:	Head of MHA/MCA Operations		
Date completed:	2 October 2024		