

Advocacy – this section is under review

The **Care Act 2014 Section 68** requires that a Local Authority must arrange, where appropriate, for an independent advocate to represent and support an adult who is the subject of a safeguarding enquiry or Safeguarding Adult Review (SAR) where the adult has ‘substantial difficulty’ in being involved in the process and where there is no other appropriate individual to help them.

There are distinct differences between an Independent Mental Capacity Advocate (IMCA) introduced under the **Mental Capacity Act 2005**, and an Independent Advocate introduced under the **Care Act 2014**. Independent advocates cannot undertake advocacy services under the **Mental Capacity Act 2005**, however where there is an appointed IMCA they may also take on the role of Independent Advocate under the **Care Act 2014**.

1.1 Independent mental capacity advocates (IMCAs)

IMCAs provide one type of non-instructed advocacy. Their role was established by the Mental Capacity Act 2005 to provide a statutory safeguard mainly for people who lack capacity to make important decisions and who do not have family or friends who can represent them to do so. IMCAs have a statutory role in the safeguarding adult’s process.

There is a legal requirement to make a decision about instructing an IMCA for an adult at risk who is the focus of safeguarding adult’s processes where they lack capacity to make decisions about their safety. IMCA instruction may be unnecessary if the adult at risk has adequate alternative independent representation. This could be from another advocate, or from family or friends.

It should be remembered that where the adult does not want support from family or friends that their wishes should be respected and an independent advocate provided.

There are two distinct types of advocacy – instructed and non-instructed.

Instructed advocates take their instructions from the person they are representing. For example, they will only attend meetings or express views with the permission of that person.

Non-instructed advocates work with people who lack capacity to make decisions about how the advocate should represent them. Non-instructed advocates independently decide how best to represent the person.

Advocates should be invited to the strategy meeting or case conference, either accompanying the adult at risk, or attending on their behalf to represent the person's views and wishes. Instructed advocates would attend only with the permission of the adult at risk.

2. Support to adults

A requirement under the **Equality Act 2010** is for provision and adjustments to enable disabled people equal access to information and advice. Ensuring equality may reduce or remove substantial difficulty. Access to other services for example, translators should always be considered to ensure that the adults are afforded every opportunity to participate and be involved.

2.1 Support for vulnerable witnesses in the criminal justice process – this section is under review

Research has found that sometimes evidence from victims and witnesses with learning disabilities is discounted. This may also be true of others such as people with dementia. It is crucial that reasonable adjustments are made, and appropriate support given, so people can get equal access to justice. Guidance should include reference to support relating to criminal justice matters which is available locally from such organisations as Victim Support and court preparation schemes; Some witnesses will need protection; and the police may be able to get victim support in place.

Special Measures were introduced through legislation in the **Youth Justice and Criminal Evidence Act 1999** (YJCEA) and include a range of measures to support witnesses to give their best evidence and to help reduce some of the anxiety when attending court. Measures in place include the use of screens around the witness box, the use of live-link or recorded evidence-in-chief and the use of an intermediary to help witnesses understand the questions they are being asked and to give their answers accurately.

Vulnerable Adult Witnesses (**Section 16 YJCEA**) have a:

- Mental disorder
- Learning disability, or
- Physical disability

These witnesses are only eligible for special measures if the quality of evidence that is given by them is likely to be diminished by reason of the disorder or disability.

Intimidated Witnesses (**Section 17 YJCEA**): Intimidated witnesses are defined by Section 17 of the Act as those whose quality of evidence is likely to be diminished

by reason of fear or distress. In determining whether a witness falls into this category the court takes account of:

- the nature and alleged circumstances of the offence;
- the age of the witness;
- the social and cultural background and ethnic origins of the witness;
- the domestic and employment circumstances of the witness;
- any religious beliefs or political opinions of the witness;
- any behaviour towards the witness by the accused or third party.

Also falling into this category are:

- complainants in cases of sexual assault;
- witnesses to specified gun and knife offences;
- victims of and witnesses to domestic violence, racially motivated crime, crime motivated by reasons relating to religion, homophobic crime, gang related violence and repeat victimization;
- those who are older and frail;
- the families of homicide victims.

Registered Intermediaries (RIs) have been facilitating communication with vulnerable witnesses in the criminal justice system in England and Wales since 2004.

Special measures include practical and emotional support to victims and witnesses (either for the defence or for the prosecution) provided by the Witness Service. Support is available before, during and after a court case to enable adults and their family and friends to have information about court proceedings and could include arrangements to:

- visit the court in advance of the trial;
- consider the use of screens in court proceedings;
- the removal of wigs and gowns;
- the sharing of use of intermediaries and aids to communication.

If the person alleged to have caused harm is a young person or has a mental disorder, including a learning disability, and they are interviewed at the police station, they are entitled to the support of an 'appropriate adult' under the provisions of the **Police and Criminal Evidence Act 1984 Code of Practice**.

There is an automatic referral to Victim Support services for all victims of crime whether they are deemed vulnerable or not.

