

# **North Somerset Council**

## **Adult Social Services**

### **Independent Care Act Advocacy Policy**



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## 1. Document information

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| <b>Title</b>                           | Independent Care Act Advocacy Policy   |
| <b>Policy Status</b>                   | Approved   |
| <b>Current Version</b>                 | Final version  |
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| <b>Approval date</b>                   | 01/08/2023   |
| <b>Planned review</b>                  | 30/07/2025   |
| <b>Climate implications</b>            | Yes  |
| <b>Equalities impact</b>               | Yes  |
| <b>Impact on unpaid carers</b>         | Yes  |

| Version history                    | Date       | Description                    |
|------------------------------------|------------|--------------------------------|
| Version 1                          | 09/05/2023 | 1 <sup>st</sup> Draft          |
| Version 2                          | 16/05/2023 | 2 <sup>nd</sup> Draft          |
| Version 3                          | 08/05/2023 | Considered at Governance Board |
| Version 4                          | 22/06/2023 | Final Draft                    |
| Date requested at Governance Board | 27/07/2023 | Approved by Governance Board   |
| Version FINAL                      | 01/08/2023 | Approved by DLT                |

## 2. Aim and audience for this policy

Under the Care Act (2014) North Somerset Council must provide access to an Independent Care Act Advocate (ICAA) under certain circumstances. The aim of this policy is to inform carers with support needs, and people with care and support needs, of North Somerset councils' duty under the Care Act (2014) to provide access to an ICAA who can represent their views, wishes, experiences, and rights. The policy also provides information to supporters and professionals working alongside people with care and support need, and carers, regarding North Somerset councils' eligibility criteria, when the duty does not apply, and the standards and expectations regarding the delivery of high-quality Independent Care Act Advocacy.

## 3. What is an Independent Care Act Advocate (ICAA?)

An ICAA is an advocate working independently of North Somerset Council and appointed under the Care Act (2014). The role of an ICAA involves supporting people to have a voice to facilitate and maximise their involvement in a wide range of adult care and support processes. ICAA's promote social inclusion, equity, and social justice by working alongside people to listen to and represent their experiences, wishes, views, interests, and feelings, without prejudice. This empowers people to make decisions, secure their rights, get the services they need, and, where appropriate, challenge decisions made by the North Somerset Council.

## 4. Legal context

### The Local Authority Duty

All local authorities have a duty to make independent Care Act advocacy available under section 67 and section 68 of the Care Act (2014). An ICAA may be referred to as a section 67 or section 68 advocate. This distinction is set out below.

- Section 67 advocate: An advocate allocated to support a care and support process not related to safeguarding.
- Section 68 advocate: An advocate allocated to support a safeguarding process.

The duty to make advocacy available under Section 67 of the Care Act (2014) applies at the first point of contact with the person or carer when a representative of North Somerset Council is:

- Carrying out a needs assessment with a person (regardless of whether this is a face to face, telephone, online or supported self-assessment).
- Carrying out a carers assessment (regardless of whether this is a face to face, telephone, online or supported self-assessment);
- Preparing a care and support plan with the person;
- Preparing a support plan with a carer;
- Revising a care and support plan;
- Revising a support plan;
- Carrying out a child's needs assessment for transition into adult social care;
- Carrying out a child's carer's assessment;
- Carrying out a young carer's assessment.

The duty to make advocacy available under Section 68 of the Care Act (2014) applies when a representative of North Somerset Council is:

- Conducting a Safeguarding Enquiry or Review.

Where the need for an ICAA is identified care and support process, and safeguarding enquires/reviews, must not proceed until one is appointed. North Somerset Council understands it has a duty to ensure that independent care act advocacy is available and that it is in breach of this duty if an ICAA is not available when needed. Decisions made in this situation are unlawful and subject to legal challenge. The only exception is where urgent care and/or support is being implemented without assessment to meet needs or reduce the risk of abuse and neglect.

### **Who is Eligible for support from an ICAA?**

The advocacy duty under the Care Act (2014) applies equally to adult carers with support needs, adults with care and support needs, and young people moving to

adult care services, regardless of where they live, ethnicity, disability, sex, gender identification, sexual orientation, level of income, faith group, or the nature of the support receive.

Under the Care Act (2014), North Somerset Council will arrange for an ICAA to be available to represent people with care and support needs, and carers with support needs, when:

- There is no appropriate other person to support and represent them; and
- They feel that the person would experience substantial difficulty being fully involved in the care and support process without support.

Substantial difficulty applies to one or more of the following areas:

- Understanding relevant information relating to the process or function taking place;
- Retaining that information;
- Using or weighing up that information as part of the process of being involved; or
- Communicating their views, wishes or feelings (whether by talking, using sign language or any other means).

When deciding whether a person is likely to experience a substantial difficulty to being fully involved in the care and support process, without support, North Somerset Council will have regard to:

- Any health condition the person has;
  - Any learning difficulty and/or learning disability the person has;
  - Any disability the person has;
  - The degree of complexity of the person's circumstances, whether in relation to their needs for care and support (or support) or otherwise;
  - Where the assessment or planning function is the carrying out of an assessment (regardless of whether the person or carer has previously refused an assessment or not); and
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- Whether the person is experiencing, or at risk of, abuse or neglect.

Any determination of substantial difficulty is not a determination about mental capacity. Where there are concerns about a person's capacity to be involved in the care and support process, or any likely decisions to be made, a representative of North Somerset Council, with the appropriate training and skills, will assess their capacity under the Mental Capacity Act (2005) and consider whether an Independent Mental Capacity Advocate (IMCA) is required.

Many people who qualify for independent advocacy under the Mental Capacity Act will also qualify for independent advocacy under the Care Act (2014). To enable a person to receive seamless advocacy and not to have to repeat their story to different advocates, the same advocate can provide support in both roles, provided they are trained and qualified to do so.

North Somerset Council is also responsible for assessing and meeting the social care needs of adult prisoners while in custody and upon discharge. All prisoners are treated as if they are resident in that area for the purposes of the Care Act (2014), for as long as they reside in that prison. Prisoners are entitled to the support of an independent advocate in the same circumstances as people in the community.

### **When the Duty Does Not Apply**

The duty to make an ICAA available does not apply if North Somerset Council is satisfied that there is somebody else who would be an appropriate person to represent and support the person or carer. Practitioners completing Care Act assessments will record whether someone has been identified as an appropriate person in Liquidlogic Adults System (LAS) under *Care Act Assessment - Advocacy - does the person have difficulty (yes) - Appropriate Person (yes)*. By answering *yes* to *appropriate person* practitioners are confirming that they have considered the criteria for determining whether someone is an appropriate individual (criteria set out below) and agree that they are appropriate to represent and support the person or carer.

Somebody wishing to represent and support the person's, or carer's, involvement may only be deemed appropriate if:

- They are not engaged in providing care or treatment for the person they wish to support (in either a professional or paid capacity);
- They are not implicated in any enquiry relating to abuse or neglect;
- The person they wish to support has capacity and can give informed consent to being represented and supported by them; or
- Where the person lacks capacity or is not able to give informed consent, North Somerset Council is satisfied that being represented and supported by the person wishing to do so would be in their best interests;
- The person wishing to represent the person (or carer) has demonstrated that they have adequate direct contact with the person they wish to support to do so effectively;
- The person wishing to represent the person (or carer) has demonstrated adequate knowledge of the care and support process in which they will be supporting them to be involved in;
- The person wishing to represent the person (or carer) has demonstrated they are able to act independently of North Somerset Council
- There is no conflict of interest or dispute between the person (or carer) and the person wishing to represent them; and
- Where the person lacks capacity there is no conflict of interest or dispute between the person wishing to represent them and North Somerset Council about what is best for the person.

The appropriate individual cannot be:

- Already providing care or treatment to the person in a professional capacity or on a paid basis;
  - Someone the person does not want to support them;
  - Someone who is unlikely to be able to, or available to, adequately support the person's involvement;
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- Someone implicated in an enquiry into abuse or neglect or who has been judged by a safeguarding adult review to have failed to prevent abuse or neglect.

A person wanting to support and represent a person or carer under the Care Act (2014) must be able to demonstrate that they are able to support the person to be actively involved with Local Authority processes.

North Somerset Council has the final decision about whether someone is appropriate to discharge this role. If a person is deemed inappropriate this does not mean they cannot be involved in the care and support process and must still be consulted (where the person or carer gives informed consent and/or it is deemed by North Somerset Council to be in their best interests).

If North Somerset Council feels a person may be appropriate but later finds otherwise (i.e., they have not had adequate contact with the person) then the duty to make an ICAA available applies because the person no longer has someone appropriate to support them.

If North Somerset Council arranges for the involvement of an ICAA and later finds that a person who they thought was inappropriate to offer support is actually appropriate, then the duty to provide an ICAA no longer applies. However, in this situation the statutory guidance is clear that consideration must be given to continuing the advocacy support if this would be of benefit to the person or carer.

In the event of North Somerset Council not being made aware there is someone appropriate to assist the person in engaging in care and support processes an ICAA will be appointed. If an appropriate person is then identified later the appointed ICAA can, at that stage, 'hand over' to the appropriate individual. Alternatively, North Somerset Council may agree with the person, the appropriate individual, and the advocate that it would be beneficial for the advocate to continue their role, although this is not a specific requirement under the Care Act (2014).

In the event of North Somerset Council considers someone appropriate who may then turn out to have difficulties in supporting the person to be involved in the process, arrangements for an ICAA will be made.

### **Situations When an ICAA must be appointed.**

In general, under the Care Act (2014), a person with a substantial difficulty in being involved in their assessment, plan or review will only become eligible for an ICAA when there is no other appropriate person to support them. However, the Care Act (2014) does specify 3 exceptions to this:

- Where the person is likely to be accommodated in an NHS hospital for a period of 28 days or more;
- Where the person is likely to be accommodated in a residential home or care home for a period of 8 weeks or more; or
- Where there is a disagreement or dispute between North Somerset Council and the appropriate individual advocating on behalf someone with and care and support needs, and they both agree that the involvement of an Independent Advocate would be beneficial to the person.

If, under these circumstances, North Somerset Council believe that the person requires support to facilitate and maximise their involvement an ICAA must be made available, regardless of the involvement of an appropriate person.

## **5. How will North Somerset Council Implement the Independent Care Act Advocacy Policy?**

The ICAA's utilised in North Somerset are employed by the Advocacy People. When the need for an ICAA has been identified a referral must be made to the Advocacy People. Referrals made to the Advocacy People must be recorded by a practitioner in the free text box in Liquidlogic Adults System located in the *Care Act assessment*, under *Advocacy- does the person have difficulty (yes) – appropriate individual (no)*.

More information about the Advocacy People can be found at

<https://www.theadvocacypeople.org.uk/>.

## The Standards and Expectations for Delivering High-Quality Independent Care Act Advocacy

The implementation of the ICAA policy involves providing high quality ICAA's. The Care and Support (Independent Advocacy Support (No2)) Regulations 2014 set out clear requirements in relation to the role and function of any ICAA appointed by the Local Authority. ICAA's **must** perform their functions to these requirements.

In all cases an ICAA must determine in all circumstances how best to represent and support the person or carer, and must act with a view to promoting their wellbeing.

To the extent that it is practicable and appropriate to do so an ICAA must:

- Meet the person in private; and
- For the purpose of promoting wellbeing, and provided that the person has given informed consent, consult with;
  - People who are, or have been, engaged in providing care or treatment for the person in a professional capacity or for remuneration; and
  - Other people who may be in a position to comment on the person's wishes, beliefs or values (e.g., family members, carers or friends).
- For the purpose of promoting wellbeing, where the person lacks capacity to give informed consent, and the ICAA is satisfied it is in their best interests to consult, consult with;
  - People who are, or have been, engaged in providing care or treatment for the person in a professional capacity or for remuneration; and
  - Other people who may be in a position to comment on the person's wishes, beliefs or values (e.g., family members, carers or friends).

An ICAA must assist the person in;

- Understanding the purpose of the care and support process they are involved in;
- Communicating their views, wishes or feelings;
- Understanding how their care and support needs, (or support needs in the case of carers) could be met by the Local Authority or otherwise;
- Making decisions in respect of care and support (or support) arrangements; and
- Challenging the local authorities' decisions if the person (or carer) so wishes.

An ICAA must also:

- So far as is practicable, make sure the person understands the duties of the Local Authority under the Care Act (2014);
- So far as is practicable, make sure the person understands their own rights and obligations under the Care Act (2014);
- In the case of carers, to make sure the carer understands their own rights and obligations under the Act, and the rights and obligations of the person they provide care for;
- Make representation as necessary to ensure that the person (or carer's) rights are upheld; and
- Where they have concerns about the manner in which the care and support function has been completed, prepare a report for the Local Authority outlining the concerns they have.

An ICAA may examine and take copies of any relevant records (health or social care records) relating to the person when:

- The person has capacity, is able to give informed consent, and does consent to the records being made available to the ICAA; or
- The person does not have capacity and is not able to give informed consent, but the ICAA considers it in their best interests for the records to be provided.

Where the person does not have capacity, or where there are communication barriers between the ICAA and the individual, the appropriate mode or modes of communication must be identified and then utilised to support people to express their views.

Where the person does not have capacity or is not able to challenge a decision made by the Local Authority in relation to the care and support function the ICAA **must** challenge the decision if they consider North Somerset to be in breach of their general responsibility to promote individual wellbeing.

When supporting a person to maximise their involvement in safeguarding the ICAA should assist the person to:

- Decide the outcomes and/or changes they want;
- Understand the abusive or neglectful behaviour of others;
- Understand the way in which their own actions may have exposed them to the abuse or neglect;
- Understand what actions they can take to safeguard themselves;
- Understand what advice and help they can expect from others,
- Understand what parts of the process are completely or partially within their control; and
- Explain what help they want from others to avoid further abuse or neglect and recover from their experience.

### How to work with an ICCA

Where North Somerset Council has arranged for an ICCA under the Care Act (2014) it must:

- Take into account any representations the ICAA makes on behalf of the person (or carer) in relation to how the care and support function is being completed and the impact on the person (or carer);

- Take reasonable steps to assist the ICAA to fulfil their role, represent and support the person or carer (for example by referring early, setting a timeframe for assessment or review that allows the advocate time to consult with the person and others beforehand or providing records requested by the advocate);
- Keep the ICAA informed of any developments and of the outcome of any assessments carried out; and
- Provide the ICAA with a written response to any report they have prepared that raises their concerns about the manner in which the care and support function has been completed by North Somerset Council

Where North Somerset has cause, it may make reasonable requests for information from the ICAA in relation to their performance and the functions they have carried out in relation to a particular person or carer. The ICAA and the Advocacy People must comply with such requests.

### **Combined Advocacy**

Where North Somerset Council is completing a combined assessment (for example a joint assessment for a person and their carer) and both people being assessed require an ICAA under the Act, North Somerset Council can appoint the same ICAA to represent and support both when:

- There is no conflict of interest or dispute between the people being assessed; and
- There is no conflict of interest or dispute between the Independent Advocate and either of the people being assessed.

Regardless of whether North Somerset Council deems the same ICAA appropriate it must provide different advocates when:

- Either of the people requests it; or

- Any Independent Advocate already supporting one of the people being assessed requests it.

### **The Advocacy Duty where the person or carer does not engage with an ICAA.**

North Somerset Council has a duty to arrange independent care act advocacy under the Care Act (2014) whenever it is needed. This is regardless of whether the person or carer wishes to be supported by an ICAA. If the person or carer chooses not to engage with the ICAA they do not have to do so but North Somerset Council must still make one available to them.

When North Somerset Council becomes aware that a person or carer may be eligible for an ICAA they will provide them with information about the advocacy role in an accessible and positive way, to support the person or carer to understand the benefits of an ICAA in their situation and what to expect from their involvement. This will reduce the risk that the person will choose not to engage with the ICAA and ensure their involvement in the care and support process is maximised.

## **6. Further Information**

The follow documents are available alongside this guidance

- Easy read summary
- Fact sheet
- Further easy read information from the Advocacy People is available at [Easy Read | The Advocacy People](#)

## **7. Complaints**

If you are unhappy about any action or decision taken by Adult Social Care in relation to Independent Care Act Advocacy, you should initially talk to the person you normally deal with. If you are unable to resolve your complaint in this way, you can contact:

Complaints Manager,  
Adult Social Services and Housing,  
Town Hall,  
Walliscote Grove Road,

Weston super Mare,  
BS23 1UJ

Telephone: 01275 882171

Email: [complaints.manager@n-somerset.gov.uk](mailto:complaints.manager@n-somerset.gov.uk)

## **8. Accessible information**

Council documents can be made available in large print, audio, easy read and other formats. Documents on our website can also be emailed to you as plain text files.

Help is also available for people who require council information in languages other than English. Please email [asshsstrategyandpolicyteam@n-somerset.gov.uk](mailto:asshsstrategyandpolicyteam@n-somerset.gov.uk) or 01934 888 888.