



ADVOCATES CODE OF PRACTICE

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Introduction

People are entitled to be in control of their own lives but sometimes, whether through disability, financial circumstances or social attitudes, they may find themselves in a position where their ability to exercise choice or represent their own interests is limited. In these circumstances, independent advocates can help ensure that an individual's rights are upheld and that views, wishes and needs are heard, respected and acted upon.

The Advocacy Charter

The Advocacy Charter was published in July 2002 by Action for Advocacy and set out to define and promote key advocacy principles. The Charter provides advocacy schemes and others with a vehicle for both explaining what advocacy is and outlining a common vision of what constitutes effective advocacy. The Advocacy Charter principles and the Code of Practice were revised in 2014, by Empowerment Matters CIC and the National Development Team for Inclusion (NDTi), to reflect changes in legislation as well as developments in advocacy practice.

What is the Code of Practice?

The Code of Practice is a set of guidelines for advocates and their managers, aimed at providing clarity, support and boundaries for their practice. It is also a guide for commissioners of advocacy services that outlines the expectations and purpose of the role and what clients as well as commissioners should expect from the delivery of the service. The Code provides a clear description of what is and is not expected of an advocate in their day-to-day work with clients.

An effective Code of Practice can:

- Offer guidance to advocates in their role.
- Inform clients of what they can realistically expect from their advocate/advocacy service.
- Educate health, social care, third and private sector services, commissioners and others about the scope and limitations of the advocate's role.
- Help to develop a better understanding of the training, supervision and support needs of advocates.
- Raise awareness of the need for and benefits of independent advocacy for vulnerable people.

Definition of Advocacy

Advocacy is taking action to help people say what they want, secure their rights, represent their interests and obtain services they need. Advocates and advocacy providers work in partnership with the people they support and take their side. Advocacy promotes social inclusion, equality and social justice.

Definition of Non-Instructed Advocacy

Non-instructed advocacy takes place when a person lacks the capacity to instruct an advocate. An individual might be able to express what they want, e.g. to go home, state what they like or dislike, but may lack the capacity to instruct an advocate as to the action to take regarding a particular issue.

The non-instructed advocate seeks to uphold the person's rights; ensure fair and equal treatment and access to services; and make certain that decisions are taken with due consideration for all relevant factors which must include the person's unique preferences and perspectives.

The Advocacy Charter

Defining and promoting key advocacy principles

Clarity of purpose

The advocacy provider's aims, objectives and planned activities are within the objects set out in its governing document and providers should be able to demonstrate how these meet the principles contained in this Charter.

Advocacy providers should ensure that the people they advocate on behalf of, health and social care services and funding agencies have information on the scope and limitations of the advocacy provider's role.

Independence

The advocacy provider will be structurally independent from statutory organisations. The advocacy provider will be as free from conflict of interest as possible, both in design and operation of advocacy services, and seek actively to reduce conflicting interests, in particular where the organisation provides additional services such as housing provision.

Person Centred Approach

The advocacy provider will ensure that the wishes and interests of the people it advocates on behalf of direct its work. Advocates should be non-judgmental and respectful of people's needs, views, culture and experiences.

Empowerment

The advocacy provider will support self-advocacy and empowerment through its work. People who access the service should have a say in the level of involvement and style of advocacy support they want where they are able and wish to. Where clients lack the ability or capacity to influence the service, the advocacy provider should have a process in place to enable those with an interest in the welfare of the person to influence this. Providers will ensure that people who want to, can influence and be involved in the wider activities of the organisation up to and including at Board level.

Equal Opportunity

The organisation will have a written equal opportunities policy that recognises the need to be pro-active in tackling all forms of inequality, discrimination and social exclusion. The advocacy provider will have systems in place for the fair and equitable allocation of advocates' time.

Accessibility

Advocacy will be provided free of charge to eligible people. Where clients need or want to purchase advocacy or where someone has an appointed deputy/attorney in place who wishes to instruct an advocate on the person's behalf, suitable processes should be in place to safeguard the person and ensure they are not open to financial abuse. The advocacy provider will aim to ensure that its premises (where appropriate), policies, procedures and publicity materials promote access for the population that it serves.

Supporting advocates

The advocacy provider will ensure advocates are suitably prepared, trained and supported in their role and provided with opportunities to develop their knowledge, skills and experience.

Accountability

The advocacy provider will have systems in place for the effective monitoring and evaluation of its work, including identification of outcomes for people supported. All those who access the service will have a named advocate and a means of contacting them.

Confidentiality

The advocacy provider will have a written policy on confidentiality that is in line with the Data Protection Act 1998 and the Mental Capacity Act 2005. It should outline how information about a person accessing the service may be shared as well as the circumstances under which confidentiality might be breached. Advocates must also be aware of situations that would require making a child or adult safeguarding alert.

Complaints

The advocacy provider will have a written policy describing how individuals, including relevant stakeholders, can make complaints or give feedback about the service or about individual advocates. Where necessary, the organisation will enable people who use its services to access external independent support to make or pursue a complaint.

Safeguarding

Clear policies and procedures will be in place to ensure safeguarding issues are identified and acted upon. Advocates will be supported to understand the different forms of abuse and neglect, issues relating to confidentiality and what to do if they suspect a client is at risk.

Code of Practice

Clarity of purpose

1. Advocates should be clear about the nature and extent of their role. They should understand the boundaries of their own advocacy role and non-advocacy roles such as mediation and advice giving.
2. Advocates should not act outside of these boundaries. Advocates should seek permission (where the client has the capacity to consent or refuse) to refer people on to other agencies where appropriate.
3. Advocates should refer clients who lack capacity to consent to other appropriate services, including other advocacy providers, where appropriate/in their best interests (in accordance with the Mental Capacity Act 2005).
4. Advocates should be able to explain, in straightforward language, what advocacy is and isn't; why some people need advocacy; where people have a statutory right to access advocacy; where there is a statutory duty placed on the NHS or Local Authority to instruct an advocate; and the benefits advocacy can bring. They should be equipped to answer questions and deal with enquiries about advocacy.
5. Advocates should be responsible for providing clients with a clear explanation of their role at the start of any new relationship, which should include providing easy to read materials where this is required.
6. Advocates should provide written information about their organisation and a copy of the Code of Practice to clients, carers or other professionals if requested.

Independence

1. Advocates should be able to describe how they are independent from other service providers.
2. Advocacy providers should ensure there is a service level agreement where they receive funding from the local authority or other organisation that provides services that are not advocacy e.g. domiciliary care or supported housing. This should make clear that the advocacy provider is independent from the other organisation.
3. Advocacy providers should have suitable policies and processes in place that support them to challenge decisions made on behalf of their clients by practitioners working in health and or social services. As from August 2015, it is seAp policy that advocates follow the "*Guidance to support advocates in challenging decisions or actions with or on behalf of individuals*" issued by Empowerment Matters in 2015.
4. Advocates should take all appropriate steps to avoid conflicts of interest occurring in their work with clients, i.e. a situation in which someone in a

position of trust has competing professional and/or personal interests. Where a conflict of interest does arise, it should be declared to the line manager and advice should be sought as to how to proceed. Such competing interests can make it difficult for duties to be fulfilled fairly. Even if there is no evidence of improper actions, a conflict of interest can create an appearance of impropriety that can undermine confidence in the ability of the person to act properly. In the context of advocacy services, conflict of interest includes but is not limited to: breach of confidentiality; abuse of trust; personal gain; divided loyalty (e.g. providing personal care and advocacy to the same person); competing priorities, e.g. seeking preferential treatment for a friend or family member

5. Advocates should be free to act according to the wishes and needs of clients. They should not be compromised through requirements of contracts to act in a certain way that is not in line with advocacy principles or other guidance such as the Mental Health Act 1983 Code of Practice; Mental Capacity Act 2005 Code of Practice or Advocacy Code of Practice whilst carrying out their duties. Where this occurs, it should be reported to the line manager at the earliest opportunity.

Person Centred Approach

1. Advocates should ensure advocacy support is appropriate to the client's needs and/or expressed wishes.
2. Advocates should take instruction from clients where they have the capacity to instruct or take instruction from a third party where the client lacks capacity to instruct.
3. Advocates should base their actions on mutually agreed plans and preferred outcomes, and work in partnership with clients to achieve this.
4. Where advocates are acting in a non-instructed role their actions should be guided by the framework of the Mental Capacity Act 2005, the Mental Health Act 1983 (where applicable) and the recognised approaches to non-instructed advocacy.
5. The advocacy provider should have clear policies and processes that outline the model of advocacy that they deliver and which guide the advocacy role including:
 - Prioritisation policy
 - Non-instructed advocacy policy
 - Referral/instruction forms that include third party referral options
 - Form of authority (for use in both instructed and non-instructed advocacy) i.e. consent form / instruction form.

The advocacy role may include:

Instructed Advocacy:

- Gathering and presenting up to date and accurate information to help clients make informed choices but NOT giving advice.
- Listening to clients and discussing options but NOT imposing views or opinions.

- Channelling clients wishes, views and requested instruction, NOT filtering them e.g. due to personal views that the client will not achieve what they wish.
- Talking to and corresponding with family members or other professionals with the client's permission but NOT making decisions or choices on behalf of clients.
- Representing the client's expressed views and wishes but NOT taking action independently of the client unless they have clearly instructed this.
- Agreeing a plan of action and identifying initial outcomes and timescales with clients but NOT being prescriptive or inflexible.
- Ensuring the person's fundamental human rights are respected and upheld at all times.
- Challenging health, social care or third sector service providers and decision makers in order to promote a person-centred approach.

Non-instructed advocacy:

- Where a client lacks the capacity to instruct, using the recognised models of non-instructed advocacy which include:
 - Person centred approach
 - Witness observer approach
 - Rights based approach
 - Watching brief
 - Questioning approach
- Using the framework of relevant legislation to guide and underpin the advocacy role including the Care Act 2014; Mental Capacity Act 2005 (5 statutory principles and best interests checklist); Mental Health Act 1983; Human Rights Act 1998; Equality Act 2010; Data Protection Act 1998 and any other relevant legislation or guidance.
- Spending time with the person in order to get to know them and building a picture of their preferences, wishes, views, circumstances, lifestyle and their cultural or religious background.
- Seeking appropriate alternative forms of communication, which enable the client to express wishes, views and choices.
- Ensuring the person's fundamental human rights are respected and upheld at all times.
- Following the process of supported decision making to ensure the client is as involved in decisions about them as much as possible.
- Challenging health, social care or third sector service providers and decision makers in order to promote a person-centred approach.

Other forms of advocacy may also include

- **Peer Advocacy**
- **Group Advocacy**
- **Self Advocacy**

Empowerment

1. The advocacy provider should have empowerment at the heart of their service delivery and carry out the following actions to ensure clients are as active and present in decisions that are being made about them as they possibly can be:
 - Promoting and delivery of self-advocacy tools/models.
 - Promoting supportive decision-making to ensure the client is at the heart of decisions about their own care and support.
 - Recording the outcomes achieved by an advocacy client.
 - Promoting the person's rights within decision-making meetings and highlighting relevant guidance and legislation that underpins this.
 - Agreeing on methods of advocacy representation where the client is able to instruct the advocate to ensure they have a say in their own lives and become enabled to access relevant services.
 - Use the framework of the Mental Capacity Act 2005 and recognised models of non-instructed advocacy where the person lacks capacity to make particular decisions to ensure the person has a say in their own lives and decisions that are being made about them.
 - Ensuring that the client has been referred appropriately and considering if advocacy is the best option or if another form of support would be more appropriate (advice or information for example).
2. Advocates should be able to explain to all clients what their rights and options are with respect to the specific decision at hand. Where the advocate is unable to do this either due to a lack of knowledge, skills or specific expertise they should support clients to access the most appropriate representation, advice or information e.g. via a solicitor, advice organisation or alternative specialist service.
3. Advocates should inform clients of their right to request a change of advocate (within the constraints of the organisation), or terminate contact with the advocate, at any time if a client is unhappy with the advocate's approach to a particular issue.
4. Advocates should be open and transparent in their work with clients.
5. Advocates should recognise the existing skills of clients, and support people to develop new skills and the confidence to speak for themselves.
6. Advocates should provide clients with information about making a complaint about the service or advocate.
7. Advocates should provide clients with information about how they can give feedback to the advocacy provider about its work and how to get involved in the wider activities of the organisation if they wish/where this is an option.

Equal Opportunity

1. Advocacy providers should ensure that they are able to meet the needs of the population they serve and where this is compromised e.g. due to lack of resources, this is raised with relevant stakeholders and/or funders.
2. Advocates should be fully conversant with their organisation's equal opportunities policy and be able to explain it to others in straightforward language. Advocates should adhere to this policy at all times.
3. Advocacy providers should be aware of their duties and responsibilities under relevant human rights and equality legislation including the Equality Act 2010, Human Rights Act 1998 and other relevant wider policies that promote personalisation and person centred care and support.
4. Advocates should counter/challenge any evidence of unfair or unequal treatment and challenge discriminatory practice. Advocacy providers should ensure there are systems in place that enable advocates to whistleblow, make complaints, make a safeguarding alert or seek legal advice where appropriate.
5. Advocates should be respectful of clients' religious, cultural and spiritual needs and be proactive in ensuring these are met. Where a client expresses a preference for advocates with particular skills, knowledge or attributes, this should be referred to the line manager.

Accessibility

1. Advocates should not make a charge to clients for their services where they are funded directly to provide this service.
2. Advocacy providers that charge for their service e.g. where someone has a property and affairs deputy or attorney who believes that advocacy representation would be in the client's best interests, must ensure there are appropriate safeguards and agreements in place that ensure the client is not vulnerable to financial abuse.
3. Advocacy providers that charge for their services for clients who have capacity to consent to this (e.g. because there is not appropriate funding provision in place) must ensure there are appropriate safeguards and processes in place to ensure the client is not vulnerable to financial abuse. This may involve approaching the local authority for specific funding or having a sliding scale of charges that are proportionate to a person's circumstances.
4. Advocacy providers should ensure there is information made publicly available about their service and its remit on their websites and in written information, in a format reflective of the needs of local client groups e.g. in other languages, Makaton, Easy Read, Braille etc.
5. Advocacy providers should use data and monitoring information to identify whether the service is accessible to people who cannot, or find it difficult to, request advocacy support for themselves. seAp advocacy teams will use this information to focus outreach and awareness raising to specific client groups in the community, evidencing this activity through monthly and quarterly monitoring reports.

6. Advocacy providers should ensure there is a clear and accessible referral/instruction process for self-referrers as well as third parties.
7. Advocates should ensure that clients are aware of when and how they can be contacted and any limitations to this contact (e.g. not at weekends).
8. Advocates should respond positively to requests from clients to meet in places and at times, which are mutually convenient. Where necessary, the advocate should make arrangements for accessible meeting places, which are acceptable to the client and/or setting they are in.
9. Advocates should be fully conversant with their and other organisations' (where they provide advocacy in a range of settings) risk assessment, personal safety and lone working procedures and health and safety policies. Advocates should explain to clients when particular aspects of these policies impact upon when and where the advocate can meet the client (e.g. in some secure settings).
10. Advocates should make every effort to ensure that information they have gathered on behalf of the client is accessible and understandable to them.

Supporting advocates

1. Advocacy providers should ensure the following is available, and that advocates make full use of and contribute to:
 - Ongoing relevant training and personal development opportunities.
 - One to one casework supervision with the line manager or other appropriate identified person who is suitably skilled and knowledgeable about the role of advocacy.
 - Annual appraisal against agreed targets.
 - Group support and networking opportunities with other advocates and other health, social care, third or private sector organisations.
 - Opportunities for reflection and analysis of their own practice.
 - Specialist supports such as counselling, as required and available.
2. Advocacy providers should ensure that advocates are supported to carry out their roles safely and competently through having the right knowledge and skills.
3. Advocates should ensure they have access to, and know how to use, a wide range of information resources such as books, journals and the internet, which are accurate and up to date.
4. Advocacy providers should consider putting in place processes for mentoring or shadowing advocates where this may enhance or support development of their practice.

Accountability

1. Advocates should operate within the law at all times, and ensure they adhere to their organisation's employment and funding contracts.
2. Advocacy providers should ensure they are fully aware of their duties and responsibilities under employment law and that advocates are familiar with this.
3. Advocacy providers and advocates should be aware of their statutory duties with regards to human rights legislation and safeguards where they receive funding from a statutory body.
4. Advocates are accountable on different levels, including to their organisation and the client. In practice this means that:
 - Advocates should keep accurate and up to date written records of actions taken and progress made with their work. Clients should be kept informed of and involved in all aspects of the advocacy process.
 - Advocates should comply with the organisation's data collection policy and the Data Protection Act 1998 and ensure client-monitoring information is routinely collected and fed back to the organisation.
 - Advocates should not hold money or possessions belonging to a client. In exceptional circumstances where there is no alternative but for the advocate to do so, proper records and receipts should be kept and the line manager must be notified of any such transactions at the earliest opportunity. Advocates should not accept gifts other than one-off, inexpensive items, which should be declared to the line manager. Further gifts should be declined, and an explanation given to the client.
 - Advocates should not make promises to clients, which they may not be able to fulfil.
 - Advocates should conduct themselves in a professional and responsible manner in all dealings with clients, carers and other professionals. Where disputes do arise, these should be referred to the line manager at the earliest opportunity.
 - Advocates should follow the rules and regulations of the organisation they are working in.

Confidentiality

1. Advocacy providers should ensure their confidentiality policy is in line with the Data Protection Act 1998 and Mental Capacity 2005.
2. Advocates should be fully conversant with their organisation's confidentiality policy and be able to explain it in straightforward language including where information will be shared in a person's best interests (in line with the Mental Capacity Act 2005).
3. Advocates should at all times observe and respect the rights and remits of confidentiality for clients within the policy of the organisation which should include:
 - Breaching confidentiality where there are concerns for the health and / or safety of the person or others.
 - Sharing information in line with the Data Protection Act 1998 and Mental Capacity Act 2005 when it is deemed to be in the client's best interests.
 - Awareness of the responsibilities of being a 'record holder' under the Data Protection Act 1998 and the holding of data about clients.

In line with best practice, this will generally mean that:

- Advocates should be honest with the client about the level of confidentiality they can realistically guarantee. This means explaining any conditions under which confidentiality may be breached (e.g. harm to self or others and abuse) and the means by which this may occur.
- Advocates should receive appropriate casework supervision and will be expected to discuss their work with their line manager on a regular basis.
- Notwithstanding the above exceptions, advocates should not share information about a client with others without that individual's permission where they have the capacity to consent. Where permission cannot be obtained due to reasons of incapacity, information should be shared in accordance with the Mental Capacity Act 2005 i.e. where it is deemed to be in their best interests e.g. to ensure their wishes and views are heard and their rights are upheld/taken into account within decision making.
- Advocates should inform the client about all actions taken on their behalf.
- Upon first contact with any key professional involved in an advocacy case, advocates should make clear that copies of all correspondence relating to a client will be shared with, and explained to, the client.
- Advocates should avoid colluding with hearsay and speculation about client.
- Advocates should ensure that all data kept on a client is securely stored in line with the Data Protection Act 1998 and routinely updated and checked for accuracy. Clients should have access to this information as requested.

Complaints

1. Advocacy providers should ensure that complaints are dealt with in a timely manner and in accordance with the organisation's policies and procedures.
2. Advocates should be fully conversant with their organisation's complaints procedure and be able to explain it in straightforward language to both clients and other relevant stakeholders.
3. Advocates should ensure that clients are made aware of their right to make a complaint about the advocate or advocacy service. This may involve giving clients a copy of the organisation's complaints leaflet; explaining the various stages of the complaints process to them at the start and during the course of the relationship; and being open to criticism and suggestions without becoming defensive.
4. Where the complaint is from another professional e.g. social worker, care home manager or a relative of the client, the same high standards of professional conduct should apply.
5. All complaints received by the advocate in the course of their work, whether verbal or written, should be passed on to their line manager at the earliest opportunity.

Safeguarding

1. Advocacy providers should have suitable adult and child safeguarding policies and procedures in place that enable the advocate to make a safeguarding alert or represent the client through the process.
2. Advocates should be trained in and knowledgeable about the different forms in which abuse and neglect can take place, including but not limited to, physical, emotional and financial abuse.
3. Advocates should be aware of the appropriate action to take if safeguarding issues are identified.
4. Advocates should be aware of the organisation's whistleblowing policy and procedures and be supported to make use of these where appropriate.
5. The organisation should have a clear policy, which is understood by all advocates, detailing in what circumstances client confidentiality can be breached.
6. The organisation should have strong links with local safeguarding agencies if alerts need to be raised.
7. Advocates and providers should ensure that any alerts are followed up and outcomes recorded.

Legal Issues for Advocates

- a. Advocates must ask clients or the referring person/agency if the client is the subject of:
 - (i) Children Act proceedings (children/young people only)
 - (ii) Criminal proceedings
 - (iii) Mental Health Act proceedings
 - (iv) Any other court cases

- b. Advocates must establish if other legal agencies are involved, i.e:
 - (i) Probation service
 - (ii) Court Welfare Officer (CAFCASS: Child & Family Court Advisory Support Service)
 - (iii) Guardian ad Litem (CAFCASS)
 - (iv) Youth Offending Team
 - (v) Solicitor

If YES, advocates must contact their line manager immediately before proceeding with any advocacy work, as consent will need to be obtained from the court to enable work to commence/continue. It should be noted that the client's legal position may also change during the course of the work.

In consultation with seAp's Chief Executive, the line manager will seek detailed legal advice from:

- (i) seAp's solicitors
- (ii) The Presiding Judge / Magistrate

In consultation with seAp's Chief Executive, the line manager will write to the Presiding Judge / Magistrate, outlining the advocacy work being requested / undertaken and seeking leave of the court to work/continue to work with the client. If the advice is received that seAp should not become involved/continue to be involved in a particular issue presented by a client for legal reasons, the advocate will inform the client that they are legally restrained from working with them on that issue, and withdraw from any involvement in that area.

It may be appropriate for the advocate to continue to be involved, if the client has other issues with which they require advocacy support which are unrelated to the Court proceedings. However, legal advice will still need to be sought by the line manager first before any further involvement with the client is considered, as some judges will not give consent to advocacy involvement, even if the advocacy issues are unrelated to those which are before the Court.

The client should always be advised of their entitlement to seek independent legal advice. Failure to follow this procedure may lead to advocates being held in Contempt of Court, a criminal offence which could result in prosecution.

Related Policies / Guidance

- Equality, Diversity and Culture
- Whistleblowing
- Confidentiality
- Data Protection
- Adult Safeguarding
- Safeguarding Children
- Gifts
- Conflict of Interest
- Prioritisation
- Non-instructed advocacy
- Guidance to support advocates in challenging decisions or actions with or on behalf of individuals [Empowerment Matters / Irwin Mitchell LLP]