

# **Their support was really reassuring.**

Advocacy: A guide for professionals in Essex



# What is an advocate?

Advocates are independent professionals who work with people to help them understand their options, know their rights and say what they want.

Advocacy helps to make sure that people are involved as much as possible in decisions about their health and care.

## Your duty to refer

Advocacy is a statutory right for eligible people. The Mental Capacity Act and Care Act state that you must refer eligible people for advocacy. The Mental Health Act states that you must make eligible people aware of how to access advocacy.

## Who is eligible?

Use the grid in this leaflet to find out who you must refer.

If you are unsure about eligibility, or have questions about advocacy types, contact us.



NHS Complaints advocacy	Independent Mental Capacity Advocacy (IMCA)	Independent Mental Health Advocacy (IMHA)	Care Act Advocacy	Children's advocacy
<p><b>When to refer</b></p> <p>Anyone who wants to make a complaint about an NHS-funded service can get our help. People can find our NHS complaints self-help resources on our website, or we can post a copy. If they need more support, you can refer them for an advocate or they can request an advocate themselves.</p>	<p><b>When to refer</b></p> <p>Make a referral when both conditions apply:</p> <ol style="list-style-type: none"> <li>the person is assessed to <b>lack capacity</b> in relation to a decision about: <ul style="list-style-type: none"> <li>serious medical treatment</li> <li>long-term accommodation</li> <li>also section 39a, 39c, 39d (Mental Capacity Act, DoLS referrals, including RPR and 1.2 Reps) <ul style="list-style-type: none"> <li>- 39a) for a person being assessed under DoLS, when there is no one appropriate to consult</li> <li>- 39c) when there is a gap between appointment of Relevant Person's Representative (RPR)</li> <li>- 39d) if a person has an unpaid RPR, and the person or the RPR, asks for an advocate or the Supervisory Body recommends it</li> </ul> </li> </ul> </li> <li>there are no family or friends considered appropriate to consult about the decision</li> </ol> <p><b>An IMCA can also support with these, although sometimes a Care Act referral is more appropriate</b></p> <ul style="list-style-type: none"> <li>a care review following a long-term accommodation decision (sometimes known as a placement review), 4-6 weeks after placement</li> <li>safeguarding issues</li> </ul> <p><b>'Lack capacity'</b> means the person:</p> <ul style="list-style-type: none"> <li>has an impairment or disturbance that affects the way their mind or brain works (e.g. a brain injury, dementia, autism, learning disabilities, mental health problems) AND</li> <li>the impairment or disturbance means that they are unable to make a specific decision at the time it needs to be made</li> </ul>	<p><b>When to refer</b></p> <p>Make a referral whenever a person is in any of the following situations:</p> <ul style="list-style-type: none"> <li>detained under the Mental Health Act (even if on leave of absence from the hospital) but excluding people under short term sections 4, 5, 135 and 136</li> <li>a conditionally discharged patient</li> <li>subject to a Community Treatment Order (CTO)</li> <li>subject to guardianship</li> <li>being considered for S58A treatment (including informal patients and people under 18)</li> <li>being considered for S57 treatment (including informal patients)</li> <li>people who are detained under the Mental Health Act under a forensic section (commonly sections 37, 37/41, 47/49, 48/49)</li> </ul>	<p><b>When to refer</b></p> <p>Make a referral when all three conditions apply:</p> <ol style="list-style-type: none"> <li>one of these processes is taking place: <ul style="list-style-type: none"> <li>social care needs assessment</li> <li>carer's assessment</li> <li>care planning</li> <li>care review</li> <li>S42 safeguarding investigation</li> </ul> </li> <li>without support, the person will have <b>substantial difficulty</b> being involved</li> <li>there are no appropriate, able and willing family or friends to support the person's active involvement*</li> </ol> <p>*There are some exceptions: see <a href="https://voiceability.org/care-act">voiceability.org/care-act</a></p> <p><b>'Substantial difficulty'</b> means that, without support, the person will find it very hard to do one or more of these:</p> <ul style="list-style-type: none"> <li>understand relevant information</li> <li>retain that information</li> <li>use or weigh up that information</li> <li>communicate their wishes and views</li> </ul>	<p><b>When to refer</b></p> <p>Make a referral for:</p> <ul style="list-style-type: none"> <li>young people who are leaving care <ul style="list-style-type: none"> <li>- aged 16-25</li> <li>- either relevant or formerly relevant for support under the Children (Leaving Care) Act 2000</li> </ul> </li> <li>looked after children who have asked for advocacy support <ul style="list-style-type: none"> <li>- up to and including the age of 18</li> <li>- in Essex or who are the responsibility of Essex but who are placed out of borough</li> </ul> </li> <li>any child or young person who wants to make a formal complaint about social care services <ul style="list-style-type: none"> <li>- up to and including the age of 18</li> </ul> </li> <li>disabled children and young people <ul style="list-style-type: none"> <li>- up to and including the age of 19</li> <li>- accessing social care or services from the children with disabilities team, and accessing short break care</li> </ul> </li> </ul>
<p><b>Advocate's role</b></p> <p>Advocate's role NHS complaints advocates support people to complain about the treatment or care they or a friend or family member received from an NHS service. Advocacy support is available at every stage of a complaints process.</p>	<p><b>Advocate's role</b></p> <p>As far as possible, to:</p> <ul style="list-style-type: none"> <li>make sure that the person's views and wishes are taken into account in the best interests decision</li> <li>support the person to be involved in the decision, or to represent them if necessary</li> <li>uphold the person's rights in relation to that decision</li> </ul>	<p><b>Advocate's role</b></p> <p>Advocate's role as far as possible, to:</p> <ul style="list-style-type: none"> <li>understand their rights and options</li> <li>understand decisions about treatment</li> <li>understand the parts of the Mental Health Act which apply to them</li> <li>have their views and wishes heard in decisions about their care or treatment</li> <li>raise anything they are unhappy with relating to their care or treatment</li> </ul> <p>For forensic patients the Advocate will also assist as far as possible to:</p> <ul style="list-style-type: none"> <li>understand the legal authority under which they are given care or treatment</li> <li>understand the provisions of the legislation under which they qualify for advocacy</li> <li>understand any conditions or restrictions they are subject to</li> </ul>	<p><b>Advocate's role</b></p> <p>To support the person to:</p> <ul style="list-style-type: none"> <li>understand their rights under the Care Act</li> <li>be fully involved in the assessment, review or planning process</li> </ul>	<p><b>Advocate's role</b></p> <p>To support the child or young person to:</p> <ul style="list-style-type: none"> <li>understand their rights and options</li> <li>say what they think</li> <li>have their views and wishes heard in decisions about their care and where they live</li> <li>raise anything they are unhappy with relating to their care</li> <li>to make informed decisions/to contribute to their care plans</li> <li>to support in any relevant meetings such as Statutory review meetings</li> <li>to attend on behalf of the CYP to represent their wishes and feelings</li> </ul>

**We can also provide General Advocacy and paid Relevant Person's Representatives (RPRs).**

# What do advocates do?

## An advocate can support someone to:

- communicate their views and wishes
- understand their rights
- understand any processes and decisions they are subject to
- understand the options they have
- make their own choices
- challenge a decision

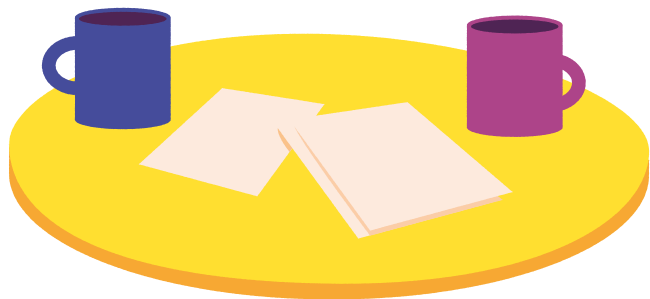


**Even when someone can't tell their advocate what they want, our advocates will use a range of approaches to establish their views and wishes as far as possible and secure their rights.**

In some circumstances, an advocate has the right to access medical or care records on behalf of the person they are supporting. An advocate may write a report that must be taken into consideration by professionals.

**An advocate does not:**

- offer counselling or befriending
- offer legal advice
- tell people they support what decisions to make
- tell health or social care professionals what decisions to make



# How to make a referral

Go online to find services near you and make a referral  
[voiceability.org/make-a-referral](https://voiceability.org/make-a-referral)

You can also request a referral form by emailing  
[helpline@voiceability.org](mailto:helpline@voiceability.org)

**If you have questions about eligibility or advocacy types, contact us.**

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Freephone:

**0300 303 1660**

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Email: [helpline@voiceability.org](mailto:helpline@voiceability.org)

Website: [voiceability.org](https://voiceability.org)



## About VoiceAbility

We've been supporting people to have their say in decisions about their health, care and wellbeing for over 40 years. We're an independent charity and one of the UK's largest providers of advocacy and involvement services.