

Alternative Action Plan - Advocacy Actions - DRAFT

Action: What is needed	How it will be done	Who will do it	When?
<p>Changing the rules around advocacy provision so that all who are entitled to an independent advocate have to opt-out of advocacy rather than having to request/opt-in</p>	<ul style="list-style-type: none"> • Draft Mental Health Bill includes duty on local services to arrange a visit and see if person wants to use advocacy services, and duty on managers of hospitals/registered establishments to refer all formal patients to the IMHA provider – this should be a) passed and b) strengthened to include informal/voluntary patients as well <ul style="list-style-type: none"> ○ If an individual has chosen not to have an independent advocate, there should be regular checks to ensure that they have not changed their mind • Care Act provisions on advocacy should a) be strengthened and b) should be opt-out <ul style="list-style-type: none"> ○ Current law¹ a) only applies to people who the local authority considers would experience substantial difficulty in understanding and/or retaining and/or using information, or to communicate wishes/decisions, if they didn't have an advocate, and b) only applies to people who don't have "an appropriate person to represent and support" them (e.g., family members would likely qualify, but would not have advocacy training or specialist knowledge of systems) • Scottish law should also be changed to include opt-out advocacy, in line with the recommendations of the Scottish Mental Health Law Review and the Independent Review of Learning Disability and Autism in the Mental Health Act • If not already applicable², NI should also introduce opt-out advocacy 	<p>Government – strengthen and pass the draft Mental Health Bill provisions on advocacy services</p> <p>DHSC – strengthen advocacy provisions under the Care Act and make these opt-out</p> <p>Scottish government (and if applicable, NI government) – make opt-out advocacy statutory</p> <p>Local authorities – implementing new rules</p>	
<p>Duty on decision-makers³ to consider how an individual's voice⁴ is heard, and to show how</p>	<ul style="list-style-type: none"> • Include duty in relevant legislation (Draft Mental Health Bill?) • Include a duty to record/report on how relevant decision makers have a) accommodated and made adjustments to enable people to communicate, b) listened, c) acted upon the person's views and wishes, with accountability/recourse if this is not done 	<p>DHSC/UK government(s)</p>	

¹ Care Act 2014, Part I, 67-68

² Have been unable to find clear details on current legal rights to independent advocacy in Northern Ireland, all I can find is that HSC trusts may instruct independent advocates to support patients who are under-16 [The Mental Health \(Northern Ireland\) Order 1986 \(legislation.gov.uk\)](#)

³ Around care, support, detention and discharge under the Mental Health Act etc

⁴ Not necessarily verbal

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<p>they have listened and responded</p>			
<p>Increasing awareness of what advocacy an individual is entitled to</p>	<ul style="list-style-type: none"> • Ensuring that people with a learning disability and their families are informed early on and frequently re-informed about what forms of advocacy they may be entitled to, including in the future <ul style="list-style-type: none"> ○ For example, by including this information in initial diagnoses, annual health checks, EHC plan meetings, transition-planning meetings, communications with local authorities, etc ○ This information should be made available in a range of accessible forms • Currently there are various 'responsible persons' in relation to qualifying patients, and so there is a lack of clarity over who is responsible for telling a person about rights to advocacy – all should be required to share this information, and support/training should be given to all of these people so that they can identify people who are, or who may in future, be eligible for advocacy 	<p>DHSC – produce guidance setting out that this information should be shared frequently and in multiple places, and provide a list of what these settings are and who should be sharing the information</p> <p>'Responsible persons' (local authorities, responsible clinicians, hospital managers, registered medical practitioner/approved clinician) – implement</p>	
<p>Ensuring that all Independent Mental Health Advocates who will be working with people with learning disabilities receive comprehensive training, including training around working with people with learning disabilities (and people who are autistic) and information about challenging behaviour</p>	<ul style="list-style-type: none"> • Reviewing the training provided to IMHAs and updating this based on evidence of what effective advocacy looks like <ul style="list-style-type: none"> ○ <u>Should include:</u> ○ Ensuring knowledge of laws regarding the care and treatment of people with learning disabilities (including the Mental Health Act 1983, Mental Health Act 2007, Care Act 2014, etc) ○ Training on alternative communication methods, e.g., sign language, Makaton, Picture Exchange Communication Systems⁵ ○ Training in how to communicate effectively and empathetically with families ○ <u>Updates should be based on:</u> 	<p>DHSC, in association with other relevant bodies – reviewing/updating training, making mandatory</p> <p><i>There is some ongoing work around developing training for IMHAs re: legal rights and relevant laws as part of the CBF Legal Panel's work – the points raised in this action will be raised with relevant people involved in developing that training</i></p>	

⁵ Key point is that individual's method(s) of communication is used; advocates should consult family members and others who know how the person communicates to find out how to communicate with them, and if necessary should ask family members/others who know the person to interpret for them to enable effective communication

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	<ul style="list-style-type: none"> ○ Communication with people with learning disabilities and their families on what 'works', what is helpful, and what is unhelpful ○ Communication with existing advocates on what barriers they face and what they have found effective in overcoming these ● Making this improved training compulsory, even for existing IMHAs 		
Establish a regulatory body for overseeing and regulating advocacy services	<ul style="list-style-type: none"> ● Promote the code of practice, and develop any additional standards and guidelines on advocacy that are identified as needed, based on evidence of what effective advocacy looks like ● Adapt existing code of practice to better incorporate voices of families and how to build relationships with them ● Adapt existing code of practice to provide more details on alternative forms of communication <ul style="list-style-type: none"> ○ Above code only applies to England and Wales, Scotland has this: Independent Advocacy Principles, Standards & Code of Best Practice - Scottish Independent Advocacy Alliance (siaa.org.uk) ● Establish a regulatory body for overseeing and regulating advocacy services 	NDTi ⁶ and other relevant groups/organisations/bodies, in conjunction with families and people with lived experience – adapt/expand code of practice	
Family members should be entitled to their own advocates. These advocates should be provided to family members free of charge and should be able to attend all relevant meetings alongside the family members.	Produce statutory legislation setting out that family members should be entitled to advocacy, which will better allow them to make their views around their relative's care heard	DHSC	
If an individual is not entitled to an independent advocate because they have a suitable person (e.g., close family	Provide guidance to organisations setting out that they should treat suitable person as equivalent of independent advocate	NHSE/NICE/local authorities etc	

⁶ As authors of existing code of practice

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<p>member) who can advocate on their behalf, the suitable person should be recognised as an advocate and be respected as an independent advocate would</p>	<p>Support families to know what role is played by an independent advocate and how this can be done, so that they are informed and supported to advocate for their relatives</p>		
<p>Clarifying who is responsible for funding independent advocacy</p>	<ul style="list-style-type: none"> • Producing clear guidance on which bodies are responsible for funding advocacy in different cases • Provide a pot of funding that can be used to pay for advocacy to ensure that, in cases where it cannot initially be determined which body is responsible for funding the independent advocate, this does not interfere with the individual receiving independent advocacy 	<p>DHSC</p>	
<p>Increasing powers of advocates, ensuring that points raised by advocates are listened to and properly considered</p>	<ul style="list-style-type: none"> • Require that responsible clinicians (or other relevant people/bodies/decision makers) need to meet with advocates if the advocate requests, and that issues raised by advocates should be properly recorded • Require that, prior to making decisions, the relevant decision maker must have a) consulted with an advocate if the person has one, and b) if a person does not have an advocate, have checked why this is (e.g., have they opted-out or were they unaware of statutory right) and if needed taken action to put the person in contact with an independent advocate • If an issue raised by advocates is not followed through/no action is taken, there should be a requirement to explain why this has happened, and an oversight body to examine these and follow up if deemed appropriate • Both of these should be extended to 'suitable persons' (e.g. family members) who are acting as advocates in place of an independent advocate 	<p>DHSC – produce statutory guidance/requirement</p> <p>Responsible clinicians (etc.) – act on this</p>	