
STATUTORY INSTRUMENTS

2014 No. 2889

**The Care and Support (Independent
Advocacy Support) (No. 2) Regulations 2014**

Manner in which independent advocates are to carry out their functions

5.—(1) Independent advocates must perform their functions in the manner specified in this regulation.

(2) An independent advocate must determine in all the circumstances how best to represent and support the individual in question but at all times must act with a view to promoting the individual's well-being⁽¹⁾.

(3) In particular, an independent advocate must, to the extent that it is practicable and appropriate to do so—

- (a) meet the individual in private; and
- (b) provided that the condition in paragraph (4) is met, with a view to promoting the individual's well-being, consult with—
 - (i) persons who are, or have been, engaged in providing care or treatment for the individual in a professional capacity or for remuneration; and
 - (ii) other persons who may be in a position to comment on the individual's wishes, beliefs or values, for example family members, carers or friends of the individual.

(4) The condition referred to in paragraph (3)(b) is that—

- (a) the individual has capacity, or is competent, to consent to the independent advocate consulting with a person mentioned in that sub-paragraph, and does so consent; or
- (b) the individual does not have capacity, or is not competent, so to consent but the independent advocate is satisfied that consulting with a person mentioned in that sub-paragraph would be in the individual's best interests.

(5) In particular, an independent advocate must—

- (a) assist the individual in—
 - (i) understanding the function in the exercise of which the individual is involved;
 - (ii) communicating the individual's views, wishes or feelings;
 - (iii) understanding how the individual's care and support, or support, needs could be met by the local authority or otherwise;
 - (iv) making decisions in respect of care and support arrangements;
 - (v) challenging the local authority's decisions if the individual so wishes;
- (b) so far as is practicable, ensure that the individual understands the local authority's duties under Part 1 of the Act and the individual's rights and obligations under that Part and any other rights and obligations of the individual which may be relevant to those obligations;

⁽¹⁾ See section 1(2) of the Act for the meaning of "well-being".

- (c) make such representations as are necessary for the purpose of securing the individual's rights in relation to the exercise of the function; and
 - (d) where the independent advocate has concerns about the manner in which the assessment or planning function has been exercised or the outcomes arising from it, prepare a report for the local authority outlining those concerns.
- (6) In particular, an independent advocate may examine and take copies of any relevant records⁽²⁾ relating to the individual in circumstances where—
- (a) the individual has capacity, or is competent, to consent to the records being made available to the independent advocate and does so consent; or
 - (b) the individual does not have capacity, or is not competent, to consent to the records being made available to the independent advocate but the independent advocate considers it is in the best interests of the individual.
- (7) Where the individual does not have capacity, or is not competent, to communicate his or her views, wishes or feelings, the independent advocate must do so to the extent the independent advocate can ascertain them.
- (8) Where the individual does not have capacity, or is not competent, to challenge a decision made in the exercise of the assessment or planning function, the independent advocate must challenge the decision if the independent advocate considers the decision to be inconsistent with the authority's general duty under section 1 of the Act (duty to promote the individual's well-being).

(2) See section 67(9) of the Act for the meaning of "relevant record".