

7 Minute Briefings

Care Act Independent Advocacy in Section 42 Enquiries



Section 42 duty requires consideration of the following:

Whether there is 'reasonable cause to suspect' that an adult has needs for care and support and is experiencing, or is at risk of abuse or neglect, and as a result of their needs is unable to protect themselves.

Making whatever enquiries are necessary and deciding whether action is necessary and if so what and by whom

Advocacy Role working in partnership with client
Communicate to others how they feel, help explain who they want to support them and what is important to them now and in the future. Ensure they are in control of what is happening and be involved as they wish to be. Have their voice heard in what they would like to happen and have access to information they understand to make decisions. Help to understand who and what can make them feel safe from abuse or harm in the future. Support them to tell people what changes they want and what they can do to keep themselves safe. Support clients in their safeguarding meetings.

Advocacy Role working with professionals
Will always take our instruction from client
Establish client's capacity from professionals to understand Section 42, if client lacks capacity provide non-instructed advocacy report
Establish abuse or neglect from professionals involved
Information required for risk assessment around alleged perpetrators
Full disclosure is required if investigations are being carried out by police to enable advocacy to proceed
Attend all meetings with consent from client

The Mental Capacity Act 2005

Where an adult lacks capacity to make decisions about their safeguarding plans, then a range of options should be identified, which help the adult stay as much in control of their life as possible.

Safeguarding plans should empower the adult as far as possible to make choices and to develop their own capability to respond to them.

See 7 min Briefing on the MCA for more information



The objectives of a S42 enquiry into abuse or neglect are:

- establish facts
- ascertain the adult's views and wishes
- assess the needs of the adult for protection, support and redress and how they might be met
- protect from the abuse and neglect, in accordance with the wishes of the adult
- make decisions as to what follow-up action should be taken with regard to the person or organisation responsible for the abuse or neglect
- enable the adult to achieve resolution and recovery

Making Safeguarding Personal

The Care Act requires local authorities to offer an advocate to anyone who has 'substantial difficulty' being involved, where the individual lacks a suitable person to facilitate their involvement and/or represent them.

The local authority must; "arrange, where appropriate, for an independent advocate to represent and support an adult who is the subject of a safeguarding enquiry or safeguarding adult review (SAR), where the above conditions are met.

Making safeguarding personal means it should be person-led and outcome focused. It engages the person in a conversation about how best to respond to their safeguarding situation in a way that involvement, choice and control as well as improving quality of life, wellbeing and safety.

Six Key Principles underpin all aspects of adult safeguarding work.

Independent advocacy will ensure these are clearly openly addressed from the outset and at the heart of decision-making and action.

Empowerment – "I am asked what I want as the outcome from the safeguarding process and these directly inform what happens".

Prevention – "I receive clear and simple information about what abuse is, how to recognise the signs and what I can do to seek help".

Proportionality – "I am sure the professionals will work in my interest, as I see them, and they will only get involved as much as needed".

4. Protection – "I get help and support to report abuse and neglect. I get help so I am able to take part in the safeguarding process to the extent to which I want".

5. Partnership "I know staff treat any personal and sensitive information in confidence, only sharing what is helpful and necessary. I am confident professionals will work together and with me to get the best result for me".

6. Accountability – "I understand the role of everyone involved in my life and so do they".