



# Brighton and Hove Speak Out

## Policy: Non-Instructed Advocacy

**Date agreed by Governance Board: August 23<sup>rd</sup> 2021**

Staff annual review date: Aug 2022

Full Board review: Aug 2024

### 1. Introduction

Speak Out believes that everyone has the right to make life choices. Some people, particularly those with specific challenges around communication, may need the support of an advocate to do this. Sometimes an individual can lack the capacity or capability to instruct and direct the advocate, and this lack of capacity or capability can mean that life choices are compromised.

Where a person is unable to instruct, non-instructed advocacy should be used to represent a person's views, wishes and interests; to safeguard and secure their rights; and to ensure that their needs are highlighted.

### 2. Scope of this policy

Non-instructed advocacy should not be used to make decisions on a person's behalf (but information gathered by the advocate regarding the person should be used to influence the best interest decision being made on the person's behalf).

Non-instructed advocacy should be used as a final method of working with someone, when no reliable form of communication has been found in order to represent the important issues from that person's point of view.

Non-instructed advocates will be aware that they do not have direct permission for their work from service users, and will often have taken a referral from a third party. They will always try to ensure, as a minimum, that the service user is content with their presence when they visit – this may be expressed verbally or by body language.

Following the guidelines in the Mental Capacity Act 2005 the advocate will work creatively and resourcefully to enable any effective communication with the person they are advocating for, taking 'all practicable and appropriate steps' to enable that person to make a decision or express their views and wishes.

The advocate should also take into account that decisions are 'decision and time specific' – a person may be able to instruct with regard to some issues but not with others. Advocates should continue to seek instruction.

The person may also have fluctuating capacity and the advocate needs to consider visiting at different times of the day and visiting more than once to identify consistency of views and wishes.

Non-instructed advocates will seek to uphold the persons rights; ensure fair and equal treatment and access to services; and ensure that decisions are taken with due consideration for the individuals' unique preferences and perspectives whilst ensuring less restrictive practices are achieved.

Non-instructed advocates will retain comprehensive notes to show that they have kept the issue of consent under review and that where views are expressed how these were obtained.

It is important that advocates working in a non-instructed capacity are supervised and well supported by their manager, to ensure that they remain objective and independent, not making assumptions about the person they are advocating for or imposing their own views or preferences.

Managers supporting non-instructed advocates should encourage the advocate to reflect on their advocacy practice and case work to consider whether they chose the right approach and whether they could have approached situations differently.

Advocates should inform service providers when they are acting in a non-instructed capacity.

### **3. Non-Instructed Approaches**

There is a long history of advocates providing non-instructed advocacy and a number of different approaches have been developed and used successfully . There are currently a number of recognised approaches to non-instructed advocacy;

- Person Centred
- Rights Based
- Values Based
- The Watching Brief
- Witness-Observer

These approaches aim to ensure that the individual is kept at the centre of all discussions and that decisions are made taking the individual's wishes, where known, into consideration.

The individual abilities of people who cannot formally instruct an advocate will vary greatly. The advocate should respond to this diverse range of need by providing a flexible approach, tailored to each individual recognising remaining strengths and abilities.

The methods used may depend on a number of factors, the time available to build the advocacy relationship, the issue(s), any timescale regarding a decision, how many other people an advocate can gain information from etc. and therefore an advocate needs to be able to use their own judgement as to where and when each of these approaches is most appropriate.

It is acknowledged that a holistic and integrated approach is likely to be most effective in delivering non-instructed advocacy. It is important that advocates and advocacy managers are confident and competent in using all these approaches, separately or in combination and share their expertise and experiences with each other.

## **Person Centred**

This approach is based on a long-term, trusting and mutually respectful relationship between the advocate and the individual being supported. This approach requires a certain amount of time to get to know the individual and see life from their perspective. It is based on a long term, trusting and mutually respectful relationship between the individual and their advocate.

The advocate will spend time with the individual and will build a picture of their life, history, lifestyle preferences and needs, wishes, views, values and beliefs by engaging with the individual and also observing them in their environment. The advocate will seek to have some understanding of;

- What life is like for the person
- How they experience the world
- What is important to them
- What their wishes, hopes and dreams may be

The advocate will then be able to speak about the person's perspective with confidence and represent their views and wishes, ensuring that those who make decisions and deliver services do so in a person-centred way.

## **Rights Based**

This approach begins with the premise that we all have certain fundamental rights that can be clearly defined. These rights may be legislative, ethical or human rights. The advocate represents the individual to ensure that in any decision or action proposed their rights are taken fully into account.

This approach may be useful where decisions about an individual's care and treatment may be being made, in order to raise the issue of an individual's rights and to ensure they are kept at the heart of decision making

## **The Watching Brief**

'Watching Brief' was devised by advocates from Asist (Advocacy Services in Staffordshire). This approach centres around 8 quality of life domains which are used as the basis for a series of questions that the advocate can ask regarding the proposed course of action and the likely outcome for the individual.

The core of NIA is the use of the Watching Brief (WB), a process by which an advocate generates questions on behalf of their advocacy partner. In essence, the advocate asks questions that any reasonable person would have asked in the same circumstances. For any proposal, planned or actual, the advocate looks at how it impacts on the life of the advocacy partner. The advocate can

break down the proposal in relation to each of the 8 domains that constitute the WB and ascertain, through questioning, whether it impacts positively or negatively on the life of the advocacy partner.

## The 8 Domains of the Watching Brief

- **Skills & abilities** developing and using your skills to be as independent as possible
- **Community presence** using, being involved with and contributing to the local community
- **Continuity** having a past, present and future with key people and events in your life
- **Choice & influence** influencing and making choices about your own life
- **Individuality** being a unique and distinctive person in your own right
- **Status & respect** being held in esteem and valued for who you are
- **Partnerships & relationships** having meaningful contact with other people
- **Well-being** feeling physically and psychologically well

Many people would view these concepts as ordinary life principles and as such they constitute what we all believe to be the basic rights we enjoy as a citizen.

## Witness-Observer Approach

There is a real value in the advocate's role in being an observer or witness to the ways in which services interact with the individual. The advocate may see or hear things that are unacceptable or which pose a threat to the individual's well being. Conversely, the advocate may also pick up on the individual's preferences and pleasures, which can in turn be used to enhance positive relationships.

The witness-observer approach does not require the advocate to make judgements or assumptions, merely to report on the facts of his or her observations. In doing so, the advocate may be bringing to the attention of service providers or decision makers factors that they had not previously been aware of or taken into account, e.g. a lack of stimulation, dislike of certain people, foods or activities; appropriateness of routines and systems; the communication function of key behaviors or actions etc.

## 4. Making 'Best Interest' Decisions

When advocacy is non-instructed and consent from the service user cannot be gained, advocates will use a 'best interests' decision-making framework in order to:

- Accept a referral
- Receive and store the service users personal data (in-line with Speak Outs Data Protection policy)
- Decide on which issues to act
- Share any information with third parties

Best interest decisions will be documented in the service user's case file, including a very brief rationale for the decision, for example that there is a clear need for independent advocacy because:

- There is no other person to represent the individuals' interests
- There is a potential or actual conflict of interest for other parties

In the course of the advocacy work, advocates will check their decisions to share any information about the individual with third party, ensuring:

- Proportionality – weighing up the nature of the advocacy issue and different options available
- Information is only shared on a 'need to know' basis.
- Advocates will document the need to share certain information in the service user's case file.

Non-instructed advocacy cases will be discussed as part of advocate's regular supervision.

## **5. Summary**

Effective non-instructed advocates will work in an integrated way, combining approaches to best represent the perspective of the person for whom they are advocating, and raise issues on their behalf in a credible way ensuring that the individual is kept at the centre of all discussions relating to their life and care.