Advocacy

The Mental Health (Care and Treatment) (Scotland) Act 2003 places a duty on health boards and local authorities to fund independent advocacy services for those who are receiving care and treatment for their mental ill health.

All mental health service users in forensic mental health services are entitled by law to an independent advocacy service. Whilst some of these services may be based in hospitals, they are separate from health and local authority services.

Advocacy services are there to:

- Empower individuals, and enable them to have their voices heard with regard to care and treatment.
- Enable people to gain access to information which will allow them to explore and understand their options.
- Act on instruction only and help you to decide what it is you want to be heard.
- Help you understand, make and if need be challenge decisions you disagree with.
- Give you the confidence to speak up for yourself and the advocate may be present.

Those supporting your friend or relative should be able to direct you to the nearest advocacy service.

Unfortunately, there is currently no legal right for carers to have advocacy services, but this is currently being campaigned for.

Forensic Network

6. Confidentiality & Advocacy

What is Confidentiality?

Healthcare staff's first responsibility is to the patient they care for and the trust they build with them.

All professional staff are bound by law and professional codes of conduct to a duty of confidentiality to their patients. A breach of confidentiality can have very serious consequences.

A carer’s involvement in patient care and treatment should only occur with the agreement of the patient. Information-sharing should not occur unless the patient has consented. This is not the case for a Named Person who has rights to information unless the patient formally withdraws the nomination.

Patients should be encouraged to let their carers be involved in decisions about their care and treatment, and to keep them informed, unless there is a good reason not to.

With consent from the patient, anyone involved in their care should be included at all stages of the patient’s journey; from admission through to discharge. It is vital, if a carer is to be involved in supporting a patient, that the carer is given adequate information that will help them maintain the safety and wellbeing of the patient and that of other people.

Professionals should usually support a patient's wish to have a carer, family member, friend, supporter or advocate involved in their care and treatment. If this cannot happen, they should explain why to the patient.

Where a patient's request is refused, it is good practice to record this in the patient's notes, outlining the reasons for the refusal. It may not always be appropriate to involve another person, for example where:

- Contacting and involving the person would result in a delay in making the decision in question that would not be in the patient's interests
- The involvement of the person is contrary to the interests of the patient
- That person has requested that they should not be involved

Further information on best practice around confidentiality and working with carers can be found in the Carers, Consent and Confidentiality Good Practice Guide (2024): https://www.mwcscot.org.uk/sites/default/files/2024-10/CarersConsentAndConfidentiality_2024.pdf

What if the Person I Support Withholds Consent?

It is expected, if a patient does not consent to carer involvement, that professionals working with the patient will engage with the patient around the reasons for this and outline the benefits of having carer involvement.

If a patient does not give permission to involve a carer, then detailed information about the patient's case cannot be given.

Where appropriate, the carer should still be offered general information in an appropriate format, which may help them understand the nature of mental disorder and treatment in general, and the operation of Mental Health legislation.

Furthermore, carers' support can still be offered through attendance at carers' groups or referral to carer support services in their local area.

Confidentiality for Family, Friends and Carers

If carers request that the information they provide is kept confidential, this should be respected and recorded in the patient's notes. A carer should be asked to consent to information being disclosed with the patient. If a carer does not agree to information being shared, healthcare professionals should talk with them about the benefits of sharing information and see if there are ways to address their worries.