



# THE 3 R'S PROJECT FACTSHEET

Assistance  
and capacity

This FACTSHEET gives a summary of the expectations on local authorities to identify and offer assistance with decision making to groups of people who may require extra help with decision making on self-directed support (SDS). It also provides some details of the organisations who can give people help with communicating their decisions.

Under Sections 6 and 17 of the Social Care (Self-directed Support) (Scotland) Act 2013 (referred to as the 2013 Act) the local authority must take reasonable steps to facilitate any assistance required to help the supported person to play a full part in their assessment, to understand the choices available to them and to decide how and in what ways they would like to arrange their support. The relevant provisions within the 2013 Act are not intended to *impose* assistance on the supported person who may not want to have any help.

The provisions made within the Act for assistance are not intended to replace any decisions made by the supported person, but to enable them to actively participate in the process.



## Assistance with understanding and/or making decisions

Some people with support needs may find it more difficult to make decisions about SDS on their own, however with some additional support they may be able to make the necessary decisions associated with the assessment, support planning process or the provision of support. Where the authority believes the supported person would benefit from further assistance they should consider the full range of decisions that the person will have to make.

Every assessment will be unique, but the main decisions are likely to cover:

- ▶ decisions about the outcomes that the supported person wants to achieve;
- ▶ decisions about the steps that the supported person wants to take to achieve those outcomes;
- ▶ decisions about the means by which the supported person will receive their support;



- ▶ the range of reactive or management decisions that come with the on-going day to day provision of support; and
- ▶ any further decisions about needs, outcomes and plans associated with the review of a supported person's needs.

The local authority must then take reasonable steps to enable the supported person to make and communicate the relevant decisions. The authority should exercise judgement in deciding whether the supported person requires assistance.<sup>1</sup> Where the authority decides that additional assistance *is* required, they must take reasonable steps to identify a person or persons who can provide some extra assistance to the supported person. After this step (but only with the supported person's agreement), the local authority should then involve the relevant individuals.<sup>2</sup>

Where a supported decision-making arrangement or a 'circle of support' is being considered, the agreement of the supported person to the arrangement is paramount.

It is important that the person who is providing any assistance is *able* to provide that assistance. While there is no requirement for the person to have professional qualifications in supported decision-making, they should be aware of what their role involves, the limits of their

role, and the fact that their role is to help the supported person to make decisions and not to make decisions on the supported person's behalf.

Only guardians<sup>3</sup> or attorneys<sup>4</sup> appointed under the relevant legislation have the power to make decisions on behalf of a supported person. In some cases, it may be reasonable to predict that the supported person's condition will deteriorate over time such that they will lack capacity to make decisions. The authority should take steps to make the supported person and their family aware of the option to grant a power of attorney, whilst the supported person has capacity to do so.

## Assistance with communicating decisions

Assistance to make decisions and assistance to communicate decisions are two distinct forms of assistance, and they are treated as such by the 2013 Act. Where the person requires assistance to communicate decisions the supported person may require some additional support from, for example, an interpreter or a speech and language therapist,<sup>5</sup> or from a family member or friend. If so, the authority

<sup>1</sup> The Mental Health (Care and Treatment) (Scotland) Act 2003 makes provision for anyone with a diagnosis of a mental disorder to have access to an independent advocate to help communicate decisions. That includes people with mental illness, learning disabilities, autism and dementia. People do not lose this right when they are assessed for and granted self-directed support.

<sup>2</sup> You can find further information about independent advocacy by visiting [www.siaa.org.uk](http://www.siaa.org.uk)

<sup>3</sup> Please visit the website of the Mental Welfare Commission at [www.mwscot.org.uk](http://www.mwscot.org.uk). Part of their remit is to empower individuals and their carers, monitor mental health and incapacity law, and influence and challenge service providers and policy makers. They also receive copies of all episodes of detention and

related events for every individual under the Mental Health (Care and Treatment) (Scotland) Act 2003.

<sup>4</sup> The Office of the Public Guardian [www.publicguardian-scotland.gov.uk](http://www.publicguardian-scotland.gov.uk) maintains a public register of powers of attorney that have been registered, guardianship and intervention orders granted and authorisations granted under the access to funds scheme. They also supervise individuals who have been appointed to manage the financial and property affairs of adults who lack the capacity to do so for themselves. The local authority has the role of supervising welfare guardians.

<sup>5</sup> The local authority are expected to pay for these extra services and the cost should not fall onto the advocacy or support organisation.

must take all reasonable steps to identify other people who can help the supported person to communicate their decisions. The authority should take steps to obtain the supported person's agreement before they arrange any assistance for the supported person.

## Guidance where the supported person lacks capacity

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Where the supported person has a guardian or attorney, and where that 'representative' has the necessary powers, the guardian or attorney should be supported to make the relevant decisions in relation to the person's assessment and the support plan. The authority should ensure that the representative is: fully involved in the assessment; supported to collaborate with the professional; and

supported to make informed choices about the supported person's support.

Where a social worker or other professional has doubts or questions about a supported person's capacity, they should seek assistance from a Mental Health Officer. Where the local authority concludes that an application to court for guardianship would be appropriate they should discuss this with the supported person's family or others who may have an interest in the supported person's care and support. If the family does not apply, the local authority can also apply by itself to the court for a guardianship order.

If you would like further clarification on any of the information contained in this FACTSHEET, please contact the 3 R's Project on **0131 467 2994** or email them at:

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