



Department  
for Education

# **Effective Advocacy for Looked-After Children, Children in Need and Care Leavers**

**Statutory guidance for local authorities**

**September 2023**

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# Summary

## About this guidance

This guidance is about the right to advocacy of looked-after children, children in need and care leavers, making or intending to make representations under sections 24D and 26 of the Children Act 1989.

A child is a **looked-after** child if a court has granted a care order to place a child in care, or the child has been provided with accommodation by the local authority for more than 24 hours.

A **child in need** is a child who is unlikely to achieve or maintain a reasonable level of health or development, or whose health and development is likely to be significantly or further impaired, without the provision of services; or a child who is disabled.

A **care leaver** is a young person aged 16-25 years old who has been looked-after at some point since they were 14 years old for a minimum of 13 weeks and were still in care on or after their 16<sup>th</sup> birthday.

This guidance should be read alongside the new National Standards for the Provision of Children and Young People's Advocacy Services. This guidance is specifically for children in receipt of social care services (as mentioned above), whereas the National Standards for the Provision of Children and Young People's Advocacy Services applies to advocacy that is being provided for children in residential special schools, secure children's homes, secure training centres, youth offending institutions and secure schools (when open), as well as children in receipt of social care services (including looked-after children, children in need, and care leavers), young carers who may need support in adulthood, and where a child may need continuing care and support in adulthood.

It sets out local authority duties in making arrangements for the provision of advocacy services for children and young people. Advocacy is about representing the views, wishes and needs of children and young people to professionals making decisions about their lives, and helping them to navigate the system, especially in times of transition. Advocacy services must be provided for looked-after children, children in need and care leavers to empower them to speak for themselves or speak on their behalf, and to offer information, advice and support. Advocates also assist children and young people making or intending to make a complaint under the Children Act 1989.

The aim of this guidance is to help local authorities provide an effective advocacy service which takes into account the views, wishes and feelings of children and young people. It is not intended to be prescriptive about what must be offered. Instead, it sets out the principles of effective advocacy and the expectation that local authorities will commission advocacy services that meet the individual needs of the looked-after children, children in need and care leavers they are responsible for.

## What's new

This guidance updates the 2004 guidance [Providing Effective Advocacy Services for Children and Young People Making a Complaint under the Children Act 1989](#) which focused on the provision of advocacy services when children wish to make a complaint, as set out in Section 26A of the Children Act 1989. This updated guidance reflects that advocacy is an option available to children and young people whenever they want advocacy support in asking them to represent them in meetings and not just when they want to make a formal complaint.

Documents such as [Advocacy for Children](#) by the Office of the Children's Commissioner, [Always Heard](#) by Coram Voice, [Foster Care in England](#) by Sir Martin Narey and Mark Owers, [The Education Select Committee Inquiry into Fostering](#) and the [Independent review of children's social care](#) illustrate how important the support of an effective advocate can be in helping children and young people overcome a wide range of issues, including understanding their legal entitlements, navigating the care system and accessing vital services. These reports found evidence that the provision of advocacy services by local authorities were inconsistent and that looked-after children, children in need and care leavers do not always feel listened to or receive the support they are entitled to.

We have listened to these concerns and to the direct experiences of the children and young people who use these services, and this new guidance aims to broaden, strengthen and bring up to date the role and function of advocacy. It sets out the clear principle that advocates should be in a position to provide support to looked-after children, children in need and care leavers, whenever that support is needed, and that a child or young person's views, wishes and feelings should be at the heart of the advocacy service.

This guidance sets out that advocacy should be child-led and child-centred. In line with the Children Act 1989 and the [Corporate Parenting Principles](#), this guidance reiterates how important it is that the views, wishes and feelings of children and young people are listened to and taken into account. Decisions about children and young people's lives and futures should not be made without the individual child or young person being involved, as far as possible, in the decision-making process. Advocacy provides an important mechanism by which these principles can be put into practice.

This guidance, in line with the new National Standards for the Provision of Children and Young People's Advocacy Services, sets out updated principles for an effective advocacy service.

This updated guidance also reflects the changes to advocacy rights and access to advocacy that have occurred since 2004, including the strengthened right to advocacy for children and young people in children's homes.

This guidance should be read alongside:

- National Standards for the Provision of Children and Young People's Advocacy Services
- [Applying corporate parenting principles to looked-after children and care leavers \(2018\)](#)
- The Children Act 1989 guidance and regulations, Volume 2: care planning, placement and case review guidance (2015) and Volume 3: planning transition to adulthood for care leavers
- [Children's homes regulations, including quality standards: guide \(2015\)](#)
- [The National Minimum Standards for Fostering Services](#)

## **Expiry or review date**

This guidance will next be reviewed in March 2025.

## **What legislation does this guidance refer to?**

- The Children Act 1989
- Adoption and Children Act 2002 (amended Children Act 1989)
- The Advocacy Services and Representations Procedure (Children) (Amendment) Regulations 2004
- The Care Planning, Placement and Case Review (England) Regulations 2010
- The Care Leavers (England) Regulations 2010 (the Care Leavers Regulations)
- The Children's Homes (England) Regulations 2015
- The Children and Social Work Act 2017

## **Who does this guidance apply to?**

This guidance applies to looked-after children, children in need, and to care leavers.

## **Who is this guidance for?**

This guidance is for local authorities, independent advocates, officers and managers involved in the provision, delivery, commissioning and review of advocacy services.

## **Status of this guidance**

This guidance is issued under section 7 of the Local Authority Social Services Act 1970, which requires local authorities with social services functions to act under the general

guidance of the Secretary of State. Only in exceptional cases may local circumstances justify a variation.

## **Introduction**

### **What is effective advocacy?**

Effective advocacy supports children and young people to express their views, wishes and feelings and ensures that these views, wishes and feelings are listened to and considered in decisions. Advocates provide children and young people with the knowledge, confidence and support they need to make informed decisions on matters which influence their lives.

It is important that children and young people have access to advocacy when they need it. They should be informed of their right to advocacy when they first come into contact with local authority services, and at other times when decisions are being made that affect them or at points of transition. However, it should be for the child or young person to decide whether they take up the offer of help and support from an advocate.

### **What is an advocate?**

An advocate is someone who empowers children and young people to have their views, wishes and feelings heard in decisions being made about their lives. Looked-after children, children in need and care leavers must be given the choice to be represented by an independent advocate who has received the appropriate training and has the expertise required to provide professional advice and support

### **What do advocates do?**

Advocates look out for the children and young people they represent, ensuring that their views are heard, and their rights are respected when decisions are being made about their lives. They are independent and act as an important safeguard, ensuring that looked-after children, children in need and care leavers receive the help and support they are entitled to.

Advocacy puts children and young people's views, wishes and feelings at the heart of the decision-making process and, at its best, can provide an important safety check in the system by providing early intelligence of systemic issues. Advocates can also provide help specifically when a looked-after child, a child in need, or a care leaver, feels that a concern or problem is not being resolved, or when they need help to understand and respond to changes to the services they receive.

### **Children's rights**

This guidance builds on the core principles of Article 12 of the UN Convention on the Rights of the Child, which outlines the right of the child to be heard.



The right to advocacy in England is set out in Section 26A of The Children Act 1989, which states that every local authority shall make arrangements for the provision of assistance to persons who make or intend to make representations under section 24D; and children who make or intend to make representations under section 26. The assistance provided under the arrangements shall include assistance by way of representation. A looked-after child, child in need or care leaver can request an advocate at any time. There are, however, key points in their lives when, due to a significant or unexpected change, or an identifiably high level of need, having an advocate will ensure that their views, wishes and feelings are listened to and considered in decisions. Advocacy can also assist children and young people when they wish to make a complaint under the Children Act 1989.

## **Children and young people's wellbeing and safety**

Advocacy can be a powerful method of promoting high aspirations, supporting mental and physical wellbeing and encouraging children and young people to make the best use of the services provided by local authorities. The provision of effective advocacy can play an important role in securing the best outcomes for looked-after children, children in need and care leavers. Advocacy can also play a vital role in keeping children and young people safe.

[Working Together to Safeguard Children](#) states that anyone working with children should 'listen to what they say; take their views seriously; and work with them and their families collaboratively when deciding how to support their needs. Special provision should be put in place to support dialogue with children who have communication difficulties.

## **Improving advocacy services and access to advocacy**

If advocacy provision is to be effective, it must be led by the views, wishes and feelings of the children and young people who use the service. Children and young people should be informed of their right to an advocate as soon as they come into contact with local authority services. It is the voices of looked-after children, children in need and care leavers that can communicate the successes and failures of the services they receive. Ensuring that children and young people can access advocacy support early can help prevent issues escalating or arising later on and ensure that children and young people get the right support at the right time.

[Fostering Better Outcomes](#), the government's response to [The Education Select Committee Inquiry into Fostering](#) and the [Foster Care in England](#) report set out a clear commitment to work with the sector to improve services through the child's voice. There is a clear need to make improvements to the provision and quality of advocacy services for vulnerable children. Advocacy can be a valuable feedback mechanism and additional safeguard for children and young people. It includes the voice of the child in determining

how services are provided for children and young people, and practice can improve if it is routinely and consistently driven by children's outcomes and experiences.

[Fostering Better Outcomes](#) draws on the results of a [survey](#) by Coram Voice and the Hadley Centre for Adoption and Foster Care Studies at the University of Bristol, to outline the very positive experiences of advocacy experienced by a large number of children and young people in care, while also highlighting that, according to the [Children's Commissioner's national survey](#) of children in care, half of fostered children did not know, or were unsure, how to access an advocate.

If children and young people do not feel listened to, or do not know how to make their voices heard, these reports highlight that feelings of helplessness and vulnerability can be compounded and problems can get worse. Listening to children keeps them safe and helps protect them from poor practice. Child protection is everyone's responsibility; both staff who come into direct contact with children, and those who work with adults who are parents and/or carers. It is essential that all looked-after children, children in need and care leavers have access to effective advocacy and that their voices have the power to influence systemic decisions, as well as the way services are provided at an individual level.

Advocacy services are included in [inspections of local authority children's services](#) (ILACS), although not always noted in reports unless exceptionally strong or weak. Inspectors will assess whether:

- children and young people have access to an advocate when needed;
- children and young people are listened to;
- practice focuses on their needs and experiences and is influenced by their wishes and feelings;
- feedback from children and their families about the effectiveness of the help, care or support they receive informs practice and service development;
- children in care and care leavers are helped to understand their rights, entitlements and responsibilities;
- they know how to give feedback or complain and understand what has happened as a result of their complaint; and
- their complaints are treated seriously and are responded to clearly; urgent action is taken and services improve where necessary;

# Supporting children and young people to make a complaint

## The role of advocacy services for children making complaints

Many of the concerns and problems that children and young people share with advocates can be resolved without the child or young person needing to make a formal complaint, as advocates play an important role in the early identification and resolution of problems and concerns. The advocacy services provided or commissioned by local authorities can provide appropriate support and assistance at an early stage to resolve many problems effectively without the need to proceed to a formal complaints procedure.

Local authorities should consider how best to make children and young people aware of how to contact their advocacy service and should ensure that arrangements are in place for advocacy services to quickly respond to referrals so that advocates can provide help and support as soon as possible. Local authorities must also make children and young people aware of the complaints procedures, and that they have additional help and support to do so through the advocacy service.

A formal complaints procedure is not the best method for children and young people to air grievances. Many local authorities have contracts with advocacy organisations so that advocates can visit children's homes and meet children in foster care when assisting the child or young person with their concerns. As many looked-after children live in foster care, local authorities need to consider how best to make children and young people aware of the complaints procedures and how to facilitate contact with advocates.

With appropriate support and assistance at an early stage, many problems can be resolved effectively without the need to proceed to the formal stages of the complaints procedure. Advocacy services have a very important role to play in the early identification and resolution of problems and complaints. Local authorities should ensure that arrangements are in place for advocacy services to quickly respond to referrals so that advocates are able to provide help to children and young people as soon as possible, if they want this support.

The [Children and Social Work Act 2017](#) sets out the [seven corporate parenting principles](#) for local authorities in England, which recognises the unique challenges that looked-after children and care leavers face and, in particular, whether they feel cared for or listened to. Complaints procedures should be devised and operated in this wider context of encouraging children to speak out and encouraging decision-makers to listen to and take account of their views, wishes and feelings.

The purpose of advocacy in complaints procedures is to ensure that children and young people are given assistance when making or intending to make a complaint. Regulation 4 of the Advocacy Services and Representations Procedure (Children) (Amendment)

Regulations 2004 states that where a local authority receives representations from a complainant or becomes aware that a person or child intends to make representations under section 24D or section 26 of the Children Act 1989, they must provide the person or child with information about advocacy services and offer the person or child help in obtaining an advocate.

However, the complaints officer (or children's complaints officer if applicable) should always check that a young person has been put in touch with an advocate and is happy with the level of support they are receiving. If this is not the case, the children's complaints officer or equivalent officer should:

- inform the child about their rights to advocacy;
- ask the child if they want an advocate;
- provide help and assistance about how to find advocacy services; and
- offer the child or young person help and assistance.

Local authorities must appoint an officer who has overarching responsibility for co-ordinating all aspects of the complaints and representations system. However, the specific roles, duties and tasks may be performed or delegated to other staff in the organisation, for example, children's complaints officers or equivalent officers (see below for information on the roles and responsibilities of officers involved in the complaints process).

## **The Children Act complaints procedure**

Section 26(3) of the Children Act 1989 requires every local authority to establish a procedure for considering any representations (including complaints) made by:

- any child who is being looked-after by them or who is not looked-after by them but is in need;
- a parent of such a child;
- other persons with parental responsibility for the child;
- any local authority foster parent; or
- such other person as the local authority consider has a sufficient interest in the child's welfare to warrant his representations being considered by them, about the discharge by the authority of any of their functions under Part 3 of the Children Act in relation to the child.

Local authorities in considering any representations under section 26 are required to comply with regulations made to regulate the procedure to be followed. Section 24D of the Children Act 1989 requires local authorities to establish a procedure for considering representations (including complaints) made to them by:

- A relevant child for the purposes of section 23A or a young person falling within section 23C;
- A person qualifying for advice and assistance; or
- A person falling within section 24B(2), about the discharge of their functions under Part 3 of the Children Act in relation to the child or young person. In considering such representations a local authority is required to comply with regulations.

The Regulations made under sections 26 and 24D are the Representations Procedure (Children) Regulations 1991 (S.I. 1991/894) as amended. They set out the procedures to be followed by local authorities in considering representations and impose other requirements relating to such matters as monitoring the operation of the procedures and providing information to people making representations.

In practice, most authorities operate the complaints procedure in three stages:

- stage 1 – initial stage with the emphasis on problem solving leading to early resolution;
- stage 2 – formal investigation by the local authority with an independent person;
- stage 3 – review panel of at least three persons which includes an independent person.

## **The role of the advocate in the complaints procedure**

An advocate should help and assist a child or young person who wishes to make a complaint and should be led by the child or young person's decision. An advocate should not prevent a child or young person making a complaint because the advocate believes this is not in the child or young person's best interests.

Regulation 6 amends the Representations Procedure (Children) Regulations 1991 to ensure that an appointed advocate is involved throughout the process. So, for example, if an advocate is appointed, the local authority must send the advocate notice of the proposed result of their consideration of the representations.

At a meeting of the panel appointed for the consideration of the representations the complainant may be accompanied by their advocate and the advocate may speak on their behalf. The advocate's role is to help the child or young person at the earliest possible stage. Successful early involvement could prevent children and young people having to use a complaints procedure at all. The advocate's role in the complaints procedures is:

- to empower children and young people by enabling them to express their views, wishes or feelings, or by speaking on their behalf;

- to seek the resolution of any problems or concerns identified by the child or young person by working in partnership with children and young people and only with their agreement;
- to support children and young people pursuing a complaint through every stage of the complaints procedure and to provide them with information about their rights and options, helping them clarify their complaint and the outcomes they are seeking; and
- to speak for or represent children at any stage of the complaints process, including at the informal stage or at any formal hearing or interviews.

## **Making a complaint about the advocacy service**

Advocacy services should make it easy for children and young people to raise concerns about the advocacy they have received, in writing or verbally. They should provide information for children and young people on what to do if they are not happy with the advocacy service. This is widely publicised, including online.

For complaints made about an advocacy service, the first response would be to try and resolve it at a local level with the emphasis on problem solving. This would usually be undertaken by an advocate's line manager.

If the complaint was about the advocacy service and was not resolved at a local level, a suitable person who is independent of the advocacy service investigates all aspects of the complaint promptly, decides whether the complaint is upheld and recommends remedies to be carried out within a specified timescale. That same person should ensure the child or young person receives feedback about the outcome of their complaint and knows what to do if they are dissatisfied with the outcome.

Advocacy services should make sure that any solutions are put in place straight away or within a set timescale. They record all complaints, both formal and informal, and analyse the data annually. Lessons are learned from this analysis and appropriate action taken.

## **Who may not be an advocate when a child or young person intends to make or has made a complaint?**

Advocacy must be provided by an independent, trained advocate. Regulation 3 provides who may not be an advocate when a child or young person intends to make or has made a complaint. A person may not provide assistance under the arrangements made by the local authority under section 26A to persons or children who make or intend to make representations under section 24D or section 26 if:

- they are or may be the subject of the representations;

- they are responsible for the management of a person who is or may be the subject of the representations;
- they manage the service which is or may be the subject of the representations;
- they have control over the resources allocated to the service which is or may be the subject of the representations; or
- they are or may become involved in the consideration of the representations on behalf of the local authority.

No person with an interest in the subject of the complaint and in its outcome should be an advocate in relation to that complaint. As advocates are to be provided for children and young people who intend to make a complaint, it will not always be clear when an advocate is appointed what or who is to be the subject of the complaint. Where there is a possibility that a person may be the subject of the complaint, or otherwise come within Regulation 3, the person should not be appointed as an advocate in that case.

## **The role of other professionals in the complaints procedure**

A complaints officer works for children's services and investigates complaints. They are sometimes referred to as a designated complaints officer. By law, every local authority has to appoint a complaints officer.

The key role of the children's complaints officer (and other equivalent officers depending on local structures) is to:

- consult with children when they express their intention to make a complaint to help them understand the options available and how the complaints procedure works;
- provide information and advice to children and young people about advocacy services and support in accessing these services; and
- work with children and young people and their advocates concerning issues of complaint and provide information and advice about options for resolution both within the complaints procedure, or alternative routes of remedy and redress where appropriate.

Their role also includes a duty to:

- keep a written or electronic record of complaints made, the procedure followed and the outcome;
- arrange for the investigation;
- appoint an independent person;
- monitor the progress of the complaint;

- keep the child or young person making the complaint and key people informed at all stages;
- ensure timescales are adhered to; and
- make observations and suggestions to the local authority on any action to take following an investigation.

### **Independent Person**

The Children Act 1989, section 26(4) requires that at least one person who is not a member or officer of the local authority takes part in the consideration of the representation and any discussion about action to be taken. An Independent Person is required at stage two and three under section 26(3) of the Children Act 1989 complaints procedure. The person appointed should be neither a member nor an officer of the local authority. The key task of the independent person is to ensure that the process of investigation is open, transparent and fair and to work alongside the investigating officer to provide an independent and objective element to the investigation.

### **Investigating Officer**

An investigating officer may be appointed by the council with social services responsibility to carry out an investigation. This does not remove the requirement to appoint an independent person, as these are two distinct roles.



## The role of children and young people in advocacy

Advocacy empowers children and young people to make sure that their rights are respected and that their views and wishes are fully considered and reflected in the full range of decision-making about their lives. The key principles of effective advocacy are set out in this guidance and should be read in conjunction with the corresponding National Standards for the Provision of Children and Young People's Advocacy Services.

### Advocacy is child-led

The views, wishes and feelings of children and young people should be at the centre of an effective advocacy relationship. An effective advocate should listen to and take seriously the views, wishes and feelings of the child or young person. The child or young person should have control over the advocacy relationship and advocacy support should be provided only when the child or young person chooses it.

Advocates should support children and young people to lead the advocacy relationship and only act upon their express instructions and permission. Advocates should not share their opinion nor offer legal advice. The National Standards for the Provision of Children and Young People's Advocacy Services outline two limited exceptions to this:

1. When non-instructed advocacy is provided
2. When the advocacy service considers that action is necessary to prevent significant harm or abuse

### Co-production of advocacy services

Advocacy services should routinely seek children's and young people's views, advice and partnership to ensure they are providing the best possible help and the help that children and young people actually want and need. Children and young people should be empowered, valued, understood and cared for to support them in providing their views.

There are various ways local authorities could introduce elements of meaningful co-production and involve children and young people in all aspects of the service.

The standards give a number of possible examples:

- Participating in the design stage of commissioning advocacy services;
- Recruitment of staff, particularly those working directly with children and young people;
- Contributing to staff induction, training and appraisal;
- Management committees and/or advisory boards and panels;
- Working groups on policy, ethics and practice development;

- Evaluating and monitoring the service; and
- Production and promotion of publicity and information materials.

Direct feedback should be gathered from children and young people throughout their experience of using advocacy services. Advocacy services are provided to benefit and help children and young people and commissioning organisations should take into account their views, wishes and feelings to create an effective service. Commissioning organisations should get feedback both about the values and principles of effective advocacy and about practical aspects of the service and how it can be made user-friendly. For example, the easiest method of making contact with an advocate, or the most convenient times for children and young people to meet with advocates.

### **Advocacy for children placed out of area**

When a local authority places a child or young person out of the local authority area, they should ensure that the child or young person has access to advocacy services. There are different ways local authorities can achieve this. For example, the local authority may make arrangements with their contracted advocacy provider to support children placed out of area. Alternatively, local authorities may wish to come to an arrangement with the local authority where the child or young person is placed.

As far as possible, advocacy services should try to establish principles of consistency and continuity when a child or young person is placed out of area and ensure that the child or young person continues to receive high quality, professional advocacy support. Local authorities should, wherever possible and where it is in the child's best interests, put in place measures that allow children and young people to keep the same advocate for as long as they wish, particularly when a strong relationship and trust has been established.

### **Advocacy for children in children's homes**

Children living in children's homes, including secure children's homes, may have a higher level of need for advocacy than children living with foster carers or in the family home, and their needs will be specific to their individual living arrangements. It is important that local authority advocacy service recognises this and puts in place processes that will allow children and young people in children's homes to access and receive high quality advocacy relevant and appropriate to their specific needs and circumstances.

The [Guide to the Children's Homes Regulations](#), states that 'looked-after children are entitled to an independent advocate to advise them and ensure they have the support needed to express their views, wishes and feelings about their care and lives.' Staff working in children's homes should regularly remind children of their right to access an independent advocate, concerning any matter relevant to the child's status as looked-after. In addition, Regulation 22 of the Children's Homes Regulations makes the

provision that all children's homes must ensure that they have suitable facilities for a child to meet privately with their advocate.

The [Guide to the Children's Homes Regulations](#) states that all staff working in children's homes have an important role in helping looked-after children to understand and access advocacy services. Advocates for children living in children's homes can offer vital support to the child or young person over issues specific to their particular circumstances. For example, lack of contact with their social worker, issues about their care within the home, contact with family and leaving care grants. The right to access advocacy support or independent advocacy, if eligible, should be included in the children's guide produced by the children's home.

It is clear that children in children's homes require a level of support that is unique to and meets the demands of their individual circumstances. Advocates will require appropriate training and skills to meet those needs effectively and advocacy services should ensure they have policies and processes in place to meet the advocacy needs of these children and young people.

### **Non-instructed advocacy for children who may be unable to give instructions**

Non-instructed advocacy provides representation for children and young people whose age, disability, mental health, or medical condition, would otherwise prevent them from communicating their views, wishes and feelings and as a result, may be in a situation where their rights would be unknown, unprotected or breached.

Where there is clear evidence that a child or young person may be unable to instruct an advocate, non-instructed advocacy can provide an important safeguarding function. The National Standards for the Provision of Children and Young People's Advocacy Services state that non-instructed advocacy can apply to children and young people who are unable to:

- communicate their wishes in any way with regards to a particular decision, action or situation;
- give informed consent for an advocate to assist them; or
- understand and weigh up their options in respect of a particular decision, action or situation at a specific time.

The National Standards for the Provision of Children and Young People's Advocacy Services set that advocates who are undertaking non-instructed advocacy should adopt a person-centered approach. This means they should take the time to get to know and understand the child or young person in order to assess the appropriate way to best support them and protect their rights.

Non-instructed advocates may attend meetings on behalf of the child or young person they represent to champion their rights. They should have access to relevant and appropriate information about the child or young person and arrangements should be in place for the non-instructed advocate to secure necessary consent where this is legally required.

If the non-instructed advocate considers that a child or young person's rights are being breached, they should be able to challenge any breaches of rights; make safeguarding referrals in the usual way; begin statutory complaints proceedings where appropriate and ensure access to legal advice and legal representation is available, for example, through access to the Official Solicitor.

### **When an advocate may be most useful**

A child or young person can request an advocate at any time. There are, however, key points in their lives when, due to a significant or unexpected change, or an identifiably high level of need, having an advocate will ensure that their views, wishes and feelings are listened to and taken into account.

Examples of circumstances where commissioning organisations should proactively be offering children and young people advocacy assistance to protect their rights include:

- When a child or young person is the subject of a child protection plan and the local authority is considering care proceedings;
- When a child or young person first enters care and is considered a looked-after child;
- Prior to a child or young person moving to a new placement;
- When a child or young person is placed out of area;
- On the child or young person's admission to a residential or secure setting;
- When a child or young person takes part in a review meeting;
- Where a child or young person has an Education, Health and Care plan, including when reviewing the appropriateness of the provision and placement;
- When a looked-after child, child in need or care leaver has been excluded from school, or there is imminent risk of such exclusion;
- When a child or young person makes a complaint that should invoke a statutory complaints procedure;
- When a child or young person in foster care or a residential/ secure setting has made an allegation;
- After a child or young person has gone missing or run away and wants support in their return home interview;
- When preparations are being made for a young person to leave care or a residential/ secure setting
- When the child is an unaccompanied or separated migrant or refugee and;

- When a young person is transitioning from children's to adult services.

It is a requirement that advocacy is offered in the following circumstances:

- After any use of restraint, or a period of segregation or seclusion in a residential/ secure setting;
- When a child is subject to a full search in a secure/ residential setting.

## **The role of the Independent Reviewing Officer (IRO)**

Independent reviewing officers have an important role in checking that looked-after children are aware of their right to an advocate, both in relation to complaints and when their case is being reviewed. Chapter 3 of the [Independent Reviewing Officer handbook](#) sets out the legal requirement for the IRO of a looked-after child to ensure that the child understands their entitlement to independent advocacy support. The IRO handbook states that 'every child has the right to be supported by an advocate' and 'when meeting with the child before every review, the IRO is responsible for making sure that the child understands how an advocate could help and his/her entitlement to one.' It also states that 'advocacy is an option available to children whenever they want such support and not just when they want to make a formal complaint.'

Independent reviewing officers monitor the review process of the care plans of looked-after children by local authorities and challenge poor practice by local authorities, including 'drift' in care. IROs chair review meetings and ensure that the local authority involves the child or young person and significant adults in their review process. The IRO has a role in resolving problems by negotiation with the local authority and has, as a last resort, the power to refer children's cases to the Children and Families Court Advisory and Support Service (CAFCASS) to take the case to court.

The [Care Planning, Placement and Case Review guidance](#) also states that 'taking into account the age and understanding of the child, the IRO should consider carefully how best to explain to the child their right to:

- make a complaint and how to do this;
- an advocate, including the role of the advocate;

There should be close working between the IRO, designated complaints officer, children's complaints officer or equivalent and the advocate. The process of advocacy and complaints must run alongside the IRO's actions in resolving an issue and it will be good practice for the IRO, the designated complaints officer and the advocate to agree channels of communication and their respective roles in trying to resolve a complaint.

# The role of the advocate

## Advocates are champions for children and young people

Advocates play an important role in championing the rights of children and young people – representing their views, wishes and feelings and championing their right to be heard.

An advocate should not promote or act on their own opinions or views but should respect the views, wishes and feelings of children and young people and encourage others to act similarly. It is important that the child or young person feels, as far as is possible, in control of their circumstances and able to have their views, wishes and feelings heard in the way they want them to be.

Advocates find ways to build relationships with children and young people as early as possible. This is so that they can get to know the child or young person and begin to understand their individual circumstances and needs. This might be by establishing regular visits to children's homes and to children and young people in foster care to offer help and alert them to the services they provide, as well as creating informal opportunities for children and young people to talk about their experiences with an independent adult.

Regular contact between children and advocates will allow the views, wishes and feelings of children and young people to be heard early and responded to quickly and effectively. The early identification of emerging concerns or problems will prevent problems escalating and support the wellbeing and mental health of the child or young person.

## Advocates provide high quality professional practice

Advocates provide valuable help, protection and support for some of our most vulnerable children and young people. In order to provide high quality advocacy, it is vital that advocates are effectively trained and that they are supported and supervised by an effective advocacy service.

At a minimum, this should include:

- an induction process;
- an up to date job description;
- written policies;
- peer support and development;
- the support of a suitably experienced and knowledgeable line manager; and

- an annual appraisal and regular case supervision.

In line with Standard 5 of the National Standards for the Provision of Children and Young People's Advocacy Services (Advocates have the values, knowledge, skills, experience and training to meet these standards. Their conditions of employment, including supervision and continuing professional development, support high quality professional practice), local authorities should ensure that all advocates have the relevant knowledge, experience, training and values to be able to support the needs of the children and young people.

Training can include:

- up to date knowledge of legal rights;
- safeguarding practices;
- equal opportunities legislation and data protection;
- mental health practices; and
- non-instructed advocacy.

### **Advocates represent a range of backgrounds**

Advocacy services should ensure, as far as possible, that advocates are able to effectively represent the diverse needs and backgrounds of the children and young people they are representing. This should include sufficient training to understand and support the diversity of the children they work with. The advocacy service should be representative of the children and young people it serves. Their diversity and the diversity of their needs should be reflected in the resources advocates use, the communication methods they use and in the training they receive.

All advocacy services must have clear policies to promote equalities issues and monitor services to ensure that no young person is discriminated against due to sex , race, religion, language, disability or sexual orientation.

The advocate, when representing a child or young person, should be able to communicate effectively in a way the child is happy with. For unaccompanied asylum-seeking children, the advocate should help to overcome cultural or language barriers, so that the child can express their wishes and feelings appropriately.

Children and young people who are placed with families who do not share the same ethnicity or cultural background, may be more likely to need the help of an advocate who can support their interests. Advocacy services should take steps to ensure that this additional need is recognised and provided for.

Advocacy services should monitor and record uptake against the cohort of eligible children and young people and use feedback to identify under-represented groups. The service should take action to ensure equality of access across all eligible groups and particular attention should be given to those with complex communication needs.

Advocacy services should ensure that information for children and young people is available in a variety of formats to ensure children and young people are aware of the service – including for those who have disabilities (where materials and publicity could, for example, be provided in Braille, British Sign Language, audio or video podcasts, Makaton or Bliss) or where English is not their first language (where advocates are also encouraged to put forward the child or young person's view to ensure they are able to access suitable learning to gain English language skills).

### **Choice for the child or young person**

The child or young person should be given an opportunity to meet an advocate and agree the arrangement before the advocate's appointment is confirmed and any information shared with them. The child should understand that they have the right to choose an advocate whom they feel comfortable with and the local authority should take reasonable action to accommodate a child's wishes. Equally, if the child or young person requests a change in advocate the local authority should take steps to facilitate this.

Children and young people should be helped by the complaints officer, children's rights officer or equivalent officer to understand the choices open to them.

Where advocacy services are provided in-house, a child or young person may nevertheless feel more comfortable if they are enabled to use an advocate who is not an in-house advocate of the local authority. In any event, the local authority should pro-actively provide information about alternative sources of help. If the child or young person prefers to use an advocate who is not provided in-house the local authority should consider the request carefully and think about what steps it should take to meet the child's wishes.



# Effective advocacy services

## An independent service

The independent status of advocates is essential for them to be able to act effectively on behalf of the child or young person. The National Standards for the Provision of Children and Young People's Advocacy Services set out Government policy on the independence of advocacy services. Advocacy will only be used if children and young people are confident that advocates are acting exclusively on their behalf and have no apparent conflicting interests and pressures. Therefore, the advocacy or children's rights service should, as far as possible, be funded and managed in a way that ensures independence from the commissioning organisation.

This independent status should form an integral element of training for new advocates and it should be valued and championed by commissioning organisations. There are different models that local authorities can follow to ensure that the advocacy or children's rights service they commission has sufficient independence and distance from their policy development, their service provision, their complaints service, their care planning and resource management functions. The advocacy service or children's rights service must not be line managed by any senior manager directly responsible for the service provided. Local authorities should ensure that they have systems in place to ensure that both the management and delivery of services is quite separate. This includes their own private, designated space, and that they do not routinely share office space with services and professionals involved in the lives of children and young people to whom they offer an advocacy service.

Arrangements for the provision of advocacy and children's rights services vary among local authorities. Advocacy provision can be outsourced to a voluntary organisation. However provision is organised, it is important that the users of the service experience and perceive the service as independent. Feedback from children and young people suggests that separate literature, logos and identity are important in promoting the 'arm's length' nature and independence of advocacy services.

In line with the National Standards for the Provision of Children and Young People's Advocacy Services, the advocacy service should be funded and managed in a way that ensures independence from the service commissioner, as far as possible. Children and young people should be reassured that their advocates will act for them without conflicts of interest. This should be promoted in the information made available to children and young people and by those responsible for the delivery of the advocacy service.

The advocacy service should not use public funds in order to undertake activities intended to influence or attempt to influence parliament, government or political activity; or attempt to influence legislative or regulatory action or petition for additional funding.

## **Conflicts of interest**

When advocacy services are provided by voluntary organisations who also provide other services to the local authority, either directly relating to complaints handling or the provision of other services, the local authority should ensure that conflicts of interest are avoided in the provision of these services. For example, advocacy providers which also offer direct services or independent services in the consideration of complaints should have systems in place to ensure that both the management and delivery of those services is quite separate. Commissioning officers should identify all potential conflicts of interest prior to agreeing contracts for external advocacy providers and use this information to identify the most appropriate provider.

## **Keeping children and young people informed**

For an advocacy service to be effective, information setting out the services on offer needs to be readily available and easy to understand. Children and young people need a simple method of reaching out for help and that help needs to be available when requested.

Children and young people should be regularly informed and reminded of their right to advocacy. The benefits of advocacy for children and young people should be clearly outlined verbally and also provided in written form, whether through accessible printed materials or online resources. There should also be opportunities for children and young people to meet advocates in informal settings and learn about the services they offer.

Local authorities must provide looked-after children, children in need and care leavers with information about advocacy services and offer help in obtaining an advocate if a child or young person intends to make a complaint and would like an advocate to speak for them. This will usually be the name, telephone number and contact point for the service. If the child so requests, the complaints officer or equivalent officer should make initial contact with the advocacy service on their behalf.

## **Publicity about advocacy services**

Section 26A(5) of the Children Act 1989 requires local authorities to give such publicity to their arrangements for the provision of advocacy services as they consider appropriate. Section 26(8) also requires local authorities to give appropriate publicity to their procedure for considering representations.

Local authorities must have robust communication and publicity mechanisms to ensure children and young people, including those with additional communication needs, know and understand their right to advocacy. When children and young people are first informed about the advocacy service, they should be told about the confidentiality policy. We recommend that this publicity should not be limited to the complaints process, but

should be presented to looked-after children, children in need and care leavers as an empowering and useful method of support.

The National Standards for the Provision of Children and Young People's Advocacy Services, and particularly Standard 7 (Advocacy services are independent and accessible. They operate to the highest level of confidentiality and ethical practice) sets out the Government's policy for publicity about children's rights and advocacy services.

The Government wants commissioning organisations and advocacy services to actively encourage all relevant agencies and adults who are in a position to advise children and young people to:

- Inform children and young people about the service;
- Encourage them to use it; and
- Help them to access it.

Local authorities should provide age-appropriate materials, including online, about children's rights and advocacy services. Information should be accessible to all children and young people, including those with disabilities or where English is not their first language. Adults who are in a position to advise children and young people should talk to them to explain these materials, answer any questions and ensure they understand their rights.

Publicity materials about advocacy services, appropriate to the ages of children and young people, should be given to all children and young people when they are first assessed as being in need and again when they become looked after. For looked-after children, this should be recorded in the child's care plan and checked at every review by the Independent Reviewing Officer. Complaints publicity materials should include information about advocacy and be kept under regular review.

Advocacy services should have needs-based arrangements in place so that all requests for help, including urgent and out of hours referrals, can be effectively responded to, for example by signposting to other services when an advocacy service is unable to provide timely help. Where possible, advocacy services should be delivered in safe, private and accessible locations.

Local authorities should have a programme of regularly updating information and publicity on advocacy services to staff and foster carers to ensure that new staff and carers are able to inform children and young people properly of the support they can access. Publicity on children's legal rights and advocacy should be widely disseminated across children and young people's services, and included in routine meetings, staff inductions, supervision and training e.g., training for foster carers or social workers. Commissioning organisations and staff need to positively promote the use of advocacy services and feel confident in using and recognising the need for a child or young person

to acquire an independent advocate. Children and young people should be encouraged to use advocacy services where necessary and there should not be any repercussions for doing so.

## **Monitoring and reporting**

Local authorities should keep under regular review their arrangements for the implementation of this guidance. Review and monitoring of the guidance should take place at yearly intervals and is the responsibility of the Director of Social Services.

The Representations Procedure (Children) Regulations 1991 are made under section 26(6) of the Children Act 1989. Under regulation 10 of the Representations Procedure (Children) Regulations 1991, local authorities are required to monitor the arrangements that they have made with a view to ensuring that they comply with the Regulations by keeping a record of each representation received, the outcome of each representation and whether the time limits set out in the Regulations were complied with. For the purposes of such monitoring, local authorities are required to compile annual reports on the operation of their complaints procedure.

Regulation 5 of the Advocacy Services and Representations Procedure (Children) (Amendment) Regulations 2004 requires local authorities to monitor the steps that they have taken with a view to ensuring that they comply with the regulations in particular by keeping a record about each advocate appointed under the local authority's arrangements for the provision of advocacy services under section 26A(1) of the Children Act 1989.

Complaints officers, children's rights officers and others will need to work closely together in compiling annual reports and reports to departmental management teams on the use of advocacy by complaints made under the Children Act 1989.

This annual report should include:

- a summary of statistical data about numbers, ages, sex, disability and ethnicity of children using advocacy at all stages of the complaints procedures;
- arrangements for the provision of advocacy services;
- details about advocates provided under the arrangements;
- take up and refusal of service; and
- children's satisfaction with the service and perceptions of independence.

Complaints and representations annual reports are a statutory requirement under the provisions of the Children Act 1989.

The process of measuring satisfaction with advocacy services should be child-centred. Regular feedback from children and young people is crucial in maintaining standards. Local authorities should find creative ways of seeking feedback from children and young people, for example, the creation of a children and young people's reference group (with support available for children and young people with a range of communication needs), online forums and surveys.

## **A well-managed service**

There should be robust procedures in place to ensure that services are well-managed, have sufficient resources to meet the needs of children and young people and that performance should be effectively monitored and measured. This guidance emphasises the importance of children and young people receiving a professional and high-quality advocacy service.

This means that robust procedures are in place for:

- setting clear goals;
- the tendering process and the issuing of contracts;
- auditing of accounts;
- collecting and reviewing data; and
- reviewing and evaluating success measures.

To meet these requirements, commissioning organisations need to ensure they have sufficient funding to meet the service needs of the eligible children and young people in their local area.

## Safeguarding and information sharing

### Keeping children and young people, and their information, safe

Advocates and advocacy services play a vital role in safeguarding vulnerable children and young people. Advocates are able to both observe the circumstances in which looked-after children, children in need and care leavers live and listen to children and young people's accounts of the treatment they receive. They are consequently in a position to assess the risks and dangers these groups of children and young people face.

It is vital that advocates know and understand the importance of their role in protecting children and young people from harm, as set out in [Working Together to Safeguard Children](#):

Everyone who works with children has a responsibility for keeping them safe. No single practitioner can have a full picture of a child's needs and circumstances and, if children and families are to receive the right help at the right time, everyone who comes into contact with them has a role to play in identifying concerns, sharing information and taking prompt action.

It is important that looked-after children, children in need and care leavers understand the safeguarding responsibilities of the advocacy service and the role of advocates in defending and championing their right to protection.

The National Standards for the Provision of Children's Advocacy Services state that advocacy services should have effective safeguarding and whistleblowing arrangements in place. This includes safer recruitment and selection practices; up to date safeguarding policies and efficient processes in place for making direct referrals to statutory agencies.

### Acting on concerns

Advocacy services should have a clear policy based on the concept of 'significant harm' and make sure that this policy is publicised to all those using the service. Advocacy services must be clear about how they identify a level of concern that would trigger the making of a referral to social services, particularly when such a step takes place without the consent of the child and young person.

Where there are concerns about a child's welfare the procedures set out in [Working Together to Safeguard Children](#) should be followed. The policy of the advocacy service should incorporate a requirement that advocates are fully conversant with legislation and practice guidance relating to child protection as well as local policies and procedures.

The local authority should satisfy itself that the appointed advocate, or organisation it commissions to provide advocacy services, has effective arrangements in place to ensure that all advocates, their supervisors and managers of advocacy services are

trained and able to demonstrate the appropriate level of knowledge and competence to understand and operate these requirements.

When an advocate has a safeguarding concern, advocates should make sure the child or young person's views, wishes and feelings are heard throughout any investigative process. Where possible, advocacy services should regularly review and provide data on thematic issues of concern to local authorities and local safeguarding partners.

Advocacy services should provide regular opportunities to learn from any serious incidents where a child or young person they were working with was harmed. This learning and reflection should inform and shape future practice to ensure the role of advocates in safeguarding children and young people is as effective as possible.

## **Whistleblowing**

[Government advice](#) on whistleblowing for employees is clear. Employees should report wrong doing, usually something seen at work, if it is in the public interest to do so. Whistleblowers are protected by law and cannot lose their jobs as a result of blowing the whistle on an employer.

These principles apply to advocates in all areas of their work and, just as with safeguarding, advocates have a duty to protect and champion the rights of children and young people and report concerns around practice and the delivery of services where appropriate. Advocacy services should have well-publicised procedures for employee whistleblowing.

## **Confidentiality and Information sharing**

Local Authorities with social services responsibilities have specific duties under the Children Act 1989. This Act introduced the concept of significant harm as the threshold that justifies compulsory intervention in family life in the best interests of children. Social services are under a statutory duty to make enquiries, or cause enquiries to be made, where there is reasonable cause to suspect that a child is suffering, or is likely to suffer, significant harm. Section 31(9) of the Children Act 1989 defines harm as ill treatment or the impairment of children's health and development. This broad definition encompasses physical and sexual abuse as well as other forms of ill-treatment which are not physical.

The only time a child or young person's right to privacy and confidentiality may be breached is when an advocate has concerns about their safety. This section of the guidance sets out Government policy on sharing information at all stages of the advocacy process, including the complaints procedure.

The Government provides guidance for all frontline practitioners working with children and young people, which sets out clear advice on information sharing. [Information sharing advice for safeguarding practitioners](#) sets out seven golden rules to sharing

information and advocates should be aware of and follow these rules when sharing information about the children and young people they advocate for.

The National Standards for the Provision of Children's Advocacy Services set out standards for information sharing and confidentiality. Local authorities should have clear protocols on information sharing in their service level agreements. Once the advocate is appointed, correspondence about the issue, complaint or concern should be addressed to the child, with a copy sent to the appointed advocate and advocacy organisation as appropriate. Record keeping is an integral part of professional practice. Records should be clear, concise and a record of fact. They should be kept safely by all parties.

If the local authority is informed that a child or young person has decided not to use his or her advocate any longer, it should write to the advocate to inform the child or young person of this decision.

The National Standards for the Provision of Children and Young People's Advocacy Services set out the importance of advocacy services operating to the highest level of confidentiality and ethical practice. This requirement will allow trust to be established between the child or young person and the advocate, as well as strengthening the principle that this is a service that is led by the views, wishes and feelings of children and young people and one that takes those views, wishes and feelings seriously.

Records of work undertaken for the child or young person are kept strictly confidential and are not shared with third parties without the express permissions of the child or young person. The only exception to this is when there are significant safeguarding concerns and even then, only the relevant parts of advocacy records may be shared.

## **Being alert to signs of abuse and neglect and taking action**

All practitioners should be alert to the signs and triggers of abuse and neglect. The Government has published [guidance](#) to support practitioners. Children may be vulnerable to neglect and abuse or exploitation from within their family and/or from individuals they come across in their day-to-day lives. Abuse and neglect can take a variety of different forms, including:

- sexual abuse
- physical abuse
- emotional abuse
- neglect (i.e., a child might be left hungry or dirty, or without proper clothing, shelter, supervision or health care)
- domestic abuse, including controlling or coercive behaviour
- exploitation by criminal gangs and organised crime groups
- modern slavery and human trafficking
- online abuse



- sexual exploitation
- influences of extremism leading to radicalisation
- exposure to parental mental health issues
- drug/alcohol abuse

Whatever the form of abuse or neglect, practitioners should put the needs of children first when determining what action to take.

Children may report abuse or there may be visible signs of abuse, in which case the decision to share information is clear, as actions must be taken to respond to the disclosure or signs. In other cases, for example, neglect, the indicators may be subtle and appear over time. In these cases, decisions about what information to share, and when, will be more difficult to judge. Everyone, including advocates, should be aware of the potential for children to be sexually or criminally exploited for money, power, or status, including peer on peer abuse and individuals should adopt an open and inquiring mind about what could be the underlying reasons for behaviour changes in children of all ages. The Government has produced guidance on [child sexual exploitation](#) to support practitioners, local authorities and local leaders. It is important that advocates understand and are able to follow the usual referral process for children and young people who meet a statutory threshold for significant harm. Such referrals must be made to the local authority safeguarding team following established safeguarding procedures set out by the local authority. Advocates should also be mindful of settings where children and young people may be more at risk of being subject to institutional abuse and what actions to take in these situations.

The government publishes [information](#) outlining how to report child abuse, including information about the process, links to key reporting services and relevant telephone numbers. This published information complements the multi-agency safeguarding guidance [Working Together to Safeguard Children](#) which states that 'everyone who works with children has a responsibility for keeping them safe'. Everyone who comes into contact with children and young people, including advocates, have an important role to play in identifying concerns, sharing information and taking prompt action.

# Annex A

## Other legislation relating to advocacy for children and young people

### **Children (Leaving Care) Act 2000**

The Children (Leaving Care) Act 2000 requires local authorities to improve the life chances of young people living in and leaving care. The Government expects advocacy services to be accessible to all care leavers making or intending to make a complaint. Details about access to advocacy should be included in information and policies for young people about what services they might expect when they are no longer in the authority's care. One of the roles of the Personal Adviser is to act on a young person's behalf as an advocate for them when they need help making a case, both in formulating the case and presenting it.

### **Care Standards Act 2000**

The Care Standards Act 2000 establishes a complaints and representations procedure for children's homes. The home's complaints procedure enables children, staff, family members and others involved with children of the home to make minor and major complaints. The National Minimum Standards for Children's Homes sets out information and advocacy requirements.

### **Health and Social Care Act 2001**

The Health and Social Care Act 2001 places a duty on the Secretary of State for Health to make arrangements for advocacy services to be provided to people (including children and young people) wishing to make a complaint about their NHS care or treatment. The Commission for Patient and Public Involvement in Health (CPPIH) will identify and disseminate quality standards for the Independent Complaints Advocacy Services (ICAS), set criteria for its provision and provide a national assessment of ICAS services. The service will be accessible through many avenues, including Patient Advice and Liaison Services (PALS) and complaints managers in NHS Trusts.

### **Health and Social Care (Community Health and Standards) Act 2003**

Section 113 & 114 of this Act enables Regulations to provide for the further consideration of complaints by the Commission for Social Care and Inspection (CSCI) that have not been resolved by the local authority.



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