

# Guidance

Providing Effective  
Advocacy Services for  
Children and Young  
People Making a  
Complaint under the  
Children Act 1989

## Get it Sorted



Providing Effective Advocacy  
Services for Children and  
Young People Making a  
Complaint under the  
Children Act 1989

The Advocacy Services and  
Representations Procedure  
(Children) (Amendment)  
Regulations 2004

# Ministerial Foreword



By Margaret Hodge MP

Minister for Children, Young People and Families

Listening to children and young people lies at the very heart of the Government's reform programme to improve outcomes for every child. This is especially important for those times when children have a problem, concern or want to make a complaint.

Advocacy helps to safeguard children and young people, and protect them from harm and neglect.

This section 7 guidance is for children's services leads, team managers, complaints officers, practitioners, advocates and children's rights and participation officers. It is designed to provide all children's services staff with an understanding of the new duties in relation to advocacy for children and young people making or thinking about making a complaint under the Children Act 1989 as introduced by the Adoption and Children Act 2002.

But it goes further than that. Ultimately, it is about making sure that vulnerable children and young people everywhere get the help they need, when they need it, however large or small their concern. In short, making sure that someone is always ready to listen and act quickly to help.

I would also like to thank each and every contributor to the wide-ranging consultation that preceded this guidance. As *Every Child Matters: Next Steps* clearly demonstrates, a dialogue with government is an integral part of the shift in how we all work for children – moving from reactive to preventative services.

A handwritten signature in blue ink that reads "Margaret Hodge".

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# Essential Information

## 1. SUMMARY

Section 26A of the Children Act 1989 extends to England and Wales, but this guidance and the associated Regulations apply to England only.

## 2. IMPACT ON LOCAL AUTHORITIES

Section 26A of the Children Act 1989 was inserted by section 119 of the Adoption and Children Act 2002. This section, the Advocacy Services and Representations Procedure (Children)(Amendment) Regulations 2004 (S.I. 2004/719) and this guidance impose new duties on local authorities in respect of the provision of advocacy services. Local authorities have received through the Quality Protects special grant a substantial investment of funds to secure the development of advocacy, children's rights services and initiatives to improve the complaints process for children. Although the Quality Protects grant ended in March 2004, the increases in children's services spending under the grant and under the Children Leaving Care grant will continue to be available to local authorities under mainstream funding.

## 3. THE 2004 REGULATIONS

Section 26A, the Regulations and this guidance come into effect on 1st April 2004. All local authorities with social services responsibilities should ensure that advocacy services are provided for children and young people making or intending to make a complaint under section 24D or section 26 of the Children Act 1989.

# 1. Background: Why Legislate for Advocacy Services?

## INTRODUCTION

**1.1** 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. It sets out local authority duties in making arrangements for the provision of advocacy services for children and young people making or intending to make representations under sections 24D and 26 of the Children Act 1989. While it is anticipated that this procedure is for children and young people making or intending to make a complaint, it covers representations which are not complaints. For example, children and young people should be able to secure the support of an advocate in putting forward representations for a change to be made in the service they receive, or the establishment they live in, without this having to be framed first as a specific complaint.

**1.2** The guidance is designed for children's services leads, team managers, complaints officers, practitioners, advocates and children's rights officers. This guidance is for local authorities and should be read in conjunction with:

- *The National Standards for the Provision of Children's Advocacy Services*, summarised at Annex A and
- The National Minimum Standards for Children's Homes, Residential Schools and Fostering Services under the Care Standards Act 2000.

**1.3** Advocacy is about speaking up for children and young people and ensuring their views and wishes are heard and acted upon by decision-makers. This guidance builds on the core principles of the UN Convention on the Rights of the Child and *Every Child Matters: Next Steps* which puts children's views and wishes at the forefront of the decision-making process.

**1.4** The Adoption and Children Act 2002 received Royal Assent on 7 November 2002. Amongst other provisions, it amended the Children Act 1989 by inserting into it a new section 26A which imposes on local authorities the duty to make arrangements for the provision of advocacy services for care leavers making or intending to make representations under section 24D of the Children Act and for children making or intending to make a representations under section 26. When a child or young person articulates that

a concern or problem is not being resolved and a complaint is likely to be made, local authorities should ensure that help and assistance is given if children or young people would like an advocate to speak for them.

**1.5** This guidance applies to looked after children, to children who are not looked after but are in need, and to young people leaving care.

**1.6** Advocacy services will have to be provided for a looked after child, a child in need or care leaver directly making or intending to make a complaint on their own behalf. Rights to advocacy do not extend to a parent or another person making a complaint on behalf of a child.

### **DEVELOPING A LISTENING CULTURE**

**1.7** The Government wants advocacy and children's rights services to be linked to other activities which help professionals to listen to children, thereby creating a culture of openness where listening and responding to children and young people's concerns become an integral part of everyday practice.

**1.8** The requirement for the participation of children and young people in day to day decision-making in their own care was spelt out in *The Government's Objectives for Children's Social Services* (September 1999). Objective 8 requires local authorities actively to involve users and carers in planning services and in tailoring individual packages of care, and to ensure effective mechanisms are in place to handle complaints.

**1.9** The report of the Waterhouse inquiry, *Lost in Care*, cited many examples of children who had attempted to complain about an unhappy situation but whose voices had not been heard. The Government's response to the Waterhouse report emphasised the importance of hearing children's wishes and views in all aspects of the complaints process. Similarly, the Utting Report, *People Like Us*, made recommendations about a culture change which supports children and young people to speak openly about their experiences and concerns. *"Putting something right about assessment, review, consultation or placement at an early stage can only improve the effectiveness of the overall process and reduce the risk of subsequent harm."*

**1.10** Listening to the voice of the child is one of the main messages running through *Keeping Children Safe*, the Government's response to the inquiry into the tragic death of Victoria Climbié. 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. The Government's response to the Victoria Climbié Inquiry report requires Directors of Social Services to ensure that the child is spoken to alone during an assessment and introduces a range of recommendations to protect children.

## 2. The Role of Advocacy Services for Children Making Complaints

### INTRODUCTION

**2.1** Children and young people can be especially vulnerable at times when they have a problem or want to make a complaint. The emphasis in this guidance is on early detection and early resolution, so that concerns and problems are put right quickly and effectively. Complaints procedures should be devised and operated in the wider context of encouraging children to speak out and encouraging decision-makers to hear their views.

### THE NATIONAL STANDARDS FOR THE PROVISION OF CHILDREN'S ADVOCACY SERVICES 2002

**2.2** The *National Standards for the Provision of Children's Advocacy Services*, issued as section 7 guidance in November 2002, set out standards for the commissioning and delivery of advocacy services. The standards provide a framework for the planning, development and review of advocacy practice at all levels. In implementing this guidance, local authorities with social services responsibilities should ensure the standards are followed.

**2.3** 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 and that is the focus of this guidance. Of course, the role of advocacy is not limited to assisting children or young people when they wish to make a complaint. We know that children's interests can be promoted more effectively by having a personal champion in the form of an advocate who can help children and young people ensure their views and wishes are heard at all times. Advocacy in its broader sense is about empowering children and young people to make sure that their rights are respected and that their views and wishes are fully considered and reflected in decision making about their own lives.

**2.4** As the National Standards set out, advocacy services provide independent and confidential:

- Information;
- Advice;
- Representation; *and*
- Support.

**2.5** The National Standards spell out the core principles which should inform the delivery of advocacy services:

- advocates should work for and with children and young people;
- advocates should help children and young people to raise issues and concerns about things they are unhappy about;
- advocates should value and respect children and young people as individuals; *and*
- advocates should ensure that children and young people can understand what is happening to them, can make their views known and, where possible, exercise choice when decisions about them are being made.

**2.6** An advocacy service must ensure that independent advocates provide appropriate assistance to the child, taking into account their age, means of communication, language, sex, race, religion, sexual orientation, health or disability. The advocate, when representing a child or young person, should be able to communicate effectively in a way the child is happy with.

#### **ENABLING CHILDREN TO ACCESS ADVOCACY SERVICES**

**2.7** Many children and young people describe complaints as problems not being sorted out. The emphasis of this guidance is on providing help and assistance and ensuring that independent advocacy is available quickly when requested.

**2.8** Regulation 4 says that where a local authority receives from a child or young person representations made under section 24D or section 26 of the Children Act 1989, they must provide him or her with information about advocacy services and offer him or her help in obtaining an advocate. They must provide the same information and help where they become aware that a child or young person intends to make representations under section 24D or section 26. When a child or young person says that a complaint is about to be made, the authority should ensure that help and assistance is offered and given if a child or young person would like an advocate to speak for them.

**2.9** Some children and young people may already have an advocate before they reach the stage of a complaint. Responses to consultation indicated that the vast majority of concerns and problems that children share with advocates are resolved “informally”. However, the complaints officer (or children’s complaints officer if applicable) should act as a “back- stop” in checking 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 an advocate is wanted;
- provide help and assistance about how to find advocacy services;
- offer the child or young person help and assistance.

**2.10** The child or young person should be asked if it is important to them if the advocate shares the same race, culture, gender, religion, disability and/or sexual orientation as themselves. The local authority should take such matters into consideration when making arrangements for the provision of advocacy services. Services should ensure that wherever possible they can meet the preferences of children and young people.

**2.11** The local authority should provide the child or young person with information about advocacy services. 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.

#### **CHILDREN OR YOUNG PEOPLE PLACED OUT OF THE LOCAL AUTHORITY AREA**

**2.12** Local authorities when placing children out of the local authority area should ensure that arrangements are in place for the child or young person to access advocacy services when making the placement. 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.

#### **CHOICE FOR THE CHILD OR YOUNG PERSON**

**2.13** There will be times when children and young people will wish to choose their own advocate, for example, a relative, teacher, carer, friend or family member. Children and young people may select anyone of their choice as an advocate although there may be reasons why the person chosen by the child should not agree to take on the role, for example, there might be a conflict of interest. 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 and the differences between the options. For example, the child should be helped to understand the differences in the kind of support available and be helped to make an informed choice between "informal" advocacy provided by a relative or friend and a professional advocate provided under the arrangements made by the local authority.

**2.14** 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.

**2.15** Where a child chooses their own advocate, the local authority may facilitate support and advice to help the individual to effect the role of an advocate. For example, the local authority should consider providing information about the *National Standards for the Provision of Children's Advocacy Services*.

**2.16** 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 proactively provide information about alternative sources of help. If the child prefers to use an advocate who is not provided in-house then the local authority should consider the request carefully and think about what steps it might take to meet the child's wishes.

#### **PUBLICITY ABOUT ADVOCACY SERVICES**

**2.17** 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.

**2.18** Many children and young people told us that they are not aware about how to make a complaint. Local authorities must have robust communication and publicity mechanisms to ensure children and young people, including those with additional communication needs, are aware of their right to advocacy when making or intending to make a complaint. The *National Standards for the Provision of Children's Advocacy Services* set out the Government's policy for publicity about children's rights and advocacy services.

The Government wants local authorities to:

- inform children and young people about advocacy and children's rights services if they intend or wish to make a complaint;
- provide help and assistance when children and young people want an advocate to speak for them.

**2.19** When a local authority first become aware that a child or young person wants to make a complaint, they should provide age-appropriate materials about children's rights and advocacy services and talk to the child or young person to explain these materials, answer any questions and ensure that they understand their rights. The range of materials available should include texting, Minicom and the use of symbols for children and young people with learning difficulties. Publicity should include translation into the child's first language where appropriate.

**2.20** As set out in the *National Standards for the Provision of Children's Advocacy Services*, appropriate materials and methods should be developed for children with little or no communication and those without literacy skills. Local authorities may wish to develop electronic methods of communication.

**2.21** Publicity materials about making a complaint and information about children's rights/advocacy services, appropriate to the ages of children and young people, should be given to all young people when they are first assessed as being in need and again when they become looked after. For children looked after, 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 children's rights services and be kept under regular review. Age-appropriate publicity materials should be accessible for children and young people with disabilities.

**2.22** 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.

# 3. Advocates and the Complaints Procedure

## INTRODUCTION

**3.1** Children's participation in decision-making about their own lives is a key principle of *Every Child Matters* and many local authorities have taken forward initiatives to ensure independent advocacy for children making a complaint. This guidance builds on these developments.

**3.2** Local authorities are required to 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. Following the recommendations of the Waterhouse report, *Lost In Care*, and the Utting report, *People Like Us*, some local authorities have appointed children's complaints officers who co-ordinate and monitor the provision of advocacy services for children and young people making a complaint.

**3.3** Regulation 4 requires local authorities to provide information about advocacy services and to offer help in obtaining an advocate to children and young people who have made a complaint or who have said that they intend to make a complaint. Regulation 6 amends the Representations Procedure (Children) Regulations 1991 (S.I. 1991/894) by inserting references to an advocate appointed to provide assistance under arrangements made by a local authority under section 26A of the Children Act 1989 to ensure that he or she is involved throughout the complaints process.

## THE CHILDREN'S COMPLAINTS OFFICER OR DESIGNATED COMPLAINTS OFFICER WITH RESPONSIBILITY FOR CHILDREN'S COMPLAINTS

**3.4** 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.

3.5 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 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.

#### THE CHILDREN ACT COMPLAINTS PROCEDURE

3.6 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 him. 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 currently operate three stages in complaints procedures:

- stage 1 – initial stage with the emphasis on problem solving leading to early resolution (the regulations only require this in relation to complaints made under section 24D);
- 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.

**3.7** A formal procedure is not the most appealing way for children to air grievances. There continues to be evidence that children in foster care appear less informed about complaints procedures than their contemporaries in residential care. Many local authorities have contracts with national advocacy organisations so that advocates routinely visit children’s homes and meet children in foster care in order to build relationships and identify emerging concerns or problems as early as possible. Children and young people themselves have stressed the importance of this, and we see it as being best practice and want to encourage such initiatives. As most looked after children live in foster care, local authorities need to consider how best to raise children’s knowledge of complaints procedures and how to facilitate regular contact with advocates.

**3.8** Children placed outside of the authority, those in foster care, children and young people who use alternative and augmentative forms of communication and those whose preferred language is not English are particularly vulnerable. Local authorities must make sure that the arrangements they make for providing advocacy services are able to provide an effective service to these groups of children.

**3.9** It is in no one’s interest for complaints to have to proceed to the formal stages of complaints procedures, where with sufficient attention and appropriate support at an early stage problems can be resolved effectively and speedily. Advocacy services have a very important role to play in the early identification and resolution of problems and complaints and local authorities should ensure that they make arrangements for services which are geared up to respond quickly.

### Case Study – Durham County Council

Durham County Council piloted a rapid involvement of advocacy services when a young person wanted to make a complaint. This was a pro-active approach to advocacy where the young person was immediately contacted by the children's complaints officer when a complaint was received. They were advised that an advocate would contact them to offer support if they wished. This removed the onus from young people to make the initial contact and then it was the young person's decision whether to take up the support on offer. The initial contact with the advocacy service would not be made if the child or young person objected to this action, thus the young person was still in control. The pilot has resulted in a higher take up rate of advocacy and has been incorporated into the service level agreement.

#### THE ROLE OF THE ADVOCATE IN THE COMPLAINTS PROCEDURE

**3.10** Regulation 6 amends the Representations Procedure (Children) Regulations 1991 by including references to any advocate appointed under the arrangements for provision of advocacy services by a local authority. So, for example, if there is such an advocate involved then a local authority must send him or her 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 his advocate and the advocate may speak on his behalf. The advocate's role is to help the child at the earliest possible stage. Successful early involvement could prevent young people having to use a complaints procedure at all. The advocate's role in the complaints procedures is:

- to empower children or 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 by working in partnership with children 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;
- 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.

**3.11** Advocacy is about empowering children and young people to make sure that their rights are respected and their views and wishes are heard at all times. In relation to complaints, we intend advocacy to mean the provision of assistance and representation to individuals to make complaints. Our intention is that this should involve the advocate

facilitating the making of a complaint which a child wishes to make, being led by the child's decision. An advocate should not prevent a child making a complaint because the advocate believes this is not in the child's best interests.

### **CHILDREN'S RIGHTS OFFICERS**

**3.12** There is increasing overlap of roles between advocates and children's rights officers. The local authority will need to give clear and age appropriate information to make sure that the child understands their separate roles and responsibilities and in particular where they can access individual advocacy support. Some local authorities have established children's rights services which deliver individual advocacy services. Many focus primarily on participation work.

### **INDEPENDENT REVIEWING OFFICERS**

**3.13** It is currently intended that the new Regulations and guidance are expected to come into force in September 2004. 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 and significant adults in their review process. They have an important role in checking that the child or young person is aware of their right to an advocate in relation to complaints. 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.

### **CO-ORDINATED WORKING BETWEEN INDEPENDENT REVIEWING OFFICERS (IROS), COMPLAINTS OFFICERS AND ADVOCATES**

**3.14** 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.

**TABLE 1: THE ROLE OF OTHER PROFESSIONALS IN THE COMPLAINTS PROCEDURE**

### **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 tasks of the independent person are to ensure that the process of investigation is open, transparent and fair and to work alongside the investigating officer to provide an independent 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.

### **Independent Visitor**

Of all the advisory and support roles established for looked after children and young people, the role of the Independent Visitor (IV) is closest to that of an advocate. IVs have statutory duties established by the Children Act 1989 which include visiting, advising and befriending the child. IVs should be recruited, trained, assessed and approved by local authorities to provide advice and befriending to any young person who has had no, or infrequent contact with their parents for over a year. They may advise the child on where to find, or who to ask for, particular information. The child or young person may wish the IV to speak as a friend on his behalf in order to help resolve a particular issue or difficulty.

# 4. Maintaining the Independence of the Advocate

## INTRODUCTION

**4.1** The independence of the advocate is essential for them to be able to act on behalf of the child or young person. The *National Standards for the Provision of Children's Advocacy Services* set out Government policy on the independence of advocacy services. Advocacy will only be used and is only possible 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.

## WHO MAY NOT BE AN ADVOCATE?

**4.2** Regulation 3 says who may not be an advocate when a complaint is to be or has been made. It says that 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:

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

**4.3** The intention is that no one who has an interest in the subject of the complaint and therefore in its outcome should be provided under the local authority's advocacy arrangements as 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. Therefore where there is a possibility that a person may be the subject of the complaint or otherwise come within regulation 3, then he or she should not be provided as an advocate in that case.

#### **INDEPENDENCE OF ADVOCACY SERVICES**

**4.4** There are a number of different models that the local authority 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.

**4.5** Current arrangements vary among local authorities, since many local authorities are at different stages in developing their advocacy and children's rights services. The most common arrangement is to outsource advocacy provision to a voluntary organisation. It is important that children 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 the service.

#### **CHILDREN'S RIGHTS SERVICES PROVIDING ADVOCACY IN THE CONTEXT OF COMPLAINTS**

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

#### **WHAT IS NOT APPROPRIATE?**

**4.7** 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.

#### **CONFLICTS OF INTEREST FOR ADVOCACY SERVICES**

**4.8** When advocacy services are provided by independent 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.

**TABLE 2: INDEPENDENT ADVOCACY SERVICES – CASE STUDIES**

### **Tower Hamlets**

Since the start of the Quality Protects programme, Tower Hamlets has used special grant funding to fund an independent children’s rights service for looked after children and care leavers. The service is provided via a service level agreement by the NSPCC. Individual advocacy is provided by the children’s rights officer who may be contacted directly by young people or via the Department’s complaints section.

The service has two main strands:

1. the provision of advocates for young people making complaints and representations; *and*
2. development work with young people, officers and elected members to promote the participation of young people in service improvement and scrutiny.

### **Hertfordshire**

Hertfordshire Children, Schools and Families commissions Voice for the Child in Care to provide services to Hertfordshire’s looked after children and care leavers. The service incorporates individual advocacy on a one to one basis; a visiting advocacy service to the county’s residential children’s homes; support to group work with looked after children and training for staff. Alternative advocacy supports are available and encouraged through the Youth Service, Connexions and POWhER which is the county’s supported independent advocacy service for young people aged 16 plus.

### **Gloucestershire Advocacy Project for looked after children**

Gloucestershire Independent Advocacy Network Team (GIANT) is a two year project that will run until 31 September 2005. It is an in house project for two years in order to:

- build up a clear picture of demand;
- develop practice and procedures;
- establish a Management Board;
- operate for at least a full year, then review; *and*
- determine the longer term position for advocacy provision from October 2005.

The Advocacy Co-ordinator provides some direct advocacy service as well as recruiting and managing sessional advocates. The service includes advocacy for looked after children making a complaint or expressing concerns and support for young people at review meetings.

The Co-ordinator is line managed by the Children's Rights Officer, and accountable to a new Management Board. The Children's Rights Service is 'in house' to social services, as part of the Quality Group in the Performance and Support Service section of Gloucestershire's Social Services Department. It is therefore outside the direct line management for children's social services and will not report to operational Children and Families managers.

The Advocacy Management Board has been established to advise and assist the local authority with the management of the Independent Advocacy Service, under the terms of the advocacy guidance and the National Standards for the Provision of Children's Advocacy Services. It consists of eight members including two independent people and two young people with experience of the Looked After System.

# 5. Monitoring Advocacy Services

## INTRODUCTION

**5.1** 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 should be the responsibility of the Director of Social Services.

## ANNUAL REPORTS

**5.2** Local authorities are already required under regulation 10 of the Representations Procedure (Children) Regulations 1991 made under section 26(6) of the Children Act 1989 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. Many local authorities produce annual or half yearly reports.

**5.3** 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.

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

## WHAT SHOULD THE ANNUAL REPORT INCLUDE ABOUT ADVOCACY?

**5.5** This report should include:

- a summary of statistical data about numbers, ages, gender, 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.

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

#### **MEASURING SATISFACTION WITH SERVICES**

**5.7** 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) and use of electronic methods.

# 6. Information Sharing and Confidentiality

## INTRODUCTION

**6.1** This section of the guidance sets out Government policy in sharing information and confidentiality at all stages of the complaints procedures.

## KEY PRINCIPLES – INFORMATION SHARING

**6.2** 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, letters about the complaint should be addressed to the child making the complaint, with a copy 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.

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

## CONFIDENTIALITY AND SAFEGUARDING CHILDREN

**6.4** The *National Standards for the Provision of Children’s Advocacy Services* set out Government policy on confidentiality. They state that advocacy services should have a clear policy based on the concept of ‘significant harm’ and make sure that this policy should be 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 – A guide to inter-agency working to safeguard and promote the welfare of children* (1999) 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.

**6.5** 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. The local Area Child Protection Committee should be consulted about providing appropriate training.

#### **WHAT TO DO IF YOU ARE WORRIED A CHILD IS BEING ABUSED**

**6.6** *What to do if you are worried a child is being abused* (2003) was issued by six Government departments. This practice guidance briefly summarises the key child protection processes but does not replace *Working Together to Safeguard Children* (1999) or the *Framework for the Assessment of Children in Need and their Families* (2000). It includes an appendix on information sharing to assist practitioners in understanding how to share information about children and their families in a lawful and ethical manner. The booklet communicates directly with people working with children and families and explains their role in the safeguarding process. It applies to all children and young people, irrespective of whether they are living at home with their families and carers or away from home. The booklet is designed to help people protect children more effectively, through a better understanding of what to do about any concerns, and particularly, when to refer them to social services.

# Annex A National Standards for the Provision of Children's Advocacy Services

The *National Standards for the Provision of Children's Advocacy Services* were issued as section 7 guidance in November 2002. A summary of the headings from the standards follows:

The Standards:

- Standard 1 Advocacy is led by the views and wishes of children and young people.
- Standard 2 Advocacy champions the rights and needs of children and young people.
- Standard 3 All advocacy services have clear policies to promote equalities issues and monitor services to ensure that no young person is discriminated against due to age, gender, race, culture, religion, language, disability or sexual orientation.
- Standard 4 Advocacy is well-publicised, accessible and easy to use.
- Standard 5 Advocacy gives help and advice quickly when they are requested.
- Standard 6 Advocacy works exclusively for children and young people.
- Standard 7 The advocacy service operates to a high level of confidentiality and ensures that children, young people and other agencies are aware of its confidentiality policies.
- Standard 8 Advocacy listens to the views and ideas of children and young people in order to improve the service provided.
- Standard 9 The advocacy service has an effective and easy to use complaints procedure.
- Standard 10 Advocacy is well managed and gives value for money.

Copies of the standards can be obtained from DfES Publications, PO Box 5050, Sherwood Park, Annesley, Nottingham, NG15 ODJ, tel. 0870 001 2345, by quoting reference 29606/National Standards for the Provision of Children's Advocacy Services.

# Annex B

**TABLE 3: OTHER LEGISLATION RELATING TO ADVOCACY**

## **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 116 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. It also amends the Children Act 1989 to ensure that the duty to provide advocacy for children making a complaint will extend to the stage of the process operated by the CSCI.

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