



# Advocacy for children

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Children and young people's advocacy in England

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## About the Commissioner

The Children's Commissioner for England is a statutory position created by the Children Act 2004. Its remit is to promote and protect children's rights in accordance with the United Nations Convention on the Rights of the Child, with particular responsibility towards children in care and other vulnerable groups. The Children's Commissioner's statutory powers include investigating 'the availability and effectiveness of advocacy services for children'.<sup>1</sup> The Children's Commissioner is therefore seeking to ensure that local authorities and other commissioners across the country arrange for children to have the best possible advocacy support.

## Introduction

This year marks the 30<sup>th</sup> anniversary of two pivotal moments which significantly changed the children's rights landscape. Thirty years ago, the United Nations adopted the Convention on the Rights of the Child (UNCRC), and the UK Parliament passed the Children Act 1989.

Article 12 of the UNCRC<sup>2</sup> and duties in the Children Act 1989 to ascertain and give due consideration to children's wishes and feelings signalled a seismic shift in the credence to be given to children's views about decisions and actions which affect their lives. There is, however, still much more to be done to make these rights a reality for all children. In spite of article 3 of the UNCRC,<sup>3</sup> England's efforts to systematically embed children's rights into the machinery of government are in their infancy, and too few services and public bodies are designed with children's best interests in mind. Despite some good intentions, this can also be the case with some children's services: in practice, statutory requirements, funding limitations, management priorities and professional processes can often take priority over children's wishes and feelings. Systems can become too rigid and inflexible to be able to respond effectively enough to individuals' needs and when more than one agency is involved the experience of the service can become even more disjointed.

Little surprise then that some children who rely on these services and support, particularly those in the care of the state, feel that they have no say.

Of course, skilled and dedicated professionals will do all they can to ensure that support is designed around the needs and best interests of the child, which properly takes into account their views and feelings. But the children contacting the Children's Commissioner's help service Help at Hand and the Department for Education funded Always Heard Advocacy Advice Line and Safety net show that in too many instances they fail. The reality these children experience is one of feeling unheard and powerless in a system that doesn't have the capacity, or the will, to listen and respond.

That's why independent professional advocates for children are so important. The National Standards for the Provision of Children's Advocacy Services define advocacy as follows: 'Advocacy is about speaking up for children and young people. 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. Advocacy is about representing the views, wishes and needs of children and young people to decision-makers, and helping them to navigate the system.'<sup>4</sup>

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<sup>1</sup> Section 2(3)(g) Children Act 2004.

<sup>2</sup> Article 12 entitles children to express their views freely in all matters affecting them, and to have these views given due weight in accordance with the child's age and maturity.

<sup>3</sup> Article 3 requires that children's best interests are a primary consideration in all actions concerning children.

<sup>4</sup> Department of Health (2002). National standards for the provision of children's advocacy services.

Children need independent advocacy to ensure their wishes and feelings are listened to, and their rights are respected. The child in care that is being moved from area to area against her wishes because money must be saved. The teenager leaving custody still not knowing where he will live the next day. The autistic child in hospital, who is regularly being chemically restrained, and has no discharge date in sight. The care leaver being refused accommodation because the councils involved can't agree who is responsible. The teenager in a secure mental health hospital who can't go on home visits because there are staff shortages and no-one is available to carry out an assessment. The child who has been trafficked into this country, and has to interact with an overwhelming number of professionals to get appropriate support. The child in a residential special school who is frequently restrained and desperately unhappy. The child in a secure hospital, ready to go back to the community, but stuck in the institution because money can't be found to pay for it. The child in custody who has been segregated for over a week and feels overwhelmed and unable to challenge the decision. The disabled child who is not getting the support that is theirs by right. The child facing exclusion from school after a violent outburst whose teachers don't realise he witnesses domestic abuse most nights at home. Finding your way through systems and services is a challenge for most adults but for the most vulnerable children who depend on them, it can be impossible.

Advocates look out for children in the system, building trusting relationships and giving strength to children's views. Essential when problems and rights violations occur and things need to be put right, the work of the advocate is also about working constructively with service providers to create a positive eco system where children's wishes, feelings and rights are understood, heard, respected and upheld in practice. The effective advocate is as visible and approachable to children as they are confident and well regarded by senior management. Advocates are part and parcel of a high quality service - an essential safeguard to ensure children do not get overlooked and lost in the system.

Yet this review of advocacy provision in England, including the responses to statutory data request to all Directors of Children's Services, suggests that advocacy support for children is often overlooked and undervalued. Advocacy can be in short supply as some cash-strapped councils cut budgets and hope for the best. This is despite clear legal obligations to ensure children and young people have such services – see pages 30 to 31. Help at Hand has heard of whole councils with advocacy teams made up of just two or three people. Some have even removed the roles altogether leaving children to fend for themselves. The Department for Education's national phone line provides safety cover if needed – but the failure by some councils to provide services is not good enough.

Where advocacy teams do exist, the quality of provision is too often a lottery. There are pockets of brilliant practice, with advocacy teams proactively reaching out to children, and giving excellent one-to-one support, as well as systematically feeding views and concerns back to senior managers. These are services which are known, respected and trusted by children and young people. In far too many places, though, they are sadly on the periphery with rooms at the end of a corridor out of sight of the children who need their help. Little surprise then that many children have no idea what advocacy is or how they might get help. This is by no means always the case and there are many impressive, dedicated advocates doing great work. But it can often feel that they do so despite the systems around them - more often a credit to their own fortitude and doggedness than respect and value for the role as an essential of upholding the rights of children and young people.

Expectations of public services are changing and it is no longer considered acceptable to put the needs of the service before that of the individual. Which is why the ambition for child-centred, personalised support for the most vulnerable children and young people must remain high. The ambition to raise quality and improve outcomes for vulnerable children and young people are at the heart of children's services plans throughout the country. Investing in high quality advocacy support is essential to make this happen.

## About this report

This report follows previous studies commissioned by this Office<sup>5</sup> and by other recent research into advocacy. This work builds on research by the Children's Commissioner in 2016, which also explored the provision of advocacy across England and found substantial variation across local authorities, with spend per child or young person ranging from £2 to £668<sup>6</sup> each year.

This report intends both to take stock of advocacy provided by local authorities three years on and to highlight ongoing issues observed by the Children's Commissioner's Help at Hand service, which provides advice and help to children in care. This research is not a complete review of advocacy provision in England, rather it is intended to contribute to ongoing work to promote support for effective advocacy and to ensure that children and young people receive a good service wherever they are. While many people can act as a child's advocate by helping them to have their voice heard, this report focuses on independent, professional advocacy, to which children and young people are entitled by law and statutory guidance.

Sir Martin Narey's 2018 fostering stocktake stated that children in foster care should be made aware of their right to advocacy, to ensure they become more empowered in the decisions being made about their lives.

The report recommended the following:

*'It is time to reinforce the statutory guidance that children should know their rights to advocacy and how to access an advocate and urge the Department for Education to work with the Children's Commissioner and voluntary sector providers of advocacy, including Coram Voice and NYAS, to ensure this is done.'*

This report sets out to support this recommendation, by exploring the provision of advocacy across England, and make recommendations to Government and others based on the findings.

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<sup>5</sup> Brady, L. op cit, (2011). Helping children get the care experience they need Independent advocacy for children and young people in care

<sup>6</sup> Children's Commissioner for England (2016). Advocacy: Access and Outcomes for Young People.

## A shared vision for advocacy

This report has been guided by an expert working group, with input from the wider advocacy sector and members of the National Children's Advocacy Consortium.

The Children's Commissioner would like to thank:

### The working group:

- > Brigid Robinson, Coram Voice (on behalf of the National Children's Advocacy Consortium, co-chaired by Julie Prior, NYAS)
- > Carlyne Willow, Article 39
- > David Graham, The Care Leavers' Association
- > Emily Dobson, Young Minds
- > Emma Sparrow, RCPCH
- > Jon Fayle, NAIRO
- > Jonathan Stanley, Independent Children's Homes Association
- > Marc Bush, Young Minds

### Advocacy services who provided valuable input to the research:

- > Barnardo's
- > Birmingham Children's Trust Rights and Participation Project
- > Coram Voice
- > Derby Children's Hospital's Youth Service
- > Ferndene and Alnwood advocacy services
- > Just for Kids Law
- > The Mother and Child Project (Central England Law Centre and the Astraea Project)
- > NYAS (the National Youth Advocacy Service)

Special thanks are also extended to John Kemmis, who was instrumental in beginning of this project.

The Children's Commissioner and the working group have developed a shared vision for advocacy provision in England. We envisage a country which provides highly visible, local independent services which are able to support children and young people to be heard, and to promote and protect their rights. There should be parity across different services and settings, drawing upon specialist advice and advocacy when necessary.

Advocates should work with the core values of:

<b>DIGNITY</b>	Advocates respect the equal worth and dignity of every child, working with children as a partner to uphold their rights.
<b>PERSONAL POWER</b>	Advocates help to build up children's personal power.
<b>YOUR PACE</b>	Advocates work at the individual's pace and follow their instructions.
<b>INFLUENCE</b>	Advocates do whatever they can to help children make and influence decisions.
<b>TRUST</b>	Advocates earn children's trust. They are there for children, not for professionals or service providers.
<b>RESULTS</b>	Advocacy should achieve results. The child is the judge of whether having an advocate has helped, or not.
<b>IMPROVE</b>	Advocacy services are designed for and with children; they learn from children's views and ideas to constantly improve.

## Background of children's advocacy in England

Independent advocacy has long been recognised as a vital mechanism to empower children to be involved in and/or challenge decisions made about their lives. The desire to uphold children's rights sought not just to protect children in law, but also to recognise and support children's agency. The importance of this protection and empowerment was highlighted in the 1980s when horrific scandals of abuse suffered by children in institutional settings were came into public view. Other instances of large scale institutional abuse in England and Wales were investigated by various public enquiries throughout the 1990s which emphasised the necessity of listening to children, and drew sharper focus on the need to have dedicated professionals to support and be there for children. The Waterhouse Inquiry's findings *Lost in Care* and Utting's review *People like us. The report of the review of the safeguards for children living away* both stressed the importance of advocacy services for looked after children.<sup>7</sup> The first legislative breakthrough for children's advocacy came with the Adoption and Children Act 2002 (amended Children Act 1989), and The Advocacy Services and Representations Procedure (Children) (Amendment) Regulations 2004, which required local authorities to make arrangements for advocacy support for children and young people in receipt of social care services who wanted to express their views or make a complaint.

Extensive research into children's agency, participation and empowerment has continued to stress the importance of children and young people's advocacy services and the benefit, by way of expert advice and lived experience that children's involvement can deliver to services and decision-making. There is also a growing ambition to involve children in a yet more meaningful way, through co-production of services. The Social Care Institute for Excellence explains:

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<sup>7</sup> Marian Stuart and Catherine Baines, 2004. Progress on safeguards for children living away from home, a review of actions since the People Like Us report.

A 15 year old boy in a children's home would not agree to a new placement as the local authority was not listening to his wishes, in contravention of the law. His advocate liaised with the IRO and Help at Hand and secured agreement that the local authority would properly consult with him when new placements were being considered. The advocate's efforts were successful and the young person was offered a new placement that he likes and feels is right for him.

*Example of a child helped by Help at Hand*

'Co-production of health and care services with children and young people will help them to feel more independent and in control of the services they use. Their involvement will develop and deliver better care services'.<sup>8</sup>

The past 30 years has seen an impressive shift towards involving children and young people in the design, development and evaluation of services. In keeping with the UK's international law obligations, statutory guidance provides that Directors of Children's Services 'should have regard to the General Principles of the United Nations Convention on the Rights of the Child (UNCRC) and ensure that children and young people are involved in the development and delivery of local services'.<sup>9</sup>

Within the health context, one successful example is the process by which the 'Not Just a Thought' communication model was developed. Children and young people worked in conjunction with NHS England North, University of Salford & The Pennine Acute Hospitals NHS Trust, using co-production techniques to design a model of how health professionals should communicate with young people, particularly with regard to their safety.<sup>10</sup>

## What the law says

Article 12 of the UNCRC grants all children the right to be heard and taken seriously in all matters affecting them. In addition to this overarching right, the child must be offered the opportunity - and assistance when required - to be heard in proceedings affecting them:

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

The Committee on the Rights of the Child's General Comment on article 12 provides a wide interpretation of 'judicial and administrative proceedings':

*The Committee emphasizes that this provision applies to all relevant judicial proceedings affecting the child, without limitation, including, for example, separation of parents, custody, care and adoption, children in conflict with the law, child victims of physical or psychological violence, sexual abuse or other crimes, health care, social security, unaccompanied children, asylum-seeking and*

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<sup>8</sup> <https://www.scie.org.uk/co-production/people/young>

<sup>9</sup> Department for Education (2013) Statutory guidance on the roles and responsibilities of the Director of Children's Services and the Lead Member for Children's Services.

<sup>10</sup> 'Not Just a Thought' A Communication Model, learning with children, young people and young adults about how we can keep them safe. [NHS England North](#), [University of Salford](#) & [The Pennine Acute Hospitals NHS Trust](#)



*refugee children, and victims of armed conflict and other emergencies. Typical administrative proceedings include, for example, decisions about children's education, health, environment, living conditions, or protection. Both kinds of proceedings may involve alternative dispute mechanisms such as mediation and arbitration.*

*The right to be heard applies both to proceedings which are initiated by the child, such as complaints against ill-treatment and appeals against school exclusion, as well as to those initiated by others which affect the child, such as parental separation or adoption.<sup>11</sup>*

In respect of the child's views being heard through a representative, the Committee states that, 'The representative must be aware that she or he represents exclusively the interests of the child and not the interests of other persons (parent(s)), institutions or bodies (e.g. residential home, administration or society). Codes of conduct should be developed for representatives who are appointed to represent the child's views'.<sup>12</sup>

Domestic legislation in England does not grant children and young people a universal entitlement to independent advocacy when they need it. The default assumption is that most children live within protective familial structures and that, if the need arises, families should be able to advocate on children's behalf. Provisions are made, however, for certain children and young people to access advocacy. The statutory right to advocacy, and other arrangements made in addition to this, usually apply when children and young people are at their most vulnerable, and at heightened risk of not being heard or suffering rights violations. In these situations, children and young people often require independent advice, support and advocacy to interact with the systems and professionals making pivotal decisions about their lives.

Children's entitlement to statutory advocacy is determined by virtue of their circumstances, namely their care status, physical and/or mental health needs, special educational needs and disabilities, or their position in the youth justice system. The following list outlines the groups of children who are entitled to statutory advocacy support:

- > 16 and 17 year olds who are homeless
- > 16 and 17 year olds who lack mental capacity
- > Care leavers
- > Children and young people in custody
- > Children and young people in England who are detained under the Mental Health Act
- > Children and young people in receipt of social care services (including child protection) who wish to make a representation (including a complaint, and those subject to child protection processes)
- > Children and young people living in children's homes
- > Children in receipt of health services who wish to make a complaint,
- > Children who may continue to need care and support in adulthood
- > Children with special educational needs and disabilities
- > Looked after children and young people who go missing
- > Looked after children whose care and progress are being reviewed
- > Young carers

*Additional detail on the patchwork of legislation and statutory guidance that grants these different groups of children and young people the right to statutory advocacy is in the Appendix.*

The approach to providing advocacy support to vulnerable adults, however, is quite different.

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<sup>11</sup> Committee on the Rights of the Child, Fifty-First Session, Geneva, 25 May-12 June 2009. General Comment No. 12 (2009). The Right of the Child to Be Heard.

<sup>12</sup> Committee on the Rights of the Child, Fifty-First Session, Geneva, 25 May-12 June 2009. General Comment No. 12 (2009). The Right of the Child to Be Heard.

Where a local authority considers that an adult would experience substantial difficulty in doing one or more of the following things, and there is no-one else appropriate to represent and support their involvement, it has a legal duty to arrange an advocate for that person:

- (a) understanding relevant information;
- (b) retaining that information;
- (c) using or weighing that information as part of the process of being involved;
- (d) communicating the individual's views, wishes or feelings (whether by talking, using sign language or any other means).

The duty to arrange advocacy for adults applies to social care assessments, care and support plans, caring responsibilities and safeguarding enquiries and reviews.<sup>13</sup> The legal basis for advocacy for adults within the social care context is, therefore wider and stronger than for children. Children are often unable to participate meaningfully in decision-making processes affecting them. They are trying to interact with systems which were not designed with them in mind, and many of these children do not have someone in their corner who can support their involvement and push for their right to be upheld. This applies in many circumstances outside of those in which advocacy is provided by current legislation. Children who are excluded or off-rolled from school, for example, are unlikely to be able to fully participate in the process and challenge decisions at the highest level. For the most vulnerable children, their families may also be ill-equipped to challenge effectively complicated systems.

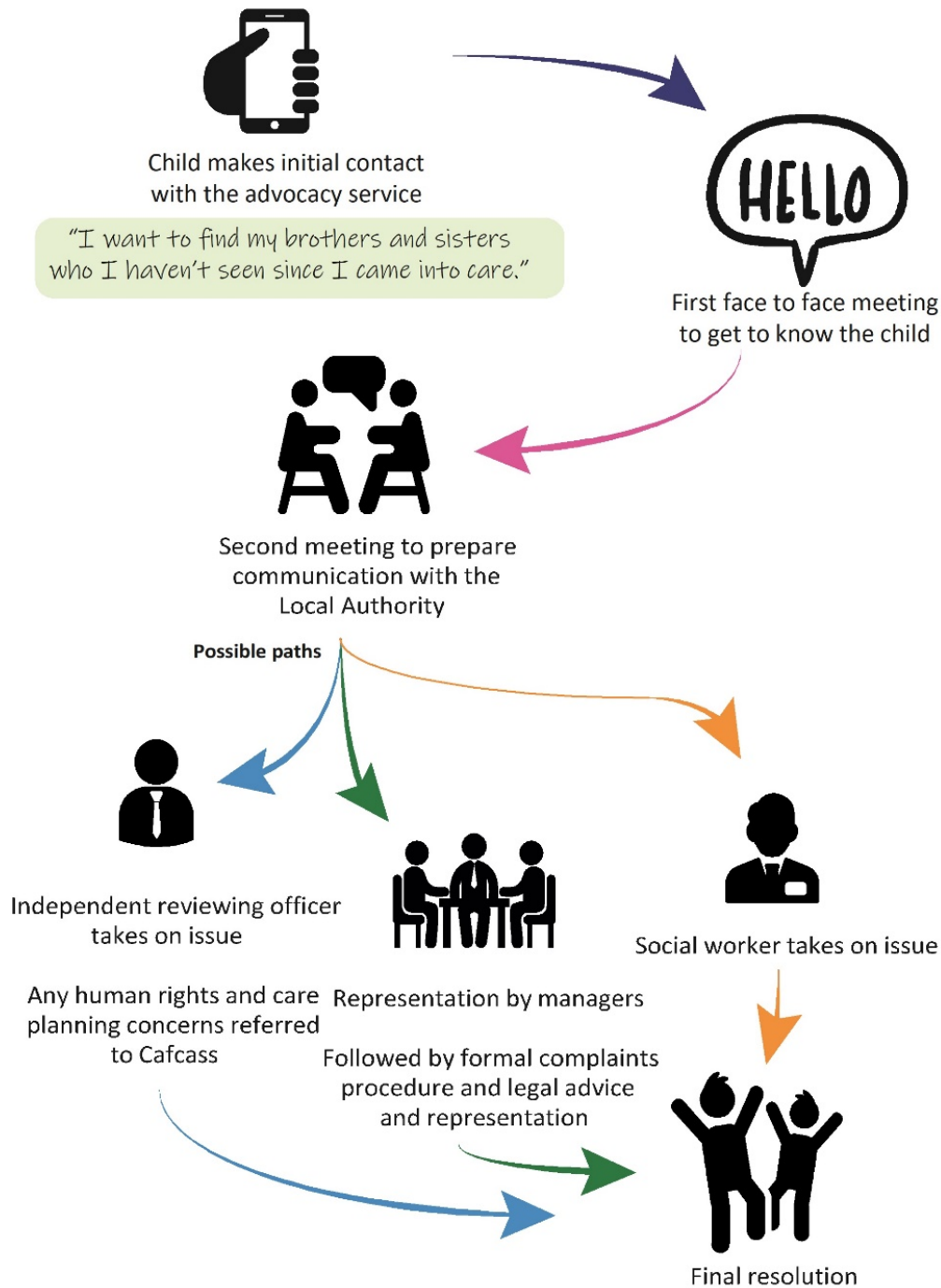
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<sup>13</sup> Sections 67 and 68 Care Act 2014.

## When things go wrong

- In 2016 it came to light that children had suffered abuse at the hands of those meant to care for them at Medway secure training centre (STC), a stark reminder of how abusive environments can remain unchallenged when children are not empowered to speak out or their perspectives are not taken seriously. The 2019 Medway Serious Case Review (SCR) also highlighted serious failings in the mechanism for advocates to refer safeguarding complaints to the Local Authority Designated Officer. This was said to be the result of contractual arrangements between the Youth Justice Board and Barnardo's, the provider of advocacy services to children detained in Medway STC. This, coupled with advocates' lack of visibility to children and young people, were cited in the SCR as key issues for Barnardo's to address.
- The Independent Inquiry into Child Sexual Abuse's report into custodial institutions found there were more than 1,000 incidents of alleged child sexual abuse reported at young offender institutions, STCs and secure children's home between 2009 and 2017, a figure much higher than previously known. The Chair of the Inquiry, Alexis Jay, said on the publication of the report: 'The harrowing accounts of non-recent child sexual abuse within custodial institutions were some of the worst cases this Inquiry has heard. But I am also deeply disturbed by the continuing problem of child sexual abuse in these institutions over the last decade. It is clear these children, who are some of the most vulnerable in society, are still at risk of sexual abuse'.
- Recent prominent cases of children stuck far away from home, in inpatient care, have highlighted the system's failure to protect children's rights. Far too many children in England are admitted to hospital unnecessarily, or are unable to be discharged due to a lack of appropriate care in the community. This leads to a cycle of increasingly restrictive practices and rights violations, including reliance upon restraint and seclusion. Last month, the Care Quality Commission's interim report from its review of restraint, prolonged seclusion and segregation for people with a mental health problem, a learning disability and/or autism recommended a strengthening of the role of advocates.

# Journey of the child



The advocate supports the child to get their issue resolved throughout the whole process. Although the child approached the advocacy service with a particular request, s/he may be satisfied with a different outcome than the one originally agreed. The advocate will offer the child ongoing support throughout and afterwards.

## How children access advocacy

In the **community** the majority of local authorities commission advocacy services from external organisations though some provide in-house.

In **residential** placements, like children's homes and mental health units, the local authority and/or service provider employ visiting advocates. The majority of visiting advocates are employed on a sessional basis by large advocacy providers.

**Health** children can access advocates to help them complain about health services. They can also have Independent Mental Health Advocates if they are detained in mental health units and/or are being considered for electro convulsive therapy. Children's health advocacy services are commissioned by local authorities and by health settings themselves.

**Secure** Barnardo's independent advocates are contracted by the MoJ to deliver services in YOIs and STCs.

**Safety net advocacy** Always Heard, commissioned by the DfE signposts children to their local advocacy services and when they cannot get advocacy provides intensive safety net advocacy support making sure they are not left without an advocate. The Children's Commissioner's Help at Hand service intervenes and supports young people to get advocacy and escalates issues where necessary.

## Children's Commissioner's 2019 data request to local authorities

The Children's Commissioner issued a statutory information request to the Director of Children's Services (DCS) in all local authorities in England, to learn more about the provision of advocacy. This was intended to explore the types of services being provided and commissioned in local areas, the cost of these services and to attempt to identify the level of demand. 119 local authorities responded to the request, however the completeness of the data varied greatly between local authorities.

The data request was designed to find out whether or not local authorities provided advocacy services to children from these eligible groups in line with their statutory responsibilities, and what the provision/commissioning arrangements for these services were. The groups were divided into six categories that corresponded with the local authorities' statutory responsibilities (presented in alphabetical order): care leavers, children complaining about health services, children over 16 who lack mental capacity, children in mental health settings, children with special educational needs and disabilities and children in receipt of social care services who wish to make a representation (including a complaint). The final category relates to non-instructed advocacy. 'Non-instructed advocacy' is advocacy support which does not require children to instruct an advocate – it is used for children who cannot lead the advocacy process e.g. children with disabilities or communication needs, or babies and very young children.

This data request focused on local authorities' broad compliance with their statutory responsibilities and, as such, questions were not asked in a way that allows for subsets of children to be counted in the results. For example, any results under the category 'children in receipt of social care services who wish to make a representation (including a complaint)' could not be broken down into its constituent parts i.e. looked after children, children in need, child protection etc. Data from the Always Heard safety net advocacy service has been used to add context in respect of these different groups.

## How advocacy services are provided

We asked local authorities what arrangements they have made for advocacy services where a legal duty exists (e.g. whether they contract with an external organisation or provide in-house). There is a large degree of variation in rates of local authorities' ability to report whether or not they provide services to different eligible groups. The below table sets out the percentage of local authorities who said they **did not know how services were provided** for particular groups.

Group/advocacy type	Don't know
Care leavers	0%
Health complaints	29% (33)
Lack mental capacity	1% (1)
Mental health	17% (19)
Non instructed	23% (26)
SEN and disabilities	7% (8)
Social care complaints	8% (9)

Table 1

(Numbers in brackets correspond to the number of Local Authorities)

All local authorities that responded could report how advocacy support was provided for care leavers, whether through a contract with an external organisation, in-house provision or spot-purchasing arrangements.<sup>14</sup> In stark contrast, however, 29% of local areas did not know how complaints advocacy for children in receipt of health services was delivered. This is in spite of the transfer of this responsibility to local authorities from the Secretary of State for Health in 2012.<sup>15</sup> Qualitative responses made clear that some local authorities were aware that such services did exist, sometimes provided through contracts managed by Clinical Commissioning Groups, which are NHS bodies responsible for the planning and commissioning of health care services for their local area. However, local authorities were unable to report how many children had accessed these services. Other areas reported that while their services did not usually provide advocacy for children in relation to health complaints, if a looked after child (or other eligible child) needed support to submit a health complaint they would be supported.

### Local authority arrangements for statutory advocacy (excluding local authorities that answered don't know)<sup>16</sup>

Group	Contract with an external organisation	In-house provision	No provision	Partial provision (for some of the children in the group, but not all)	Spot-purchase
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<sup>14</sup> (where no fixed contract is used, but councils make arrangements to buy-in services as needed) The Children's Commissioner's office is aware that some local authorities purport to have spot-purchasing arrangements in place for certain groups or individuals where necessary, when in fact they either do not provide a service for these children or if they do, it is only after very long waits. The Help at Hand service recently intervened after a young person reported they had waited for 9 weeks to be assigned an independent advocate through spot-purchasing arrangements.

<sup>15</sup> Health and Social Care Act 2012, Section 185

<sup>16</sup> As there is not a discrete group for children in care it may be that some of the responses to non-instructed, SEN and disability etc. include children in care and may therefore be over reported.

<b>Care leavers</b>	62% (70)	29% (33)	0	5% (6)	<b>3% (3)</b>
<b>Health complaints</b>	41% (32)	9% (7)	22% (17)	25% (20)	<b>4% (3)</b>
<b>Lack mental capacity</b>	59% (66)	31% (34)	1% (1)	5% (5)	<b>5% (5)</b>
<b>Mental health</b>	48% (45)	19% (18)	6% (6)	18% (17)	<b>8% (7)</b>
<b>Non instructed</b>	30% (26)	14% (12)	19% (16)	29% (25)	<b>8% (7)</b>
<b>SEN and disabilities</b>	40% (42)	30% (31)	7% (7)	20% (21)	<b>3% (3)</b>
<b>Social care complaints</b>	43% (44)	30% (31)	4% (4)	20% (21)	<b>3% (3)</b>

Table 2

(Numbers in brackets correspond to the number of Local Authorities)

## Referral and representation data

A high proportion of local authorities who returned figures, did not know how many referrals and representations had been made under each statutory requirement.<sup>17</sup>

The table below shows the proportion of local authorities who provided advocacy services for various groups of eligible children, but were **not aware of how many referrals and representations were made on behalf of each group**. Some local authorities explained that the way in which the data was collected did not allow them to disaggregate the figures into different eligible groups. This was not reported by all.

Highest rates of not knowing the number of referrals/representations were reported for SEN and disabilities, health services and mental health advocacy. Only 28% of local authorities could report the number of referrals and subsequent representations for children with SEN and disabilities. Statutory provision for access to advocacy for children with SEN and disabilities is reliant upon the local authority assessing whether or not the young person needs support in expressing their views. As such it is odd that 68% of local authorities do not keep track of how many of these children are referred for and receive advocacy.

66% of local authorities reported that they did provide health complaints advocacy, but could not report how many children were supported by these services. While a proportion of this figure is likely to be explained by commissioning structures and difficulties sharing and accessing data from partners in health, this is unlikely to account for the whole amount. It may be the case that children are expected to access health advocacy services designed for adults, which would be a cause for concern.

Group	Referrals and Representations not known	Referrals and Representations known	Referrals not known	Representations not known
<b>Care leavers</b>	14% (16)	67% (75)	19% (21)	<b>29% (32)</b>
<b>Health complaints</b>	66% (41)	27% (17)	68% (42)	<b>71% (44)</b>

<sup>17</sup> The data around the referrals and representations was incomplete. Differences in recording practices contributed to the bad quality of the data. As such, the findings in this section are indicative but not wholly representative.

<b>Lack mental capacity</b>	43% (47)	46% (51)	45% (50)	<b>51% (56)</b>
<b>Mental health</b>	68% (59)	29% (25)	69% (60)	<b>70% (61)</b>
<b>Non instructed</b>	59% (41)	33% (23)	60% (42)	<b>66% (46)</b>
<b>SEN and disabilities</b>	68% (66)	28% (27)	69% (67)	<b>71% (69)</b>
<b>Social care complaints</b>	49% (49)	38% (38)	52% (51)	<b>60% (59)</b>

Table 3

(Numbers in brackets correspond to the number of local authorities. Survey participants could give multiple responses, therefore not all sums add up to 100%)

### Knowledge of referrals and representations by type of provision

The data indicates a relationship between provision that is spot-purchased and local authorities not knowing how many referrals and representations were made per group.

In 81% of instances where provision was spot purchased, local authorities could not report the number of referrals and representations made. This compares with 43% for contracts delivered by an external organisation and 45% for in-house provision. This finding is concerning, as it demonstrates that even where services are being provided, there is a lack of central oversight at a local level.



Type of provision	Referrals and Representations not known	Referrals not known	Representations not known
Contract with an external organisation	43% (140)	45% (147)	<b>53% (172)</b>
In-house provision	45% (74)	48% (80)	<b>51% (85)</b>
Partial provision (for some of the children in the group, but not all)	70% (80)	70% (81)	<b>73% (84)</b>
Spot-purchase	81% (25)	81% (25)	<b>84% (26)</b>

Table 4

(Numbers in brackets refer to the number of instances of type of provision across all 7 categories)

## Demand for statutory advocacy

Using referrals/ representations data and population rates, a figure for the maximum possible level of demand for advocacy has been estimated for two areas of statutory responsibility. This figure is derived from national statistics, and denotes the total possible number of care leavers and children in receipt of social care services.<sup>18</sup>

The highest demand was found among care leavers, where there was an average of 3 referrals for every 10 young people. This means though, that the current level of provision sees (at most) 30% of all eligible care leavers accessing advocacy services.

The rate for advocacy support for children in receipt of social care services was 0.2 referrals per child.

<sup>18</sup> Populations are taken from the following sources - Care leavers: 17-21 rate of care leavers pro-rated to 17-25 population: Source DfE Looked After Children Statistics, Children with any CIN episode during the year: Source DfE Characteristics of Children in Need 17/18, Children with SEN at January 2018: Source DfE SEN statistics 2017/18. To note, 9% of CIN have a primary need code of illness/disability.

## Conversion rates

Local authorities were asked how many individual referrals resulted in representations being made – in this instance ‘representation’ denoted a case being taken forward.

Referrals and representations data for social care complaints was quite incomplete, with only 36 local authorities returning data in both categories. This is alarming as in the social care complaints and representations regulations, local authorities have a duty to report at least every 12 months on their complaints management arrangements, including the provision of advocacy services.<sup>19</sup> Additionally, the clearest statutory entitlement to advocacy for children is in the context of complaints - if a young person seeks to use the complaints service they should be informed of advocacy support. If a young person confirms that they would like to be supported by an advocate, then the local authority has a duty to help them get one. It seems unlikely that this duty is being fulfilled, given that only 49% of referrals to advocacy services for children wishing to make a complaint were taken forward (see Table 5 below).

Group	Referrals	Representations	Number of LAs with complete data	Conversion rate (Representations per referral)
Care leavers	10582	9438	70	0.89
Health complaints	59	59	17	1.00
Lack mental capacity	1068	1058	48	0.99
Mental health	189	189	25	1.00
Non instructed	36	35	23	0.97
SEN and disabilities	183	164	26	0.90
Social care complaints	3553	1751	36	0.49

In 2016, when this office last researched advocacy services, referrals for advocacy from looked after children and care leavers amounted to fewer than half of the total referrals for advocacy support. Overall 54% of the children supported were from those groups. In stark contrast, current data suggests that care leavers alone accounted for **67.5% of all referrals**, and represented **87.6% of children supported**. A certain degree of overrepresentation is expected, because of how easily care leavers can fall between services. Care leavers often struggle to access adequate support as they face complex issues and can experience service failures when transitioning between looked-after and leaving care teams. Additionally, it is possible that they are more likely to seek out independent support of their own volition, as opposed to younger children who may be less aware of services. In spite of this, there appears to be a large jump in the overall proportion of services being accessed by care leavers in comparison to other groups.

Within these figures, however, there was a large variation by local authority. The table below shows that 49% of local authorities made representations on behalf of 100% of care leavers who were referred, while the **lowest conversion rate for care leavers stood at 3%**. Those instances where there is a conversion rate of less than 75% for care leavers, warrant further investigation. Coram Voice’s Always Heard Safety net advocacy service’s statistics add context to these figures. Coram Voice reported that in 2018-2019, 24% (32) of local

<sup>19</sup> Representations Procedure (Children) Regulations 1991, Statutory guidance: Getting the Best from Complaints. Social Care Complaints and Representations for Children, Young People and Others

authorities that they worked with either restricted or prohibited care leavers' access to advocacy support. Some local authorities enforce age restrictions, limit service provision e.g. only offering complaints services, or in the most extreme cases offer no service to care leavers.<sup>20</sup>

Group	Min conversion rate	Mean conversion rate	Median conversion rate	Number of Las with at least 10 referrals	% LAs with 100% conversion rate	% LAs with <75% conversion rate
Care leavers	0.03	0.89	0.99	67	49	10
Health complaints	1.00	1.00	1.00	2	100	0
Lack mental capacity	0.76	0.98	1.00	22	86	0
Mental health	1.00	1.00	1.00	3	100	0
Non instructed	1.00	1.00	1.00	1	100	0
SEN and disabilities	0.74	0.94	1.00	4	75	25
Social care complaints	0.07	0.89	1.00	26	69	12

Table 5

Note: table is limited to LAs reporting at least 10 referrals. Conversion rate = representations per referral

### Local authority expenditure on statutory advocacy

From 2016/17 to 2017/18 there was an 11% increase in the overall spend on advocacy across all local authorities, compared with a 3% increase from 2017/8 to 2018/19.<sup>21</sup> Within these figures, however, is at least one local authority whose spending halved in both years. This compares to a year on year overall budget increase of 5-6% for advocacy services in 2016.

Within this period, though, there has also been a steady increase in the number of children looked after and the number of children in need, the main groups who local authorities report have been using advocacy services.

Local authorities reported a large variance in the amount of money spent on advocacy services. Using the annual estimates for the cost of services (including on-costs for in-house provision), and the referrals data, a figure per referral was estimated. This was based on data returned by 68 local authorities.

The highest spend per referral was £3018.84, while the lowest spend per referral was £21.20. This variation could point to a large disparity in the level of service provision across local authorities. It is also possible that this is further evidence of imperfect referrals data.

<sup>20</sup> Always Heard – The national Advice and Advocacy Safety Net for children in and leaving care, the First 12 months, November 2018)

<sup>21</sup> Note: these figures exclude two outlier local authorities with large year on year changes compared to others

Mean spend per referral	Median spend per referral	Lowest spend per referral	Highest spend per referral	Number of LAs
666.13	510.66	21.2	3018.84	68

Table 6

## Summary

Advocacy provides key measures of children and young people’s experiences of services, systems and decision-making, and access to advocacy can be a vital safeguard of their welfare and well-being. Not enough is known about the arrangements made by local authorities in respect of different groups of children, even when these services are being paid for by the authority. At the very least, this data collection highlights a lack of information-sharing across different parts of local authorities, and services. But it could also mean many children and young people are not receiving essential advice, support and representation to which they are entitled by law.

Local authorities’ requirement to provide advocacy in respect of representations (including complaints) covers all children in need and those looked after. Statutory guidance requires provision specifically for children in care in a number of circumstances, yet only a small proportion of those children actually gain access to advocacy. This research also highlights how little is known about services provided for children with SEN and disabilities, with mental health issues and those wishing to make health complaints. The information known about services provided to eligible children and young people is yet more incomplete when spot-purchasing arrangements are in place, which casts doubt on the oversight local authorities have of these arrangements, or indeed whether or not they are being used appropriately.

This research suggests that there is a significant group of children being denied advocacy, despite having a statutory entitlement to access it. In some local authorities, less than 75% of care leavers’ referrals are taken forward, despite the vulnerability of this group by virtue of the period of transition they find themselves in.

As in the Commissioner’s 2016 research, we have found that there is substantial variation in the provision of advocacy, not least when considering the variation in the amount of money spent on advocacy services across the country. There is considerable evidence that a postcode lottery continues to exist.

## Children's experiences of advocacy

When speaking to children and young people, particularly those with experience of the care, justice and/or health systems, a common theme is the belief that professionals don't listen to them, or attach the same value to their opinions as those of adults.

*'Because everyone just listening to the adult people and ignoring the opinions of young peoples and children. So, they don't, no one, a lot of people don't care about their [children's] feelings and their opinions, but maybe that's why they're neglected, and they have a rude behaviour with people, with teachers, with parents because of that. Because their point of view's not heard, I think that's important to hear everyone's point of view.'* (Teenage refugee)

*'... just speak to the children instead of the adults. Like the adults in our eyes, they only know what they've been told, whereas the kids actually know what's like going on.'* (Boy in care)

While professionals have to make decisions based on children's best interests rather than their wishes and feelings alone, too often these decisions are not properly explained to children and their views and feelings are not given sufficient importance in these processes. This leaves them feeling disempowered and let down.

*'It's like I don't want to have to go, this is my home now, so you're going to remove me from here, where I've been for four or five years, to go and live with someone else who I don't know, and it kill, it kills you, do you know what I mean? That, that actually kills you.'* (Teenager in care)

There is a large body of literature exploring children's experiences of advocacy. One consistent theme is that children feel that the most important outcome of advocacy is being listened to. This is often intrinsically linked to valuing and respecting children and young people and their views. One young person explained:

*'[My advocate] has helped me a lot, and I felt like I was an outcast in meetings and like cos I didn't know how to say my words, everything like that I felt like a little person.... so she showed me how to stand out and really they listened to me more.'*<sup>22</sup>

Another said:

*'[My advocate] made me feel like I was worth something, not just dashed around like some paperwork filled in and nothing else, [they] cared about how I felt and what my opinions were and made me feel...calm.'*<sup>23</sup>

In research on advocacy in child protection, some young people thought getting the result that they had asked for was the most important outcome of advocacy. A child who had been helped by an advocate during a child protection conference knew that her wishes had been taken seriously because of the action subsequently taken:

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<sup>22</sup> The Centre for Children and Young People's Participation at the University of Central Lancashire in partnership with the National Children's Bureau Research Centre (2016) Independent advocacy. Impact and outcomes for children and young people. Children's Commissioner for England.

<sup>23</sup> Ibid.

*'Yeah, because sometimes they would sort things out. Like when it was near Christmas and... I was worried that I wouldn't see my parents... and then social services sorted things out, so they do listen... All the time. Cos I'm old enough and... because how I feel is important.'*<sup>24</sup>

As well as bringing about practical changes in a child's life, independent advocacy helps build children and young people's confidence and improves their communication and problem-solving skills, as this young person reflected:

*'...the main thing is you go to an advocate for a reason and want a good outcome but they can also teach you ways to deal with your problems. So you feel more confident not just in care but as you grow up in life.'*<sup>25</sup>

During research by the Children's Rights Director, one child pointed to the knowledge that advocates have about systems and decision-makers, stating that advocates *'talk to the right people for you'*.<sup>26</sup>

Evaluation of a national advocacy provider reported that a young person arriving in this country from Eritrea with only his brother saw a 'big difference' in how social care meetings were conducted, when he had help from an advocate: 'It was completely different the way the social workers are, the way they say things, they care for me and things like that'. This young person later used the knowledge and skills he had acquired through having an advocate to help a boy in foster care who wished to see his family. He attended two separate review meetings to advocate for his friend.<sup>27</sup>

A very high proportion (90%) of children and young people consulted by the Children's Rights Director in 2010 said that an advocate had made a difference for them or had sometimes made a difference.<sup>28</sup>

*'Everything I'm entitled to she has got me, when I disagree with a decision it has been changed.'*<sup>29</sup>

In addition to reviewing existing literature on children's perspectives, the Children's Commissioner's office, alongside a number of volunteer organisations, ran focus groups with children and young people from a variety of different settings and backgrounds to share their experiences of advocacy. The consultation period ran from March-April 2019, and we spoke to 43 children and young people between 12 and 25 years old from the following groups:

- > Children who are currently under the care of the local authority
- > Children in detention
- > Care leavers
- > Children in receipt of health services
- > Children with SEN or disabilities

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<sup>24</sup> Jelicic, H., Gibb, J., La Valle, I. with Payne, L. (2013) The voice of the child in the child protection conferences. National Children's Bureau.

<sup>25</sup> The Centre for Children and Young People's Participation at the University of Central Lancashire in partnership with the National Children's Bureau Research Centre (2016) Independent advocacy. Impact and outcomes for children and young people. Children's Commissioner for England.

<sup>26</sup> Morgan, R. (2010) Children's views of advocacy. Ofsted.

<sup>27</sup> Chase, E. with Simon, A., Wigfall, V., Warwick, I. and Heathcote, S. (2006) Findings from an evaluation of the Voice advocacy service. Thomas Coram Research Unit.

<sup>28</sup> Morgan, R. (2008) Children's views of advocacy. Ofsted.

<sup>29</sup> Ibid.

One care leaver explained that she had turned to an advocate when:

*'I found I was pregnant and I was told that my child would come under the social care services, which I found upsetting... I knew I would have lots of meetings ahead and needed support.'* (19 year old care leaver)

When asked what was most important about having an advocate, the young person responded:

*'It's good to know that there is an independent person who's there for you.'*

Another young person said advocates were important because:

*'Advocates fight for people's rights'* (Young person in care)

A common theme in all groups where children knew what an advocate's role was, was how much of a difference a good advocate could make. Children reported that advocates were a consistent presence who they felt could help them with a variety of issues. Most commonly, children reported that advocates helped them resolve particular issues they were having. Children also said that advocates empowered them and helped them to be more independent.

At a focus group with 9 young people who were in inpatient care (13-18), children discussed how health youth workers had acted as the conduit between them and medical staff, ensuring they were listened to, empowered and supported.

When asked how they would judge if the advocate did a good job, children gave a number of answers. They said an advocate could:

- > Secure a good result/positive outcome to a specific problem
- > Help to ensure their voice was listened to
- > Empower young people
- > Build confidence in the young person

For children in health settings, an important consideration was how the advocate could help the young person develop. One child said it was important that an advocate:

*"Makes me stronger and able to be more independent"* (Child, health focus group)

Children were asked about issues an advocate might be able to help them with, and gave the following examples:

- > **Education** – helping me get the help and support I need
- > **Health** – getting health professionals to listen to my point of view – I am the patient!
- > **Life** – someone to stand up for young people and guide us
- > **Personal stuff** – supporting and representing me to deal with things that are happening in my life that I can't control

Children thought it was important that advocates could feed their views back to professionals:

*"[They] need to be able to speak for you so you get help."* (Young person in care)

When asked about a model of advocacy in the community, which would allow children with different needs to access advocacy under one roof, one young person said:

*“Hubs would be good so there is somewhere local you can go to.”*

Young people thought advocates should be placed in their communities, schools and places they visit. They wanted advocates to be accessible and flexible. They often felt quite isolated as young people and that they had no say in anything, particularly their health and education.

## Poor quality advocacy

Although conducted nearly a decade ago, it is important to highlight that the Children’s Rights Director’s research found that only 27% of the 72 children surveyed said that advocates always put across children and young people’s views. And 11% of children said advocates had made no difference for them. The scenarios which were found to be unhelpful to children and young people were when the advocate:

- > Didn’t ensure a child received a response to a complaint
- > Repeated themselves
- > Did what they want, rather than what the child wants.<sup>30</sup>

One child said advocates “just try to influence you to do the right thing, talk about all the positives about the particular problem and end up convincing you to do exactly what you’re not happy with”.<sup>31</sup>

Three teenagers consulted by the NSPCC thought advocates were “rubbish”, with one boy especially scathing about advocates changing young people’s words – which emulated his prior experiences with solicitors.<sup>32</sup>

A pregnant young person (15) was removed from her mother’s care and placed in foster care. Without an assessment, her unborn baby was placed on a child protection plan and pre proceedings were issued as her social worker (SW) assumed she would be unable to cope. Her advocate acted on her behalf to challenge this presumption. As a result, the SW stopped assuming she would be unable to cope, and put a package of support in place to help her. 6 months later, she was looking after her baby well, and working with the professionals in her life. *Child helped by advocate working with the MAC Project*

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<sup>30</sup> Morgan, R. (2008) Children’s views of advocacy. Ofsted.

<sup>31</sup> Ibid

<sup>32</sup> Moss, C. (2011) Safeguarding looked after children through advocacy. NSPCC.



## Deficits within the current system

The most effective advocacy services act as a conduit between children and young people and the systems and professionals with which they interact. Advocacy is meant to empower children to express their views and engage in decisions made about their lives, challenging the system and drive policy and practice change, while maintaining good relationships with services and professionals. Advocates play a critical role in identifying and challenging rights violations, including in institutional settings when children and young people may be too afraid to complain or may not know they are being mistreated. Many dedicated advocates across England are delivering high quality advocacy to children and young people. There are, however, persistent problems which hamper their efforts and deny many children and young people access to good quality, independent advocacy.

## Evidence from safety net advocacy services

The Always Heard service operated by Coram Voice on behalf of the Department for Education is the national advocacy advice link and safety net advocacy support service. Always Heard, alongside the Commissioner's Help at Hand team, provide support to any children and young people with care experience who cannot access advocacy in their local area. Always Heard provide an advocate under the safety net where they cannot access – Help at Hand will provide representation and where children cannot get advocacy

A girl (15) in a secure children's home who had been sexually exploited was being detained on a welfare order which was due to be extended because appropriate accommodation in the community could not be found. The girl's advocate, with whom she had developed a good relationship, made representations to the local authority, and the young person was provided with suitable accommodation which meant she no longer had to be locked up.

*Child helped by Help at Hand*

Help at Hand also provides an advice and representation service to children in receipt of social care services, care leavers and any other children who are 'living away from home', or are cared for by the state. The Commissioner is able to use this direct work with children and young people to act as a barometer for systemic issues relating to children's care. In the period 1 April 2018 to 31 March 2019, Help at Hand has made 118 advocacy referrals, and taken 89 enquiries that have raised concern about advocacy provision. The Always Heard service reported that 6410 young people required support to access their local advocacy service and 523 children were provided with safety net advocacy as they were not able to access advocacy.<sup>33</sup> The three main concerns regard access, quality and independence.

### Access

Problems with access include very long waiting lists, instances of no provision or very limited provision to certain groups such as children who are living out of area, care leavers or those in need of non-instructed advocacy.<sup>34</sup> Non-instructed advocacy is particularly important when a child is unable to give instructions and lead the advocacy process, for example some children with disabilities, or babies. This seems to be a particular problem for those local authorities that have in-house or local provision as it is not easy for them to draw on a wider pool of advocates like some of the national providers can. Advocacy services tell us that available resources are outstripped by demand.

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<sup>33</sup> Always Heard: The national advice line and advocacy safety net for children in and leaving care – the first 12 months (November 2018)

<sup>34</sup> Always Heard: The national advice line and advocacy safety net for children in and leaving care – the first 12 months (November 2018)

Gatekeeping is another persistent problem, with some children reporting that they cannot approach advocates directly, rather they have to wait to be referred. Additionally, many local authorities put arbitrary restrictions on their advocacy services, which do not correlate with the access which is required in legislation and statutory guidance. For example, not offering advocacy to children placed out of area or rationing advocacy support to 10 hours per child.<sup>35</sup>

### **Quality**

No clear qualification or experience is needed to become an advocate, which can mean that some advocates are underqualified. Some advocacy services are staffed by volunteers, which is not appropriate for a statutory service. Help at Hand have heard of advocates with very little knowledge of the children's rights framework underpinning advocacy, and the various entitlements children have in legislation and statutory guidance.

In some areas senior management is failing to support inexperienced staff, often because of increasing demand on their time. This can be particularly challenging in some settings. One advocate made reference to this issue with regard to a secure children's home they had worked at. Children would sometimes be deliberately challenging and push boundaries to 'test' new advocates. This can be intimidating for less-experienced advocates, who, without proper support find it difficult to build relationships with children.

The status of advocacy and advocates continues to be a significant problem. Though some areas use intelligence gained from advocacy services to drive service improvement, and make changes to services, senior managers do not always use this intelligence in the most effective way.

#### Secure settings:

Within some YOIs and STCs, the vision for the role of advocates is limited to supporting children in adjudications, and to debrief them after their first restraint. As such, a valuable opportunity for senior managers to use information to improve children's experiences of the system is missed. The situation is slightly different in Secure Children's Homes, where regular visiting advocacy services are often in place. Provision across the whole secure justice estate should be more aspirational, with the aim of systemic change at its heart. Sharing best practice across sectors is likely to play a key role in driving service improvements, and procedural and policy change. For example, the provision in some mental health institutions, and some community-based advocacy do good work to change practice.

### **Independence**

To inspire confidence in children and young people, advocacy services must be able to demonstrate their independence from the systems they are challenging. For in-house services it is unsurprising when young people are suspicious that someone who works for the local authority is not "independent" of it. However, the problem can persist even in local authorities that commission their advocacy services out to external providers. The inbuilt tension within the system begs the question, how can an outside agency be truly independent when it is reliant on the funding and commissioning of the local authority? Advocacy services can feel pressured to provide a less than robust service to children and young people, for fear of losing a contract. This can be compounded when the advocacy provider has other contractual relationships with the local authority. In response to challenge from Help at Hand, local authorities describe advocacy provision as significantly different to how it is experienced by the young person. For example, local authorities often explain that advocates can be "spot purchased" – in some cases the reality is that this is done only after significant pressure is applied by Help at Hand and it causes long delays while an advocate is found and commissioned.

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<sup>35</sup> Always Heard: The national advice line and advocacy safety net for children in and leaving care – the first 12 months (November 2018)

A number of worrying trends in the provision of advocacy have been identified by the Help at Hand team:

- > The use of volunteer employees of the council as advocates rather than skilled, specialist staff.
- > Some councils do not provide service for children placed out of area.
- > Long waiting list (up to 2 months) before a child can meet with an advocate.
- > A refusal to assist with legal advice for a young person.
- > No specialist advocates with experience of supporting disabled children, or non-instructed advocates.
- > Merging the advocacy provision with the complaints team creating a clear conflict of interest, as advocates support children to submit complaints and then have to answer the complaints.
- > Advocates from a large voluntary sector provider not providing a high quality service to children in care.
- > Too few advocates to meet demand; just one in one instance.

The organisations that provide the services themselves, say there are common reasons for which children and young people seek (or are referred for) advocacy support:<sup>36</sup>

- > Support at child protection conferences; support in reviews / meetings (including young parents whose children are subject to child protection processes)
- > Placement issues; placement moves; dissatisfaction with placement; not wanting to move;
- > Housing and homelessness
- > Social workers not providing acceptable level of support; unhappy with social workers; change of social worker.

It was clear that improvements could be made in services if there was adequate funding available to employ the numbers of high-quality advocates needed to meet demand. Other actions which would most improve the impact of advocacy were greater recognition of advocates' status from senior management and professionals, and raising awareness of advocacy among children.

There is also a belief that there should be a move toward universal locally-based advocacy services for children and young people (up to 25 years), with 68% of advocacy service managers<sup>37</sup> supporting a model where advocates could help with a variety of matters cutting across different systems and services (e.g. education, health, housing, social care) and signposting to specialist provision where necessary.

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<sup>36</sup> 2019 Survey of Advocacy Managers Report, prepared for the Office of the Children's Commissioner by Article 39.

<sup>37</sup> 2019 Survey of Advocacy Managers Report, prepared for the Office of the Children's Commissioner by Article 39.

## When advocacy services work well

### *Ferndene and Alnwood – Children and Young Peoples Inpatient Services*

Ferndene is a low secure hospital which provides regional and national Tier 4 Child and Adolescent Mental Health Services (CAMHS) for children and young people (13-18 years old). Alnwood, is a medium secure unit for young people up to 18 years old with complex mental health needs, including those with a learning disability.

Both facilities are supported by an advocacy service run by an external organisation. Advocacy is offered on an opt-out basis, so all children will receive support from the advocacy service unless they actively decide not to. When a child first becomes an inpatient at either facility, advocates will endeavor to see the young people within three days. Thereafter advocates will visit children weekly, if not more regularly, depending on the needs of the young person.

The advocates have their own keys and as such do not have to be escorted by hospital staff. This is a deliberate decision, to demonstrate their independence from the institution and for Northumberland Tyne and Wear Trust to show transparency (doors open policy) in allowing the advocates to do so.

Advocates help children to challenge individual clinical decisions, which children value immensely.

*“Advocacy helped me express my views and opinions. It helped people listen to me about my care and my needs. My advocate voiced my concerns in meetings and helped me to say what I want. My advocate also helped me get some funding for my prom which made me really happy.”* (Young person, inpatient care)

In addition, the project coordinator independently chairs monthly Service User Carer Engagement Meetings alongside the Trust’s Associate Director. These meetings raise children’s issues of concern relating to policy and procedures and monitor themes that arise with regards complaints and safeguarding. Staff ensure advocates within medium secure are informed of restraint and seclusions, enabling independent debriefs and opportunity to highlight related concerns. Hospital staff report that this insight is invaluable:

*“The advocacy service provides a valued role in helping [us] to notice when our procedures and roles may benefit us but are perhaps not functioning fully in the interests of the young people. The work of advocacy has applied a gradual effect upon the culture and practice of Alnwood, there are several important small contributions, but the overall effect (on culture and attitude) is in my view the greatest outcome.”* (Consultant psychologist)

A pregnant young person (18) presented as homeless, but the local authority would not accept this and support her. She had been staying on a relative’s sofa, and sometimes at their place of work, however the local authority did not accept that she was homeless, and said this arrangement could continue. Her advocate helped express her wishes and feelings, and supplied evidence from her GP and housing legal specialists to challenge the local authority’s decision. The young person was eventually offered sustainable long-term accommodation once the local authority accepted their duties.

*Young person helped by advocate working with Just for Kids Law*

## Conclusion

Children have the right for their views to be listened to and taken seriously in all matters affecting them. Access to high quality, independent advocacy is vital in ensuring children are heard, respected and able to participate in decisions which affect them. Advocacy improves outcomes for children, increasing their confidence and helping ensure that their voices are heard when they are not feeling listened to or included in important decisions about their lives. Access to skilled and knowledgeable advocates can support stability for children in care, preventing breakdowns in relationships and empowering young people to take an active role in their care planning. In health settings, advocacy can be an invaluable tool in managing relationships between staff and patients, helping patients to assert themselves and have a role in decisions made about their care. This is also true of advocacy in the secure estate, where advocates should be the conduit between the young people and the system, acting as a barometer for issues and feeding these back to senior managers and alerting outside agencies when necessary. Moreover, a failure to create an open atmosphere where children are listened to and supported to express themselves and voice their concerns can have serious consequences for children's safety and well-being. Effective advocacy services within institutional settings should provide much-needed reassurance to the families of children and to senior managers, politicians and the wider general public that rights violations will not go unseen or unchallenged.

Advocacy data can also offer service providers and their frontline practitioners' valuable feedback and lessons about how children are experiencing the service they provide. This can lead to wider systemic changes that will benefit all children and young people in receipt of services, and in turn improve the effectiveness of services. The lessons learned through advocacy are incredibly important, and where used effectively can provide valuable critique of policies and procedures to drive service improvement.

Unfortunately, our review has found that too many services are inadequate: children and young people entitled to advocacy are not always able to access high quality information, advice and support from advocates when they need it. The rising number of children in care and children in need is further stretching services. Too often there are long waiting lists for advocates to be allocated, services are stretched so the time advocates get to spend supporting children can be arbitrarily cut. Some advocates lack the experience, and in-depth understanding of legislation and statutory guidance to challenge and support children appropriately. Others struggle to strike the balance between challenge and collaboration. Sometimes advocates are not visible, and children don't know how they can help them. Eligibility criteria varies from local authority to local authority - with some local authorities not providing the statutory minimum in terms of advocacy. Children who are living out of area also struggle to access advocacy, where there are no reciprocal arrangements between local authorities or clear and efficient processes for spot purchasing.

One impediment to the delivery of advocacy support to children from all eligible groups is confusion about their right to independent advocacy. The patchwork of legislation which both grants groups of children and young people the right to advocacy support, and confers the responsibility on local authorities to arrange this provision, is fragmented and unclear. Consolidating this legislation would be a positive first step in improving access across all eligible groups.

When considering the design of children's advocacy services, and children's eligibility to statutory advocacy, it is important to take into account the characteristics of the different groups. Looked after children are more likely to have diagnosed special educational needs. 56.3% of looked after children had a special educational need in 2016/17.<sup>38</sup> It is well evidenced that looked after children have poorer health outcomes than the general population, they are more likely to experience mental health problems and as such there is likely to

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<sup>38</sup> Department for Education. (2019) Special educational needs: an analysis and summary of data sources

be a degree of crossover between these groups.<sup>39</sup> Additionally, the rate of mental ill health is much higher in children with SEN and disabilities, than in the general population.<sup>40</sup>

Current arrangements do not always take into account the crossover between groups and children's individual needs. If support was designed around the local needs of children and young people, with their input, it would likely look very different. Models for delivery of holistic advocacy support are better suited to addressing children's needs in the round, and supporting them on a wide range of issues, rather than focusing on specific needs.

Directors of Children's Services already have a duty to have regard to the General Principles of UNCRC and ensure that children and young people are involved in the development and delivery of local services, including advocacy services. This duty should be harnessed and used as a mechanism for driving children and young people's involvement in the design of advocacy services, and the evaluation of their effectiveness. As recommended in the 2016 University of Central Lancashire report *Independent Advocacy: Impact And Outcomes For Children And Young People*, commissioned by this office, commissioners and providers of services including health partners and the Ministry of justice should work together with young people to develop a national framework for the measurement of outcomes and impact.<sup>41</sup>

Additionally there is no standard training and assessment framework, which means that not all advocates have the required skills to robustly challenge and represent vulnerable children. While a set of national standards for the provision of children's advocacy services was produced by the Department of Health in 2002,<sup>42</sup> there is no recently updated guidance that clearly sets out the standards and expectations for local authorities in terms of commissioning, delivering and evaluating advocacy.

Lastly, local authorities either provide advocacy in-house or directly commission services. This means that there is almost always an inherent conflict of interest for advocates in attempting to strongly challenge decisions and actions on behalf of a child or young person.

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<sup>39</sup> House of Commons Education Committee, (2015–16). Mental health and well-being of looked-after children Fourth Report of Session.

<sup>40</sup> National Guideline Alliance (UK) (2016) Mental Health Problems in People with Learning Disabilities: Prevention, Assessment and Management.

<sup>41</sup> The Centre for Children and Young People's Participation at the University of Central Lancashire in partnership with the National Children's Bureau Research Centre (2016) Independent advocacy. Impact and outcomes for children and young people. Children's Commissioner for England.

<sup>42</sup> Department of Health (2002). National Standards for the Provision of Children's Advocacy Services.

## Recommendations

- > Local authorities should be required to set out a clear strategy for a local offer for all children eligible to advocacy, showing how advocacy will be delivered and should work towards a highly visible, easily accessible universal advocacy service for children and young people up to the age of 25, which is able to provide rights information and effective assistance across different services and systems as well as signposting to specialist support when necessary.
- > Whenever there are concerns that a child or young person's rights may have been breached while in a residential setting and/or in receipt of a statutory service, the child or young person must be offered assistance from an advocate.
- > The patchwork of statutory entitlement of advocacy should be consolidated, to improve public and professional awareness and accessibility to these vital services. Government departments should ensure the function and importance of independent advocacy is consistently communicated in all statutory guidance concerning children and young people.
- > The Department for Education should consult with stakeholders to update the Statutory Guidance regarding Advocacy (including the national standards), to produce comprehensive guidance on funding arrangements, commissioning, delivering and evaluating advocacy which covers all eligible groups.
- > Increased review of advocacy provision during by all relevant inspectorates during inspections (Ofsted, etc.) inspections, to be informed by updated national standards and guidance.
- > Local authorities are already required to report on their management of complaints, including advocacy services. This duty should be extended, and advocacy data should be published, to allow for monitoring of the quality of independent advocacy.
- > Advocacy providers, including those commissioned to work in custodial institutions and health settings, should publish annual reports which (consistent with data protection obligations) outline the concerns raised by children and young people, the assistance offered by the service, and the outcomes achieved.
- > Advocacy providers should publish an independence statement which sets out to children and young people how the organisation and its advocates are independent from commissioners and service providers. This should in particular describe how and when senior managers will be involved in helping advocates act robustly for children and young people. Any conflicts of interest between the advocacy provider and the systems and services with which it has formal arrangements (including financial) should be identified in this independence statement.
- > Appropriate training should be a requirement for all advocates.
- > There should be a shared framework for measuring outcomes and impact of advocacy, informed by the Children's Commissioner's 2016 research. This should be co-produced with children, who should be an integral part of service design and evaluation.

## Appendix – legal framework for advocacy for children

### **Children in receipt of health services who wish to make a complaint**

Children (and adults) in receipt of health services are entitled to access independent advocacy if they wish to make a complaint. **The Health and Social Care Act 2012** conferred a responsibility on Local Authorities to commission independent advocacy services for people in receipt of health services who wish to make a complaint. The entitlement to complaints advocacy is applicable to children and adults alike.<sup>43</sup> This act superseded provisions in the National Health Service Act 2006.

### **Children and young people in receipt of social care services who wish to make a representation (including a complaint)**

Children and young people in receipt of social care services who wish to make a representation (including a complaint), have a statutory entitlement to advocacy. **The Adoption and Children Act 2002**<sup>44</sup> amended the Children Act 1989 to place a duty on local authorities to make arrangements for the provision of advocacy for children or young people who want to make a complaint under the Children Act procedures. **The Advocacy Services and Representations Procedure (Children) (Amendment) Regulations 2004 sets out in more depth, the various requirements.** This provision applies to children in care and those young people leaving care, up until 25 years old. The regulations and guidance to implement this provision came into effect in April 2004.

### **Children with special educational needs and disabilities**

**The Children and Families act 2014** and **Special Educational Needs and Disability Code of Practice** requires local authorities to consider whether or not “some young people” with special educational needs and disabilities need support in expressing their views, and to provide advocacy where necessary.<sup>45</sup>

### **Looked after children whose care and progress are being reviewed**

Looked after children whose care and progress are being reviewed have a statutory entitlement to advocacy, as provided by **Adoption and Children act 2002**<sup>46</sup> and **The Care Planning, Placement and Case Review (England) Regulations 2010**<sup>47</sup>. A duty is placed on the Independent Reviewing Officer (IRO) to ensure that looked after children have been made aware of their right to bring proceedings under the Children Act 1989 (e.g. in relation to placements, contact with parents and siblings or discharge of a care order), their right to make a representation (including a complaint) and to access advocacy services. When a child wants to bring proceedings under the Children Act 1989, the IRO must support the child to seek legal advice, or identify another appropriate adult to support the child.

### **Children who may continue to need care and support in adulthood**

Children who may continue to need care and support in adulthood have a statutory entitlement to advocacy, provided by the **Care Act 2014**<sup>48</sup>. The local authority must also arrange independent advocacy services for children who are the subject of a (transition) needs assessment, who do not have anyone else independent and appropriate to assist them.<sup>49</sup>

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<sup>43</sup> Section 185.

<sup>44</sup> Section 119.

<sup>45</sup> Department for Education, Department for Health. Special educational needs and disability code of practice: 0 to 25 years. Statutory guidance for organisations which work with and support children and young people who have special educational needs or disabilities

<sup>46</sup> Section 118

<sup>47</sup> Regulation 45

<sup>48</sup> Section 67

<sup>49</sup> Care Act, 2014 Section 58 and 59



### **Young carers who may need support in adulthood**

The **Care Act 2014** provides that young carers who may need support in adulthood must be provided (by the local authority) with an independent advocate, if they are likely to continue to be young carers once they reach adulthood and don't have anyone else independent and appropriate to assist them.

### **Children and young people living in children's homes**

**The Children's Homes (England) Regulations 2015** states that children and young people living in children's homes must be given appropriate advocacy support. Soon after the child's arrival at the home, they should be given to him or her as to what advocacy support or services are available; how the child may access that support or those services; and any entitlement the child may have to independent advocacy provision

### **Looked after children and young people who go missing**

**The Children Act 2004** holds that local authorities and local partners must make arrangements for ensuring the welfare of children is safeguarded and promoted. As part of this, **Department for Education statutory guidance** states an independent representative or advocate should be offered to any looked after children and young people who go missing, once they have been found.

### **Children and young people in England who are detained under the Mental Health Act or are being considered for Electro Convulsive Therapy**

Children and young people in England who are detained under the Mental Health Act or are being considered for Electro Convulsive Therapy are entitled to Independent Mental Health Advocates, in accordance with **Mental Health Act 2007 (amended the Mental Health Act 1983)**. The independent advocate has the legal right to: interview a child or young person in private; interview any person who is professionally concerned with the child's medical treatment; and to obtain hospital and social services records relating to the child

### **16 and 17 year olds who lack mental capacity**

16 and 17 year olds who lack mental capacity are entitled to be provided with Independent Mental Capacity Advocates by the local authority This is in accordance with the **Mental Capacity Act 2005; and The Mental Capacity Act 2005 (Independent Mental Capacity Advocates) (General) Regulations 2006**.

### **16 and 17 year olds who are homeless**

Joint statutory guidance from the Department for Education and the Ministry of Housing, Communities & Local Government '**prevention of homelessness and provision of accommodation for 16 and 17 year old young people who may be homeless and/or require accommodation**' holds that young people should have access to independent advocacy and support to assist them in weighing up the advantages and disadvantages and coming to a balanced decision and understanding and navigating the housing system.

### **Children and young people in custody**

**The Secure Training Centre Rules 1998** provides that children in custody should be able to make representations to 'independent persons'. This was interpreted as advocates by Youth Justice Board (contract now managed by the Ministry of Justice).



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