

# Discussion paper

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## Improving advocacy for children and young people: Principles and minimum standards

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# Improving advocacy for children and young people: principles and minimum standards

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## Discussion paper

### *Ministerial foreword by Angela Constance, Minister for Children and Young People*

Every child in Scotland should get the best possible start in life.

For many, this is already a reality. Most children and young people get all the care, support and encouragement they need to help them become the successful learners, confident individuals and successful contributors that we all want them to be. Through existing family and wider community support networks and the provision of high quality universal services, many children will have all they need to thrive.

However, we also know that as they progress through life, some of our children will face challenges. Others will have to deal with complex and difficult situations. No matter what the needs of these children and their families are, we need to be able to respond in a way that places the child at the centre and involves them whenever decisions are being taken that will impact on their lives. This means listening to what young people say and making sure their thoughts and feelings are expressed and given due weight. Every child has a right to be heard and we have an obligation to ensure that this right can be exercised. For some, that will mean the provision of advocacy support.

As a concept advocacy is simple: you support an individual to share their views, perceptions or wishes. In practice it can be complex, particularly where that individual has communication difficulties. Where children and young people are concerned there may be added issues over capacity to express views, tensions with parents or carers, parental rights or possibly child protection issues which have to be taken into account.

In 2009, we published 'Do the Right Thing', the Scottish Government's response to the 2008 concluding observations of the United Nations Committee on the Rights of the Child. In that response, we made a specific commitment to work across Government and with external colleagues to develop a plan which would improve the quality, consistency and availability of advocacy support for children and young people. We have since established the National Steering Group on Advocacy Support for Children & Young People to assist us in delivering a suite of activity which we hope will achieve this. I would like to put on record my thanks to all those who have taken part in the work of the Steering Group to date and in particular to those young people who have fed directly into the Group's work.

The Steering Group has had many lively debates and offered a broad range of views about how best the advocacy needs of children might be met. These debates have helped identify the questions which form the basis of this consultation exercise.

This discussion paper provides a set of proposed principles and minimum standards to be applied whenever advocacy support is being offered to a child and young person. The principles and minimum standards are designed to sit alongside the range of other guidance currently in place and are drafted in such a way as to recognise the right of certain children and young people to access independent advocacy support. Alongside this, the principles emphasise the importance of all advocacy support for children and young people being delivered in a way which is free from conflicts of interest.

For some, what is being proposed in this discussion paper may not go far enough. For others, the development of dedicated principles and minimum standards for children and young people may not be considered necessary. Commissioners may already be applying enhanced approaches (such as in health settings and for those who have a right to independent advocacy) and these will not be affected by the proposals set out in this paper.

We are clear that principles and minimum standards alone may not bring about all the improvements we want. Following this consultation exercise, we will consider what, if any, other resources might be required to support those who commission or provide advocacy support for children and young people.

This paper provides us with an opportunity to discuss, test and refine the content of what we are proposing. We also see this as an opportunity for broader debate about how we might achieve the range of improvements that are necessary in relation to advocacy for children and young people in Scotland. We encourage you to take this opportunity to share your views on how we can best drive this agenda to ensure that the voice of the child is heard and listened to whenever we are looking to support children and their families.



**Angela Constance**  
Minister for Children & Young People

## ***Introduction***

1. Many children and young people are able to get involved in decisions that affect their lives, whether this is directly or with some help from a friend or adult. Where support is needed, advocacy is one way to ensure that the voice of a child or young person is heard.

2. Many of you reading this discussion paper will be aware that the then Scottish Executive Health Department provided guidance under HDL (2001)08 in February 2001 for the commissioning of advocacy support for all those accessing health services (both children and adults). This guidance, which is already well established and widely used by NHS Scotland and Local Authorities, was updated by the Scottish Independent Advocacy Alliance (SIAA) at the request of the Scottish Government and reissued in February 2010. The revised guidance takes account of changes in legislation since the publication of the original version, including the Mental Health (Care & Treatment) (Scotland) Act 2003. The following SIAA publications are also available for use by commissioners and providers of advocacy services.

- SIAA Book, Independent Advocacy: A Guide for Commissioners (revised)
- SIAA Book, Independent Advocacy: An Evaluation Framework
- SIAA, Independent Advocacy, Code of Practice
- SIAA , Non Instructed Advocacy Guidance
- SIAA Principles & Standards for Independent Advocacy 2008

The SIAA Principles and Standards identify four principles to be followed in the provision of independent advocacy support:

- Independent advocacy puts the people who use it first;
- Independent advocacy is accountable;
- Independent advocacy is as free as it can be from conflicts of interest; and
- Independent advocacy is accessible.

3. The SIAA Principles and Standards also recognise that there are some key factors which need to be taken into account in relation to the commissioning and provision of advocacy for children and young people. Plans to look closely at what this might entail were announced when the revised Guide to Commissioners was launched in February 2010. It is worth noting at this point that many of the principles and minimum standards included in this discussion paper are already reflected in the SIAA materials.

4. Work is also underway separately to consider what additional advice and information might be required to support the provision of effective advocacy in our children's hearings system. This consultation exercise will also help to inform that piece of work.

5. In preparing the proposed principles and minimum standards, the National Steering Group on Advocacy Support for Children & Young People recognised the wide range of circumstances in which advocacy support may be required and the different forms that advocacy provision can take. It might be a young person asking a

friend to support them in a discussion with their teacher or it might be needed in much more formal processes such as our children's hearings system. The proposed principles and standards seek to reflect this broad range of advocacy needs.

6. The purpose of this consultation exercise is to seek your views on whether or not principles and minimum standards focussing solely on the provision of advocacy for children and young people are necessary and, if you think they are, whether what is being proposed is suitable. If you do *not* think they are suitable, we would welcome your views on what alternative measures or arrangements you feel should be considered in their place.

7. The deadline for comments is **29 February 2012**. We will make specific arrangements to hear directly from children and young people as part of the consultation exercise.

## ***United Nations Convention on the Rights of the Child***

8. The United Nations Convention on the Rights of the Child was developed in 1989 and sets out the basic human rights of children. The Convention consists of 54 Articles which encompass civil, political, economic, social and cultural rights of children and young people. These Articles form a framework against which to evaluate legislation, policy and decision-making structures.

9. Article 12 of The Convention says that children and young people have the right to speak up and have their opinions listened to and taken seriously by adults.

10. Implementation and compliance with the Convention is overseen by the UN Committee on the Rights of the Child. The Committee also plays a role in interpreting the content of the Convention and does so by publishing *General Comments* focussed on thematic issues, with 13 *General Comments* having been published to date. In preparing *General Comment* number 12, the Committee considered whether more needed to be done to make sure that a child's views were taken into consideration when decisions were being taken which would affect their lives. They noted that:

“After the child has decided to be heard, he or she will have to decide how to be heard: either directly, or through a representative or appropriate body”. The Committee recommends that, wherever possible, the child must be given the opportunity to be directly heard in any proceedings.

“The representative can be the parent(s), a lawyer, or another person (*inter alia*, a social worker). However, it must be stressed that in many cases (civil, penal or administrative), there are risks of a conflict of interest between the child and their most obvious representative (parent(s)). If the hearing of the child is undertaken through a representative, it is of utmost importance that the child's views are transmitted correctly to the decision maker by the representative. The method chosen should be determined by the child (or by the appropriate authority as necessary) according to her or his particular situation. Representatives must have sufficient knowledge and understanding of the various aspects of the decision-making process and experience in working with children.”

“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.”

11. In 2009, Scottish Ministers published “Do the Right Thing”, our response to the 2008 concluding observations of the UN Committee on the Rights of the Child. Those observations focussed on the progress being made to implement the UNCRC across the UK. In their response to the Committee's findings, Ministers made a clear commitment to take action to improve the quality, consistency and availability of advocacy support for children and young people.

## **Response on advocacy**

12. We recognise the importance of involving children and families in decisions that affect their lives. This is part of our wider commitment to respecting, protecting and promoting the rights of all children in Scotland.

13. Most children and young people have the skills, confidence and understanding to be directly involved in decisions that affect them and we are committed to giving them the opportunity to do so. That is why *Getting it right for every child and young person (Getting it right)*, building on what the UNCRC says, makes clear reference to the central importance of the child's voice and the involvement of children and young people in decision making.

14. *Getting it right* also recognises that sometimes children might need support if their feelings and opinions are to be shared. That is why good quality advocacy support – which helps children and young people to be 'respected' and 'included' – is a significant part of the *Getting it right* approach.

15. Advocacy can take many forms – from a friend or family member to a service delivered by children's organisations or a professional employed by an independent advocacy service. In some instances, the provision of independent advocacy will be necessary and in others the provision of support by an independent advocacy service will clearly be preferable.

16. The Mental Health (Care & Treatment) (Scotland) Act 2003 identifies that every person (both adults and children) with a mental disorder (as defined under section 328 of the Act) has a right to independent advocacy. The Act places a duty on local authorities and the NHS to ensure that such services are available. For the purposes of the Act, independent advocacy is advocacy provided by persons other than a Local Authority or a Health Board responsible for providing services in the area where the patient is to receive care or treatment, or a member of those bodies or any other person involved in their care or treatment or in providing services to them. The Act also identifies the need for independent advocacy organisations to have policies in place to identify and manage/minimise the risk of any conflict of interest.

17. The Act's Code of Practice makes clear that independent advocacy must be divorced from the interests of those persons concerned with a patient's care and welfare. In order to achieve this, the Code goes on to identify that "independent advocacy should be provided by an organisation whose sole role is independent advocacy or whose other tasks either complement, or do not conflict with, the provision of independent advocacy. If the independent advocacy service or advocate has a conflict of interest, they should inform all relevant parties of this, and should withdraw from acting for the patient."

18. Under the Mental Health (Care & Treatment) (Scotland) Act 2003, a significant number of children have a right to independent advocacy. However, the Act will not apply for the majority of children and many will still require advocacy support at some point in their lives for a variety of reasons.

19. NHS Boards (as commissioners of advocacy services for those who need advocacy support to access health services) currently use the SIAA guidance and all



advocacy provided is independent of the relevant Board. There are no plans to change this approach.

## ***Origins of the principles and minimum standards***

20. To help improve our understanding of advocacy provision for children and young people, we have already looked at:

- when and why children and young people might need advocacy support;
- gaps in current practice; and
- how the Scottish Government might make improvements.

21. In 2010 we published a report, 'Advocacy Makes You Feel Brave: Advocacy support for children and young people in Scotland'. The report found that:

- there were lots of different ways of providing advocacy to children and young people in Scotland;
- there were significant gaps in services and children and young people's advocacy needs were not always met;
- there were no national and local strategic approaches to matching children and young people's needs with available advocacy services; and
- advocacy was seen as a vital service in ensuring that children and young people's rights were upheld.

22. The findings of the independent inquiry into the circumstances in which abuse occurred at the former Kerelaw residential school and secure unit in Ayrshire also identified a number of gaps in advocacy provision.

23. As explained in the Ministerial Foreword, we established the National Steering Group on Advocacy Support for Children & Young People in autumn 2010. The aim was to develop commissioning guidance, principles and standards and an evaluation tool. The proposed principles and minimum standards which form the focus of this paper are the first outputs from this work.

24. If adopted, it is proposed that the standards will be applied as a minimum whenever children and young people need advocacy support. For this reason, the principles and standards need to set out clearly what can be expected of those who commission and provide advocacy, as well as by those involved in taking decisions. Importantly it must also be clearly understood by the children and young people themselves when they receive advocacy support.

### ***Points to consider***

As highlighted in the introduction, the SIAA Principles & Standards acknowledge that there are key factors that should be considered in the provision of advocacy services for children and young people. There are, however, currently no dedicated principles and standards aimed at those providing advocacy support to children and young people. We would welcome your views on whether you consider there is a need for dedicated principles and minimum standards in relation to children and young people or whether the key factors can be addressed by supplementing the range of existing advocacy guidance which covers both children and adults?

## ***Developing the principles and minimum standards***

25. The draft principles and minimum standards have been developed in consultation with advocacy providers, those commissioning advocacy support, decision makers and children and young people. We have referred to a range of documents including:

- 'A Guide to *Getting it right for every child*';
- 'Advocacy makes you feel brave: Advocacy support for children and young people in Scotland';
- the Scottish Independent Advocacy Alliance (SIAA) publications on principles and standards, guidance for commissioners, Code of practice, Non-instructed advocacy and evaluation guidance for independent advocacy organisations;
- General Comment number 12 from the UN Committee on the Rights of the Child;
- Principles and standards of Who Cares? Scotland and other documents as relevant;
- Childline Casenote report (March 2011) – Looked after children talking to Childline (report not considered during steering group meetings but subsequently made available to members).

26. The proposed principles and minimum standards attempt to recognise the wide range of situations in which advocacy support may be necessary. They also respect the right of certain children and young people to access specific forms of advocacy support, including access to independent advocacy support under the Mental Health (Care and Treatment) (Scotland) Act 2003. The SIAA guidance materials already specifically support the commissioning and provision of independent advocacy within health settings and are equally applicable in other areas. Their Principles and Standards document highlights a number of key factors which need to be taken into account whenever advocacy support is being provided to children and young people.

27. Regardless of the situation in which support is being offered to a child, advocacy should be practiced in the same way. The proposed principles and minimum standards set out to recognise this, identifying for example that:

- All children and young people have a right to choose who they wish to advocate on their behalf.
- Advocates are responsible for making sure they know what the child's views are. In most cases, advocates should be able to get views directly, but sometimes this might be difficult. In such circumstances, the advocate should do all they can to determine the views and perspectives of the child based on their circumstances or actions.
- Advocates are responsible for expressing the views of the child, regardless of whether they think they are in the child's best interests.
- Advocates must be alive to child protection concerns which may emerge in the course of their work. Where concerns do arise, they have a responsibility to take any action necessary in order to protect the child. Advocates must always tell children and young people about any limits to confidentiality.

## ***Principles and minimum standards***

### **What this section covers**

28. This principles and minimum standards section covers four areas:

- What advocacy support means for children and young people.
- Why children and young people need advocacy support.
- The purpose of the principles and minimum standards.
- The principles and minimum standards for advocacy for children and young people.

### **What advocacy means for children and young people**

29. Advocacy supports children and young people to exercise their rights by ensuring that their voices, views and perspectives can be expressed, understood and presented. This means they will be listened to and their views will be taken into account in decisions which affect them.

30. The experiences, capabilities and vulnerabilities of children and young people require a particular approach to advocacy support, free from presumptions about the ability of children and young people to form views on decisions that affect them and to express those views.

31. Advocacy has an important role to play in empowering children and young people and supporting them to have their views heard. It should help them participate better in the systems, processes and decisions that affect them.

32. Advocacy can support children and young people in formal situations such as complaint processes, tribunals, Children's Hearings and court proceedings. It can also support them in more informal situations where having their voices heard can make a difference to their lives at home, in access to services and in their communities.

33. Advocates don't take decisions. Instead, they act to ensure that a child's voice is heard whenever professionals are making decisions which will affect them. It is important that everyone involved recognises the role of advocates in decision making processes.

34. Advocacy support may be provided by different people and services. Children and young people can advocate for themselves or be supported by adults including parents, carers or professionals. Group or collective advocacy can be used where a group of people who are all facing a common problem get together on a formal basis to support each other over specific issues.

35. Non-instructed advocacy may be appropriate where a child or young person has complex communication needs or has a long term illness or disability that prevents them from forming or clearly stating their wishes and desires.

## **Why children and young people need advocacy support**

36. The provision of advocacy support to children and young people is important given the discrimination and marginalisation that they can often face in our society. Advocacy enables children and young people to have greater control over the issues that matter to them by ensuring that their voices are heard in circumstances which can often be complex and challenging. Children and young people may be vulnerable and need support in ensuring that their voices are heard in the systems and processes that affect them.

37. Although there is substantial commitment to children and young people's voices being heard, children and young people do not necessarily have the confidence or skills to express their views and fully participate in systems and processes. As a result they may require help from adults or peers to get the advocacy support that will allow them to do this.

38. Adults working with children and young people have responsibilities in relation to the well-being, care and protection of children and should consider how they can support children and young people so that their voices can be heard. Advocates are instructed by a child or young person and act solely on their behalf.

39. Many children and young people are supported through non-professional routes and are able to express their own views or are supported by parents, peers or by another trusted adult. However, some children and young people will have a need to – or will wish to - access professional independent advocacy support.

40. Advocacy not only supports children and young people. It can contribute to informing service providers about needs and gaps in their services. They in turn can be informed by the voices and experiences of children and young people which contribute to a process of continuous improvement.

## **Purpose of the principles and minimum standards**

41. The principles and minimum standards aim to:

- Improve the quality, consistency and availability of advocacy support for all children and young people.
- Ensure that principles and minimum standards apply to all forms of advocacy support for children and young people, irrespective of the context in which they are offered.
- Encourage professionals and wider communities (at every level) to support children and young people to routinely express their views when decisions are being made that affect them.
- Stimulate consideration of how well children and young people are supported to exercise their right to be heard and how resources are used to improve support where necessary.

## **Principles and minimum standards for advocacy support for children and young people**

42. The principles and minimum standards have been developed for *everyone* who has a role in supporting and providing advocacy to children and young people. This includes all professionals and services that directly provide advocacy support as well as those with wider responsibilities for children and young people.

### **Definitions**

43. The term 'advocates' is used in the principles and minimum standards to identify anyone who is providing advocacy to children and young people.

44. The principles are statements which underpin advocacy support for children and young people.

45. The standards provide a minimum benchmark against which to judge the quality of planning, developing, delivering and reviewing advocacy support for children and young people.

### **Principle 1: Children and young people's rights protected**

Advocacy is conducted in such a way as to promote and protect the rights of children and young people including their right to be heard.

### **Principle 2: Children and young people's voices heard**

Advocacy supports children and young people's voices, views and perspectives to be listened to, respected and presented in order for them to be given due weight by those involved in decision making and service provision.

### **Principle 3: Children and young people's access to advocacy**

Advocacy is available where and when children need it. It is provided to children and young people from the age of 0 to 18 years in line with the United Nations Convention on the Rights of the Child (UNCRC) and up to the age of 25 years where this is appropriate. Children and young people have the right to choose their own advocate.

### **Principle 4: Advocacy support is free from conflicts of interest**

Advocates are completely loyal to their advocacy partner. They are clear about their role and functions.

### **Principle 5: Provision of high quality advocacy support**

Advocacy for children and young people is of the highest quality.

## ***Principle 1: Children and young people's rights protected***

Advocacy promotes and protects the rights of children and young people including their right to be heard.

### **Standards**

1.1 Children and young people are treated with respect, dignity and without discrimination.

1.2 Advocates and other professionals proactively make children and young people aware of what advocacy is and their right to access advocacy support.

1.3 Advocates and other professionals provide appropriate information which is understood by children and young people and which enables them to make informed choices.

1.4 Advocates ensure that they are fully informed about children's rights as outlined in the United Nations Convention on the Rights of the Child (UNCRC) and know how to get relevant information on other legislation, guidance and human rights conventions.

1.5 Advocates promote awareness of children's rights, including children and young people's right to be heard, to other professionals and service providers as well as to children and young people, and parents and carers.

1.6 Advocates are alert to child protection concerns which may emerge in the course of their work. Where concerns do arise, advocates take action as necessary in order to protect the child.

## ***Principle 2: Children and young people's voices heard***

Advocacy supports children and young people's voices, views and perspectives to be listened to, respected and presented in order for them to be given due weight by those involved in decision making and service provision.

### **Standards**

2.1 Children and young people's views and perspectives, as obtained or determined, direct the provision of advocacy support.

2.2 Advocates always work from the child or young person's perspective. They do not make decisions for children and young people or tell children and young people what they think they should do.

2.3 Advocates build positive relationships which are based on trust and which aim to build children and young people's self-esteem and confidence.

2.4 Where advocates have a role in communicating children and young people's views, these views are correctly and accurately communicated.

2.5 Where it is difficult for children and young people to speak up or make their views understood, advocates find ways of communicating with children and young people and supporting them in having their voices heard.

2.6 Where children and young people are not able to fully participate due to age or disability or because they find communication difficult, advocates identify appropriate approaches which help children and young people to be heard. This may involve working with other adults including parents and carers and other professionals, taking into account the fact that advocates should always work from the child or young person's perspective (see also 2.2, 2.8 and 2.9).

2.7 Advocates generally only act if the child or young person gives permission and instructions. Where this is difficult for the child or young person to do, sufficient time or additional support must be provided for the child and young person to make informed choices where this is possible.

2.8 Advocates are satisfied that they know the views, perspectives or wishes of the child or young person, especially where the child or young person is not able to fully participate and where other adults may be involved in supporting them.

2.9 In situations where there may be differences or tensions between the views, wishes and perspectives of the child or young person and parents and carers or other professionals, advocates make clear that they can only act on the child or young person's behalf.

2.10 A variety of approaches should be considered by those providing advocacy in order to ensure that they can regularly inform other services and organisations about the issues that concern children and young people. This feedback must not compromise children and young people's confidentiality or anonymity.



### ***Principle 3: Children and young people's access to advocacy***

Advocacy is available where and when children need it. It is provided to children from the age of 0 to 18 years in line with the United Nations Convention on the Rights of the Child (UNCRC) and up to the age of 25 years where this is appropriate. Children and young people have the right to choose their own advocate.

#### **Standards**

3.1 Advocacy support covers the range of circumstances where children and young people require support.

3.2 Children and young people have the right to choose their advocate. It is the responsibility of decision makers to recognise and act on a child's right to choose who advocates on their behalf wherever possible. Children can also decide not to make use of the services of an advocate.

3.3 Service providers give children and young people advice about what advocacy support is, and who can provide it. This information is provided in a variety of accessible formats and is available to children and young people of all ages.

3.4 Children and young people are made aware of the different kinds of advocacy that are available and have the chance to discuss the options for finding an advocate who can meet their needs. In some instances this may mean that an advocate helps a child or young person to identify another advocate who may be more appropriate for their needs.

3.5 Where appropriate, advocates provide support where young people are in the process of transition between services, including the transition to adult services.

3.6 Advocates work with children and young people to identify and confirm the start and end of the advocacy task. This acknowledges that the circumstances of the child or young person can change and takes into account the importance of building trusted relationships with children and young people over time.

3.7 Children and young people have the right to privacy and confidentiality. As part of child protection procedures, all children and young people are informed about any limits to confidentiality. They are told that if an advocate is concerned about the risk of harm to a child or young person, this information will be passed on to others. In these instances, children and young people are told who will get this information.

### ***Principle 4: Advocacy support is free from conflicts of interest***

Advocates are completely loyal to their advocacy partner. They are clear about their role and functions.

#### **Standards**

4.1 Advocacy only represents the views and perspectives of children and young people. It does not represent the views or interests of others such as parents or carers, other professionals, services or institutions.

4.2 Those organisations involved in the provision of advocacy must adopt the following functions in order to address conflicts of interest where at all possible.

Organisations will:

- provide regular support and supervision or guidance for those involved in the provision of advocacy support.
- provide appropriate training for all advocates.
- operate with sufficient flexibility to respond where a child exercises their right to choose their advocate.
- adhere to clear procedures for identifying and managing conflicts of interest, communicating information to other parties as necessary.
- prepare and disseminate suitable materials describing advocacy and conflict of interest as appropriate.

4.3 Children and young people get information and the opportunity to discuss why advocacy should be free from conflicts of interest. They are informed about any limitations to the advocacy support they access.

4.4 Parents and carers, advocates, other professionals, managers and funders all understand how important it is that advocacy is free from conflicts of interest.

## ***Principle 5: Provision of high quality advocacy support***

Advocacy for children and young people is of the highest quality.

### **Standards**

5.1 Advocacy services have clear policies to promote equality and monitor services to ensure that no child or young person is discriminated against in line with policies for all organisations working with children and young people and the Equality Act 2010.

5.2 Advocacy services have policies on confidentiality and information sharing which are implemented and monitored. They ensure that children and young people, and other professionals are aware of these policies.

5.3 Those providing advocacy ensure that it is provided in line with appropriate guidance and procedures, including child protection, relating to children and young people.

5.4 Advocacy support is well publicised and easily accessible to children and young people. It is responsive, of high quality and available quickly when a child or young person needs it. Advocacy should be flexible enough to meet children and young people's needs.

5.5 Advocates and other professionals ensure that children and young people have continuity in their access to advocacy, especially where they need advocacy to support them across different services or processes, subject to the wishes of the child or young person.

5.6 Advocacy services are accountable to children and young people whose views inform the provision, management and governance of the advocacy service.

5.7 Advocacy services have mechanisms in place to review and evaluate their services. In particular, advocacy services have ongoing feedback mechanisms for evaluating children and young people's views and experiences of their services.

5.8 Advocacy services have robust, easy to use and accessible ways for children and young people to raise concerns or complaints about the advocacy support they or other young people get.

5.9 Advocates have the appropriate skills and competences to undertake advocacy support. Advocates have access to continuous professional development opportunities to ensure that their skills and expertise are regularly updated.

5.10 Advocates and their organisations ensure that they are aware of the appropriate legislation, guidance, standards and policies relating to the advocacy support they provide.

### **Other things to consider**

46. These advocacy principles and minimum standards are not an exhaustive list and are designed as a benchmarking guide. Commissioners may already be

applying enhanced approaches (such as in health settings). These should not be affected by the proposed principles and standards which are set out in this paper.

47. Providers of services may also wish to develop additional guidance and resources where these are required for their specific services and the particular needs of the children and young people they support.

## **Policy context**

48. These principles and standards are designed to act as a baseline for practice whenever advocacy support is being given to children and young people. We recognise that within the health setting, practice already goes beyond what is proposed here. We also recognise that in many instances the type of support being offered will have to be tailored if it is to effectively meet the needs of a child. This section sets out some of the specific policies which reflect the importance of ensuring that the voice of the child is heard.

## **Getting it right for every child and young person**

49. The *Getting it right* approach puts the child at the centre of support and services and recognises that they may need support to fully participate. It says that children and young people should be:

*Respected* – given a voice and involved in the decisions that affect their well-being;

*Responsible* – taking an active role within their schools and communities; and

*Included* – getting help and guidance to overcome social, educational, physical and economic inequalities, and accepted as full members of the communities in which they live and learn.

50. This discussion paper must be considered in the context of the *Getting it Right* approach. *Getting it right* is based on the principles of the UNCRC and is considered by the Scottish Government as a model of best practice. The principles and standards reflect the approach.

## **Mental Health (Care & Treatment) (Scotland) Act 2003**

51. The Mental Health (Care & Treatment) (Scotland) Act 2003 introduced several rights relating to patient representation. Specifically, the Act says that everyone with a mental disorder in Scotland – not just those who are subject to compulsory measures - has the right to independent advocacy. To give legal backing to this right, a legal duty was placed on local authorities and the NHS for the first time to ensure that independent advocacy services are available to people who need them. Advocacy is provided, or its provision secured, at local level with most local authorities contracting out provision of the service.

## **Looked after children**

52. The role of the Children's Rights Officer in local authorities spans advocacy for children, alongside a specific remit for Looked After Children. The work of the Children's Rights Officer is underpinned by the UNCRC and seeks to ensure that the rights of children and young people are upheld in each local authority area. Therefore, working in partnership with others should ensure that children and young people are placed at the centre of planning and decision making.

53. In addition to the role of the Children's Rights Officer within local authorities, Who Cares? Scotland is an independent advocacy service. It provides an active voice for children and young people in care, and works across Scotland. This service works

directly with young people to help them speak out about what they need – and what their rights are.

54. In December 2009, the National Residential Child Care Initiative (NRCCI) report was published. Following this, in May 2010 the Looked After Children Strategic Implementation Group (LACSIG) was brought together to lead and drive forward an implementation programme to improve the outcomes for looked after children and young people in Scotland by focusing on the five themes identified as priorities from the NRCCI. Further information can be found at <http://www.sircc.org.uk/lacsig/>.

### **Secure care**

55. The framework contract for secure care, which came into effect on 1 July 2011 says that both purchasers and providers of secure care will give children and young people information about their rights. They will work together to encourage and support the child to access children's rights and advocacy services when they need them.

### **Children with disabilities**

56. It is important that the views of disabled children and young people are clearly distinguished from those of parents. Disabled young people can struggle to develop friendships and wider social networks independent of parents and paid carers (though parents frequently strive to facilitate this process), so it is particularly important that advocacy identifies and faithfully articulates their views. Genuinely listening to young people and including their voice in decision-making should help achieve this.

57. Disabled young people may have a range of complex needs resulting in additional resource implications, for instance specialist communications training for advocates.

### **Trafficked children**

58. As part of its commitment to the UK Action Plan to Combat Trafficking in Human Beings, the Scottish Government published guidance in 2009 for child protection and other practitioners. 'Safeguarding Children in Scotland who may have been trafficked' sets out:

- the reasons for child trafficking;
- the methods used by traffickers;
- the roles and functions of relevant agencies; and
- the procedures to follow to ensure the safety of children suspected of being trafficked.

59. The guidance outlines the processes that could be followed in individual cases of child trafficking. It highlights that at certain stages of the investigation, the child's views need to be considered to decide if there is a need for independent advocacy, support in communication, specialist advice or legal representation.

60. The new National Guidelines for Child Protection (December 2010) are based on the fundamental principles of *Getting it right for every child & young person*, on the

UN Convention on the Rights of the Child, on the Children's Charter and the Framework for Standards. A dedicated section in the new Guidelines now puts child trafficking firmly within child protection practices.

### **Unaccompanied asylum-seeking children**

61. In *Do the right thing*, the Scottish Government response to the concluding observations from the UN Committee on the Rights of the Child, the Scottish Government recognises that separated children are among the most vulnerable in our community and require specialised intensive support. The Scottish Government agreed to work with partners to develop a pilot scheme to provide independent advocacy support to separated children, whether asylum seeking or trafficked. The Scottish Guardianship Service has been set up in response, through a partnership between Scottish Refugee Council and Aberlour, and part-funded by Scottish Government.

### **Children's Hearings**

62. The Children's Hearings (Scotland) Act 2011 ('the 2011 Act') introduces a requirement to ensure that children and young people going through the Children's Hearings system will, for the first time, be able to get advocacy support. The 2011 Act defines advocacy support as, "services of support and representation for the purposes of assisting a child in relation to the child's involvement in a children's hearing."

63. Under existing legislation, the Children (Scotland) Act 1995, a child can take any person with them into a Children's Hearing – and this person could well be an advocate. This, however, did not address the fact that many children go to their hearing unprepared, not knowing what to expect. The reason for the change in the 2011 Act is to ensure that advocacy support is available to children and young people so that they can understand the process they are going through as a whole – before, during and after a hearing.

64. A working group facilitated by the Scottish Government is developing principles and, in the near future, will also support the implementation of this part of the Act and is paying close attention to the principles and standards set out in this consultation paper. Even at this early stage, however, it is clear that most of the principles and minimum standards are common across the two work streams.

### **Additional support needs tribunals**

65. The Scottish Government has a legal duty to provide free lay and legal advice to families and young people who want to go to the Additional Support Needs Tribunal (ASNT) to challenge an education authority's decisions about educational support. In this specific context, advocacy means a service someone provides by talking to, or making legal representations to, the ASNTS or anyone else involved.

66. The contract to provide this service was awarded to a partnership, made up of Barnardo's and the Scottish Child Law Centre in October 2010.

## **Child protection system**

67. The national child protection guidance highlights the UN Convention on the Rights of the Child and the principle that every child who can form a view on matters affecting them has the right to express those views if they so wish. This is further embedded in *Getting it right for every child & young person*, the Children's Charter and the principles which underpin the Children (Scotland) Act 1995. There are also several sections throughout the guidance that are specifically about engaging and seeking the views of the child. The guidance is at [www.scotland.gsi.gov.uk/childprotection](http://www.scotland.gsi.gov.uk/childprotection).



# Improving advocacy for children and young people: principles and minimum standards – Discussion paper

**RESPONDENT INFORMATION FORM** This form **must** be returned with your completed questions to ensure that we handle your response appropriately

## 1. Name/Organisation

Organisation name

Title Mr  Ms  Mrs  Miss  Dr  *Please tick as appropriate*

Surname

Forename

## 2. Postal address

Postcode	Phone	Email

## 3. Permissions - I am responding as...

**Individual / Group/Organisation**

*Please tick as appropriate*

**(a)** Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

*Please tick as appropriate*  Yes  No

**(b)** Where confidentiality is not requested, we will make your responses available to the public on the following basis

*Please tick ONE of the following boxes*

Yes, make my response, name and address all available

*or*

Yes, make my response available, but not my name and address

*or*

Yes, make my response and name available, but not my address

**(c)** The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

*Please tick as appropriate*  Yes  No

**(d)** We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

*Please tick as appropriate*  Yes  No

**4. Are you directly involved in:**

**Commissioning advocacy for children and young people**

**Delivering advocacy to children and young people**

## QUESTIONS

1. Are the aims and objectives of this discussion paper clear?

Yes  No  No opinion

Comments

2. a) Do you believe that it is necessary to develop a suite of principles and minimum standards focusing specifically on the provision of advocacy support for children and young people?

Yes  No  No opinion

b) If no, do you feel that existing principles, standards and guidance, including the Scottish Independent Advocacy Alliance (SIAA) materials, are sufficient to cover practice in this area?

Yes  No  No opinion

Comments

3. a) The principles and minimum standards have been developed to apply to the broad range of individuals and organisations who can give advocacy support to children and young people. Is this target audience appropriate?

Yes  No  No opinion

b) If no, who should the principles and minimum standards apply to?

Comments

4. a) Do you feel the proposed principles and minimum standards could be applied in the broad range of circumstances in which advocacy support can be required by children and young people?

Yes  No  No opinion

b) If no, can you give examples of circumstances to which you do not think they would apply?

Comments

**5. Do the principles and minimum standards make it clear that advocacy support needs to be free from conflicts of interest?**

Yes  No  No opinion

Comments

**6. a) Do you agree with principle 1 and the associated standards?**

Yes  Partly  No  No opinion

**b) Are there any changes or additions to this principle or standards that you would like to see?**

Comments

**7. a) Do you agree with principle 2 and the associated standards?**

Yes  Partly  No  No opinion

**b) Are there any changes or additions to this principle or standards that you would like to see?**

Comments

**8. a) Do you agree with principle 3 and the associated standards?**

Yes  Partly  No  No opinion

**b) Are there any changes or additions to this principle or standards that you would like to see?**

Comments

**9. a) Do you agree with principle 4 and the associated standards?**

Yes  Partly  No  No opinion

**b) Are there any changes or additions to this principle or standards that you would like to see?**

Comments

**10. a) Do you agree with principle 5 and the associated standards?**

Yes  Partly  No  No opinion

**b) Are there any changes or additions to this principle or standards that you would like to see?**

Comments

**11. a) Do the principles and minimum standards as currently drafted reflect your/your organisation's understanding of what advocacy support for children and young people should look like?**

Yes  No  No opinion

**b) Are there other principles or minimum standards that should be included?**

Comments

**12. What is your view on whether all advocacy support for children and young people should only be provided by independent advocacy services as defined under the Mental Health (Care & Treatment) (Scotland) Act 2003?**

Comments

**13. a) Does the discussion paper give you enough information about how the principles and minimum standards will apply to you as an individual/organisation?**

Yes  No  No opinion

**b) If no, what other information would you need?**

Comments

**14. The proposed principles and minimum standards will have to be considered alongside the range of existing resources focussing on advocacy provision. Is the relationship between the principles and minimum standards and those other resources sufficiently clear?**

Yes  No  No opinion

Comments

**15. Do you feel that the principles and minimum standards as currently drafted will complement the range of other guidance that is relevant to you/your organisation?**

Yes     No     No opinion

Comments

**16. Any other comments:**

Comments

All response should be submitted to: [childrens.rights@scotland.gsi.gov.uk](mailto:childrens.rights@scotland.gsi.gov.uk)

Alternatively, hard copy responses can be submitted to:

Children's Rights Team  
Children's Rights & Wellbeing Division  
Scottish Government  
Area 2-B Dockside  
Victoria Quay  
Edinburgh  
EH6 6QQ

The deadline for responding to the discussion paper is 29 February 2012.



**The Scottish  
Government**

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