

Get it Sorted

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

PHOTO REDACTED DUE TO THIRD PARTY RIGHTS OR
OTHER LEGAL ISSUES

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Overview

Consultation on draft guidance and regulations to be introduced in England, from April 2004.

Action

Comments are welcomed from local authorities, advocacy organisations, voluntary organisations, advocates, children's rights officers, complaints officers, listening to children officers, children and young people and anyone with an interest in the subject matter of this consultation.

Please send response forms, by 31 December 2003, to: Barbara Herts, Children's Participation Co-ordinator, Department for Education and Skills, Room 114, Wellington House, 133-155 Waterloo Road, London SE1 8UG or by e-mail to: advocacyconsultation@doh.gsi.gov.uk

Further information

General enquiries to: Barbara Herts, Children's Participation Co-ordinator, Department for Education and Skills, Room 114, Wellington House, 133-155 Waterloo Road, London SE1 8UG. Tel 020 7972 4237. e-mail: advocacyconsultation@doh.gsi.gov.uk

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Ministerial Foreword



Children and young people can be especially vulnerable at times when they have a problem or want to raise concerns and make a complaint. Providing advocacy support safeguards children and young people and helps to protect them from harm and neglect. This guidance builds on the key messages from *Every Child Matters* to make sure that vulnerable children and young people get the help they need, when they need it.

The Government wants to ensure that vulnerable children and young people with concerns, problems or complaints however big or small, get the assistance and support they need from advocacy and children's rights services.

This guidance on advocacy services is designed to provide managers, complaints officers, practitioners, advocates and children's rights officers and organisations with an understanding of the new duties in relation to advocacy introduced by the Adoption and Children Act 2002 and to discuss the implications for policy and practice.

If we are to get advocacy for children making complaints right, we need your help. I hope you will enjoy reading this consultation document and that you will write to us with your comments and suggestions using the feedback form provided.

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

Margaret Hodge MP

Minister for Children, Young People and Families

1. Summary

The purpose of this consultation is to gather views on the draft Regulations and guidance. Chapters 1 to 6 contains the draft guidance. Annex A contains the draft Regulations.

The Adoption and Children Act 2002 applies to England and Wales, but this guidance and the associated Regulations apply to England only. Local authorities with social services responsibilities should consider the implications of the Regulations and guidance now. Local authorities should be ready for an implementation date of April 2004. The consultation results will be made public and final guidance will be published reflecting the outcome of consultation. A children and young people's booklet will be issued alongside the final guidance.

2. Impact on Local Authorities

The draft Regulations and guidance implement the new duties placed on local authorities in respect of the provision of advocacy services by the Adoption and Children Act 2002. Local authorities have received through the Quality Protects special grant, a substantial investment of funds to secure the development of advocacy, children's rights services and initiatives to improve the complaints process for children. Although the Quality Protects programme will end in March 2004, the increases in children's services spending under the grant and under the Children Leaving Care grant will continue to be available to local authorities under mainstream funding.

3. What is new about the 2004 Regulations?

By April 2004, all local authorities with social services responsibilities should ensure that advocacy services are provided for children and young people, making or intending to make a complaint under section 24D or section 26 of the Children Act 1989.

4. How to respond

Questions appear throughout the body of the document. Please photocopy the consultation form provided with this document or use the electronic version that you can find on our website at www.dfes.gov.uk/consultations.

Please send your completed response, by 31 December 2003, to: Barbara Herts, Children's Participation Co-ordinator, Department for Education and Skills, Room 114, Wellington House, 133-155 Waterloo Road, London SE1 8UG or by e-mail to: advocacyconsultation@doh.gsi.gov.uk.

General queries

If you have any questions on policy issues please address these to Barbara Herts or Bill Jobson at the above address - tel. 020 7972 4237 or 020 7972 4346, or email advocacyconsultation@doh.gsi.gov.uk.

Any general queries about local issues should be addressed to your Quality Protects Regional Development Worker (see pages 19-20 for contact details).

5. Additional copies

This document can be downloaded from www.dfes.gov.uk/consultations. Hard copies will be available from DfES publications (0845 6022260) by quoting reference DfES/0492/2003

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1. Background: Why Legislate for Advocacy Services?

Introduction

- 1.1 This guidance is issued under section 7 of the Local Authority Social Services Act 1970, which requires local authorities with social services functions to act under the general guidance of the Secretary of State. Only in exceptional cases may local circumstances justify a variation. It is designed to provide managers, complaints officers, practitioners, advocates and children's rights officers and organisations with an understanding of the principles and changes made by the Adoption and Children Act 2002 and to discuss the implications for policies, procedures and practice. This guidance is for local authorities.
- 1.2 Advocacy is about speaking up for children and young people and ensuring their views and wishes are heard and acted upon by decision-makers. This guidance builds on the core principles of the Quality Protects programme which puts children's views and wishes at the heart of the decision-making process.
- 1.3 When a child or young person articulates that a concern or problem is not being resolved and a complaint is likely to be made, local authorities should ensure that help and assistance is given if children or young people would like an advocate to speak for them. The purpose of this guidance is to ensure that children and young people are given help, including advocacy services when making or intending to make a complaint.
- 1.4 The Adoption and Children Act received Royal Assent on 7 November 2002. Amongst other provisions, it amended the Children Act 1989 and imposed on local authorities the duty to make arrangements for the provision of advocacy services for care leavers making or intending to make a complaint under section 24D of the Children Act and for children making or intending to make a complaint under section 26. Advocacy services do not need to be provided for a parent or another adult making a complaint on behalf of the child.
- 1.5 This guidance applies to all children in need, including looked after children and young people leaving care.
- 1.6 In all cases, advocacy services will have to be provided for a child in need or care leaver directly making or intending to make a complaint on their own behalf.

Developing a listening culture

- 1.7 The Government wants advocacy and children's rights services to be linked to other activities which help professionals to listen to children, thereby creating a culture of openness where listening and responding to children and young people's concerns becomes an integral part of everyday practice.
- 1.8 The requirement for the participation of children and young people in day to day decision-making in their own care was spelt out in *The Government's Objectives for Children's Social Services* (September 1999). Objective 8 requires local authorities actively to involve users and carers in planning services and in tailoring individual packages of care, and to ensure effective mechanisms are in place to handle complaints.
- 1.9 The report of the Waterhouse inquiry, *Lost in Care*, cited many examples of children who had attempted to complain about an unhappy situation but whose voices had not been heard. The Government's response to the Waterhouse report emphasised the importance of hearing children's wishes and views in all aspects of the complaints process. Similarly, The Utting Report, *People Like Us*, made recommendations about a culture change which supports

children and young people to speak openly about their experiences and concerns. *“Putting something right about assessment, review, consultation or placement at an early stage can only improve the effectiveness of the overall process and reduce the risk of subsequent harm.”*

- 1.10 Listening to the voice of the child is one of the main messages running through *Keeping Children Safe*, the Government’s response to the Inquiry into the tragic death of Victoria Climbié. Listening to children keeps them safe and helps protect them from poor practice. Child protection is everyone’s responsibility; both staff who come into direct contact with children, and those who work with adults who are parents and/or carers. The Government’s response to the Victoria Climbié Inquiry report requires Directors of Social Services to ensure that the child is spoken to alone and introduces a range of recommendations to protect children.

Table 1: Context – Recent Legislation Relating to Advocacy

Children Leaving Care Act 2000

1.11 The Children (Leaving Care) Act 2000 requires local authorities to improve the life chances of young people living in and leaving care. The Government expects advocacy services to be accessible to all care leavers making or intending to make a complaint. Details about access to advocacy should be included in information and policies for young people about what services they might expect when they are no longer in the authority’s care.

1.12 One of the roles of the Personal Adviser is to act on a young person’s behalf as an advocate for them when they need help making a case, both in formulating the case and presenting it.

Care Standards Act 2000

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

Health and Social Care Act 2001

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

2. The Role of Advocacy Services for Children Making Complaints

Introduction

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

The National Standards for the Provision of Children's Advocacy Services 2002

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

2.3 The purpose of advocacy in complaints procedures is to ensure that children and young people are given assistance when making or intending to make a complaint. Children's interests can be promoted more effectively by having a personal, adult champion, in the form of an advocate who can help children and young people to take an active part in the decision-making processes and to ensure their views and wishes are heard at all times. Advocacy is about empowering children and young people to make sure that their rights are respected and that their views and wishes are fully reflected in decision making about their own care.

2.4 The National Standards define Government policy and what we mean by 'advocacy' for the purposes of this guidance. Advocacy services provide independent and confidential:

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

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

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

2.6 An advocacy service needs to ensure that advocates are able to promote equalities. The advocate, when representing a child or young person, should be able to reflect an understanding of the child or young person's race, gender, sexual orientation, culture, religion and language, health or disability.

Q1: Do you agree with the explanation of advocacy services in the context of complaints?

Enabling children to access advocacy services

- 2.7 Many children and young people describe ‘complaints’ as problems not being sorted out. The emphasis of this guidance is on providing help and assistance, and ensuring that independent advocacy is available quickly when requested. When a child or young person says that a complaint is about to be made, the authority should ensure that help and assistance is offered and given if children or young people would like an advocate to speak for them.
- 2.8 The children’s complaints officer or equivalent officer should:
- ask the child or young person if an advocate is wanted;
 - provide help and assistance about how to find independent advocacy services;
 - offer the child or young person help and assistance from the organisation with whom the authority has arranged the provision of advocacy services.
- 2.9 The child or young person should be asked if it is important to them if the advocate shares the same race, culture, gender and religion as themselves. The local authority should take this into account in each case. The local authority should take such matters into consideration when commissioning advocacy services (and wherever possible comply with the child or young person’s preferences).
- 2.10 The local authority should provide the child or young person with information about advocacy services. This will usually be the name, telephone number and contact point for the service. If the child so requests, the complaints officer should make initial contact with the advocacy service on their behalf.

Q2: Do you agree that this is the role of the children’s complaints officer or equivalent officer? Do they have other responsibilities in relation to children’s complaints?

Choice for the child or young person

- 2.11 There will be times when children and young people will wish to choose their own advocate, for example, a relative, teacher, carer, friend or family member. Children and young people may choose anyone of their choice as an advocate unless the person is prohibited by regulations from acting as an advocate (see paragraph 4.3), or there are conflicts of interest which cannot be resolved satisfactorily to enable them to act as an advocate. They should be helped by the complaints officer or equivalent officer to understand the choices open to them and the differences between the options.
- 2.12 The child or young person should be given an opportunity to meet an advocate and agree the arrangement before the advocate’s appointment is confirmed and any information shared with them. Where the child or young person requests a change in advocacy arrangements or the need to do so has been brought to the local authority’s attention, this should be acted upon quickly.
- 2.13 Where a child chooses their own advocate, the local authority should facilitate the support and advice required to enable the individual to effect the role of an advocate (see paragraph 3.9). For example the local authority should provide:
- information about the national standards for the provision of children’s advocacy services;
 - payment of travel expenses;
 - advice and support.

Q3: Do you think the guidance is sufficiently clear about choice for the child and young person?

Publicity about advocacy services

- 2.14 The *National Standards for the Provision of Children's Advocacy Services* set out the Government's policy for publicity about children's rights and advocacy services. The Government wants local authorities to:
- inform children and young people about advocacy and children's rights services if they intend or wish to make a complaint;
 - provide help and assistance when children and young people want an advocate to speak for them.
- 2.15 Where a local authority first becomes aware that a child or young person wants to make a complaint they should provide age appropriate and innovative materials about children's rights and advocacy services and talk to the child or young person to explain these, answer any questions and ensure that they understand their rights. Materials should include texting, minicom and the use of symbols for children and young people with learning difficulties. Publicity should include translation into the child's first language where appropriate.
- 2.16 As set out in the *National Standards for the Provision of Children's Advocacy Services*, appropriate materials and methods should be developed for very young children, those with little or no communication and those without literacy skills. Local authorities may wish to develop electronic methods of communication.
- 2.17 Age appropriate guides about making a complaint and information about children's rights/ advocacy services should be given to all young people when they first come into care or are assessed as being in need. This should be recorded in the child's care plan and checked at reviews by the Independent Reviewing Officer. Complaints publicity materials should include information about, advocacy and children's rights services and be kept under regular review.
- 2.18 Local authorities should have a programme of regularly updating information and publicity on advocacy services to staff and foster carers to ensure that new staff and carers are able to properly inform children and young people of the support they can access.

3. Advocates and the Complaints Procedure

Introduction

- 3.1 Children's participation in decision-making about their own lives is a key principle of the Quality Protects programme and many local authorities have taken forward initiatives to ensure independent advocacy for children making a complaint. This guidance builds on these developments.
- 3.2 Local authorities are required to appoint a designated complaints officer who has the overarching responsibility for the authority's complaints and representation system. However, the specific roles, duties and tasks may be performed or delegated to other staff in the organisation, for example, children's complaints officers or listening to children officers. Following the recommendations of the Waterhouse report, *Lost In Care*, and the Utting report, *People Like Us*, some local authorities have appointed children's complaints officers who co-ordinate, provide and monitor the provision of advocacy services to individual children and young people.

The Children's Complaints Officer or Designated Complaints Officer with Responsibility for Children's Complaints

- 3.3 The key role of the children's complaints officer and other officers depending on local children's advocacy structures is to:
- consult with children when they express their intention to make a complaint to help them understand the options available and how the complaints procedure works;
 - provide information, advice to children and young people about advocacy services and support in accessing these services; *and*
 - work with children and young people and their advocates concerning issues of complaint, and to provide information and advice about options for resolution both within the complaints procedure, or alternative routes of remedy and redress where appropriate.
- 3.4 Their role also includes a duty to:
- keep a written or electronic record of complaints made, the procedure followed and the outcome;
 - appoint any investigating officer;
 - appoint the independent person;
 - monitor the progress of the complaint;
 - keep the child making the complaint and key people informed at all stages;
 - ensure timescales are adhered to;
 - make recommendations to the local authority on any action to take following an investigation.

The Children Act complaints procedure

- 3.5 The Children Act 1989, requires local authorities to establish a representation and complaints procedure. In practice most authorities operate three stages in complaints procedures.
- Stage 1 – initial stage with the emphasis on problem solving leading to early resolution (provided for in regulations for complaints relating to care leavers under section 24D of the Act);
 - Stage 2 – Formal Investigation by the local authority with the independent person;
 - Stage 3 – Review Panel of at least three persons which includes an independent person.

An informal resolution stage prior to an investigation involving the independent person is already in place in regulations for complaints involving care leavers. The Adoption and Children Act 2002 amended the Children Act 1989 to allow for a similar initial stage for complaints involving looked after children and children in need. This is likely to be implemented in 2004. This will have implications for local authorities in commissioning advocacy services, as an ability to respond quickly in providing an advocate when a complaint is made will be critical in meeting regulations and resolving complaints as quickly as possible.

Q4: Is the 14 day timescale practicable for an informal resolution stage for complaints in terms of appointing an advocate to help the child through this stage?

- 3.6 A formal procedure is not the most appealing way for children to air grievances. There continues to be evidence that children in foster care appear less informed about complaints procedures than their contemporaries in residential care. Many local authorities have contracts with national advocacy organisations so that advocates routinely visit children's homes and meet children in foster care in order to build relationships and identify emerging concerns or problems as early as possible. Children and young people themselves have stressed the importance of this, and we see it as being best practice and want to encourage such initiatives. As most looked after children live in foster care, local authorities need to consider how best to raise children's knowledge of complaints procedures and how to facilitate regular contact with advocates.
- 3.7 Children placed outside of the authority, those in foster care, children with communication impairments and those whose preferred language is not English are particularly vulnerable. Local authorities should make sure that the arrangements they make for providing advocacy services are able to provide an effective service to these groups of children.
- 3.8 It is in no one's interest for complaints to have to proceed to the formal stages of complaints procedures, where with sufficient attention and appropriate support at an early stage problems can be resolved more effectively and speedily. Advocacy services have a very important role to play in the early identification and resolution of problems and complaints and local authorities should ensure that they commission services which are geared up to respond quickly.

Case Study – Durham County Council

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

The role of the advocate in the complaints procedure

- 3.9 The advocate's role is to help the child initiate the complaints procedures as well as supporting the child to pursue their complaint until a resolution is achieved. The advocate's role in the complaints procedures is:

- to empower children or young people by enabling them to express their views, wishes or feelings, or by speaking on their behalf;
- to seek the resolution of any problems or concerns, identified by the child, by working in partnership with children and only *with their agreement*;
- to speak for or represent children at the initial stage of the complaints procedures by providing information, advice and support;
- to support children and young people pursuing a complaint through the complaints procedure and to provide them with information about their rights and options, helping them clarify their complaint and the outcomes they are seeking;
- to represent children at any stage, including any formal hearing or interviews

3.10 In relation to complaints, we intend advocacy to mean the provision of assistance and representation to individuals to make complaints . Our intention is that this should involve the advocate facilitating the making of a complaint which a child wishes to make, being led by the child's decision. An advocate should not prevent a child making a complaint because the advocate believes this is not in the child's best interests. It continues to be the responsibility of the local authority to decide what is in the best interest of the child.

Q5: Do you think that the role of the advocate in the complaints procedure is clear? If not, what needs to be clarified?

Children's rights officers

3.11 There is increasing overlap of roles between advocates and children's rights officers. The local authority will need to give clear and age appropriate information to make sure that the child understands their separate roles and responsibilities and in particular where they can get individual advocacy support. Some local authorities have established children's rights services which deliver individual advocacy services. Many focus primarily on participation work. Local authorities may appoint a children's rights officer or contract with a children's rights service to provide advocacy services for children or young people making or intending to make a complaint under the Children Act procedure.

Independent reviewing officers

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

Table 2: The Role of Other Professionals in the Complaints Procedure

Independent Person

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

Investigating Officer

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

Independent Visitor

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

4. Maintaining the Independence of the Advocate

Introduction

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

Who may not be an advocate?

4.2 The draft Regulations (Annex A) prescribe that the following people may not act as an advocate. If someone is the subject of a complaint, they may not be an advocate for the person making that complaint. Neither may the manager of the service which is the subject of the complaint act as an advocate, nor the person managing the resource allocation or a person who may consider the complaint.

4.3 Therefore, the independent advocate should not currently be or have been involved in any of the following ways:

- a person who is the subject of the complaint or whose decision is the subject of those representations;
- a person responsible for the management of a person whose decision or action is the subject of those representations;
- a person who is or may become involved in the consideration of those representations;
- a person who has budgetary responsibility for the provision of services to the child in relation to whom the representations have been made;
- a person involved in the line management of the case;
- a person with control over the resources allocated to a child's case.

Q6: Do you agree with this list of people who should not act as an advocate to the child? Are there any others?

Independence of advocacy services

4.4 There are a number of different models that the local authority can follow to ensure that the advocacy or children's rights service they commission, has sufficient independence and distance from their policy development, their service provision, their complaints service, their care planning and resource management functions.

4.5 Current arrangements vary among local authorities, since many local authorities are at different stages in developing their advocacy and children's rights services. The most common arrangement is to outsource advocacy provision to a voluntary organisation. It is important that children experience and perceive the service as independent. Feedback from children and young people suggests that separate literature, logos and identity can be important in promoting the 'arm's length' nature and independence of the service.

Children's Rights Services providing advocacy

- 4.6 For children's rights services badged as a 'local authority' service, the service should be separate from the line management of operational services. The children's rights service should, as far as possible, be funded and managed in a way that ensures independence, from the service commissioner.

What is NOT appropriate?

- 4.7 The advocacy service or children's rights service should not be line managed by any senior manager directly responsible for the service provided. Local authorities should ensure that they have systems in place to ensure that both the management and delivery of services is quite separate.

Q7: Do you consider that the guidance provides appropriate levels of independence for advocacy and children's rights services?

Conflicts of interest for advocacy services

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

Q8: Do you agree that there could be conflicts of interest when advocacy services are provided by voluntary organisations who also provide other complaints handling services to the local authority? How best could potential conflicts of interest be avoided and managed?

Table 3: Independent advocacy services – Case studies

Gloucestershire Advocacy Project for looked after children

Gloucestershire's Children's Rights Service is 'in house' to social services but placed outside the direct line management of children's social services. The new service will be part of the Quality Group in the Performance and Support service section of Gloucestershire's social services department and therefore will not report to operational Children and Families managers. The service includes advocacy for looked after children and care leavers making a complaint or expressing concerns and support for young people at reviews and other meetings.

Tower Hamlets

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

The service has two main strands:

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

Hertfordshire

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

5. Monitoring Advocacy Services

Introduction

- 5.1 Local authorities should keep under regular review their arrangements for the implementation of this guidance. Review and monitoring of the guidance should take place at yearly intervals and should be the responsibility of the Head of Children's Services.

Annual reports

- 5.2 Local authorities are already required under the Children Act 1989 to monitor the operation and effectiveness of their complaints procedure and to publish this information as a public document. Many local authorities produce annual or half yearly reports. This guidance extends the requirements to ensure a breakdown is given about the use of advocacy and satisfaction with the service.
- 5.3 An annual report dealing with the operation of the complaints procedure, including the provision of independent advocacy services, should be compiled and presented to elected councillors. This report should be compiled by the most appropriate officer in the local authority, depending on local structures.
- 5.4 Designated complaints officers, children's complaints officers and other officers will need to work closely together in compiling annual reports and reports to departmental management teams on the use of advocacy in Children Act 1989 complaints.

What should the annual report include?

- 5.5 This report should include:
- a summary of statistical data about numbers, ages, gender, ethnicity of children using advocacy at all stages of the complaints procedures;
 - the organisation providing the advocate;
 - take up of service;
 - children's satisfaction with the service;
 - actions to ensure independence.
- 5.6 Complaints and representations annual reports are a statutory requirement under the provisions of the Children Act 1989 and the Local Authority Social Services Act 1970. This information is accessible under the Local Government (Access to Information) Act 1985 (to be replaced by the Freedom of Information Act 2000 in January 2005).

Measuring satisfaction of services

- 5.7 The process of measuring satisfaction with advocacy services should be child centered. Regular feedback from children and young people is crucial in maintaining standards. Local authorities should find creative ways in seeking the views of children and young people, for example, the creation of a children and young people's reference group and use of electronic methods.

Q9: Do you agree with the guidance for reviewing and monitoring the provision of advocacy services?

Q10: Is the draft guidance clear? If not, where does it need to be clarified?

6. Information Sharing and Confidentiality

Introduction

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

Key Principles – information sharing

- 6.2 The National Standards for the Provision of Children’s Advocacy Services set out standards for information sharing and confidentiality. Local authorities should have clear protocols on information sharing in their service level agreements. Once the advocate is appointed, letters about the complaint should be addressed to the child making the complaint, with a copy to the appointed advocate and advocacy organisation as appropriate. Record keeping is an integral part of professional practice. Records should be clear, concise and a record of fact. They should be kept safely by all parties.
- 6.3 If the local authority is informed that a child has decided not to use his or her advocate any longer, it should write to the advocate to inform him or her of this decision.
- 6.4 Local authorities in their contracts with advocacy providers must adhere to the Data Protection Act 1998.
- 6.5 Particular attention is drawn to the need to ensure that information provided in relation to a complaint is only used for that purpose, and that information is not sought on matters outside the agreed scope of the complaint.

Confidentiality and Safeguarding Children

- 6.6 The National Advocacy Standards for the Provision of Children’s Advocacy Services set out Government policy on confidentiality. They state that advocacy services should have a clear policy based on the concept of ‘significant harm’ and make sure that this policy should be publicised to all those using the service. Advocacy services must be clear about how they identify a level of concern that would trigger the making of a referral to social services, particularly when such a step takes place without the consent of the child and young person. Where there are concerns about a child’s welfare the procedures set out in *Working Together to Safeguard Children – A guide to inter-agency working to safeguard and promote the Welfare of Children* (1999) should be followed. The policy of the advocacy service should incorporate a requirement that advocates are fully conversant with legislation and practice guidance relating to child protection as well as local policies and procedures.
- 6.7 The local authority should satisfy itself that the organisation it commissions to provide advocacy services has effective arrangements in place to ensure that all advocates, their supervisors and managers of advocacy services are trained and able to demonstrate the appropriate level of knowledge and competence to understand and operate these requirements. The local Area Child Protection Committee should be consulted about providing appropriate training.

What to Do If You’re Worried A Child Is Being Abused

- 6.8 On 19th May *What to do if you are worried a child is being abused* (2003), was issued by six Government departments. The booklet communicates directly with people working with children and families and explains their role in the safeguarding process. It applies to all children and young people, irrespective of whether they are living at home with their families and carers or away from home. The booklet is designed to help people protect children more

effectively, through a better understanding of what to do about any concerns, and particularly, when to refer them to social services.

- 6.9 This practice guidance briefly summarises the key processes but does not replace *Working Together to Safeguard Children* (1999) or the *Framework for the Assessment of Children in Need and their Families* (2000). It includes an appendix on information sharing to assist practitioners understand how to share information about children and their families in a lawful and ethical manner.

2004 No.

CHILDREN AND YOUNG PERSONS, ENGLAND

**The Representations Procedure (Children) (Advocacy Services)
Regulations 2004**

Made - - - -

Laid before Parliament

Coming into force - - -

The Secretary of State for Education and Skills, in exercise of the powers conferred upon him by sections 24D(2), 26(5) and (6), 26A(3) and (4) and 104(4) of the Children Act 1989(a) and of all other powers enabling him in that behalf hereby makes the following Regulations:-

Citation, commencements and application

1.—(1) These Regulations may be cited as the Representations Procedure (Children) (Advocacy Services) Regulations 2004 and shall come into force on [1st April] 2004.

(2) These Regulations apply to England only

Interpretation

2.—(1) In these Regulations—

“the Act” means the Children Act 1989;

“advocacy services” means the arrangements made by a local authority for the provision of assistance;

“advocate” means a person who provides assistance;

“assistance” means assistance, including assistance by way of representation, to —

(a) persons who make or intend to make representations under section 24D of the Act; and

(b) children who make or intend to make representations under section 26(3) of the Act;

“complainant” means a person making representations under section 24D of the Act or a child falling within 26(3)(a) of the Act making a complaint under section 26(3) of the Act;

“representations” means representations under section 24D(1) or, as the case may be, section 26(3) of the Act;

“the Representations Regulations” means the Representations Procedure (Children) Regulations 1991(b)

(a) 1989 c.41.

(b) SI 1991/894; relevant amending instruments are S.I. 1991/2033, 2001/2874.

“the Representations Regulations” means the Representations Procedure (Children) Regulations 1991^(b)

Persons who may not provide assistance

3. A person may not provide assistance if—
- (a) he is the subject of the representations;
 - (b) he manages the service which is the subject of the representations;
 - (c) he has control over the resources allocated to the service which is the subject of the representations;
 - (d) he is or may become involved in the consideration of the representations on behalf of the local authority.

Information to be provided to a complainant etc.

- 4.—(1) Where a local authority receive representations from a complainant they must—
- (a) provide him with information about advocacy services; and
 - (b) offer him help in finding an advocate.
- (2) Where a local authority become aware that a person or child intends to make representations under section 24D or, as the case may, section 26(3) they must—
- (a) provide the person or child with information about advocacy services; and
 - (b) offer him help in finding an advocate.

Monitoring of compliance with the Regulations

5. A local authority must monitor the steps that they have taken with a view to ensuring that they comply with these Regulations.

Amendment of the Representations Regulations

- 6.—(1) The Representations Regulations shall be amended as follows.
- (2) In regulation 2(1) (interpretation) insert “section 24D or 26(3) advocate” means a person appointed to provide assistance (including assistance by way of representation) to a person who has made representations under section 24D or a child who has made representations under section 26(3)”.
 - (3) In regulation 4 (preliminaries)—
 - (a) In paragraph (2) after the word “complainant” insert “and any section 24D or 26(3) advocate”;
 - (b) In paragraph (2A) after the word “complainant” insert “and any section 24D or 26(3) advocate”.
 - (4) In regulation 7 (withdrawal of representations) after the word “them” insert “or any section 24D or 26(3) advocate”.
 - (5) In regulation 8 (notification to complainant and reference to panel)—
 - (a) in paragraph (1)(a) after the word “complainant” insert “and any section 24D or 26(3) advocate”;
 - (b) in paragraph (2) after the word “complainant” insert “or any section 24D or 26(3) advocate”;
 - (c) in paragraph 5(a) after the word “complainant” insert “any section 24D or 26(3) advocate”; and
 - (d) in paragraph (6) after the word “meeting” in second place where it occurs “by any section 24D or 26(3) advocate or” and after the word “nominate” insert “the section 24D or 26(3) advocate or”.
 - (6) In regulation 9(2)(b)(7) after the word “complainant” insert “and any section 24D or 26(3) advocate”.

^(b) SI 1991/894; relevant amending instruments are S.I. 1991/2033, 2001/2874.

Transitional provisions

7.—(1) Where at the time that these Regulations come into force a complainant has made representations to the local authority and the procedure for considering the representations has not come to an end, then, subject to the provisions of paragraph (2), the local authority must provide the complainant with the information and assistance which the local authority are required to provide under regulation 4.

(2) For the purpose of paragraph (1) the procedure for considering the representations is to be treated as at an end once the panel have considered the representations in accordance with regulation 8 of the Representations Regulations even if they have not made their recommendation in accordance with regulation 9 of the Representations Regulations.

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Adoption and Children Act 2002 imposes a duty on local authorities to provide advocacy services for certain categories of complainant under the Children Act complaints procedure. It inserts into the Children Act 1989 a new section (section 26A) which requires local authorities to make arrangements for the provision of assistance, including assistance by way of representation, to care leavers and children who make or intend to make complaints using the Children Act complaints procedures under sections 24D and 26(3) of the Act.

These Regulations specify who may not provide assistance for a care leaver or child making such a complaint (regulation 3).

These Regulations also require local authorities to provide information about advocacy services and to offer help in finding an advocate to a child or young person who is making a complaint or, when they become aware of the fact, who intending to make a complaint (regulation 4).

Regulation 5 requires local authorities to monitor the steps that they have taken with a view to ensuring that they comply with the Regulations.

Regulation 6 amends the regulations governing the complaints procedures – the Representations Procedure (Children) Regulations 1991 – so as to ensure that an appointed advocate is involved throughout the process.

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