

Young people's entitlements to independent advocacy



Introduction

Children's entitlement to statutory advocacy is determined by virtue of their circumstances, namely their care status, physical and/or mental health needs, special educational needs and disabilities, or their position in the youth justice system.

In this information pack you will learn about these entitlements and when rights to independent advocacy are triggered.

All children!

All children have the right to express their views freely and to have these views given due weight in accordance with their age and maturity. The right to be heard comes from the following pieces of legislative instruments:

- Children have the right to help from a representative to protect their right to be heard. **Article 12, United Nations Convention on the Rights of the Child**
- All children and young people (and adults) have the right to participate in proceedings and decision-making which impacts on them personally.
Articles 6 and 8, European Convention on Human Rights / Human Rights Act 1998

The Children's Commissioner for England, in discharging her primary function of promoting and protecting the rights of children, must promote awareness of the views of children. She is empowered by law to investigate the availability and effectiveness of advocacy services for children. **Section 2 Children Act 2004**

Looked after children

Children and young people in receipt of social care services are recognised as Looked After Children. This includes care leavers up to the age of 25. This group are entitled to receive the support of an Independent Advocate whenever they are thinking about making a representation (including a complaint).

The 'Get it Sorted' guidance clearly sets out the duty of the local authority to provide advocacy services to children and young people making or intending to make representations, including complaints.

Within the guidance (section 3.2.1) 'If a child or young person wishes to make a complaint, local authorities are required to provide him with information about advocacy services and offer help to obtain an advocate'.

Looked after children

The guidance describes the statutory procedure for a child or young person who is likely to want to make representations, including complaints, about the actions, decisions or apparent failings of a local authority's children's social services provision; and to allow any other appropriate person to act on behalf of the child or young person concerned or make a complaint in their own right.(2.1.2)

It defines the complaint 'as an expression of dissatisfaction or disquiet in relation to an individual child or young person, which requires a response. Children and young people often express complaints as 'problems not being sorted out'. (2.1.3)

Looked after children

Specifically what may be complained about, can be found in section 2.2.1 and listed as below:

- an unwelcome or disputed decision;
- concern about the quality or appropriateness of a service;
- delay in decision making or provision of services;
- delivery or non-delivery of services including complaints procedures;
- quantity, frequency, change or cost of a service;
- attitude or behaviour of staff;
- application of eligibility and assessment criteria;
- the impact on a child or young person of the application of a local authority policy; and
- assessment, care management and review.

Looked after children

Local authorities are required to put in place systems for complaints to be made verbally to a member of staff or in writing (including electronically) (regulation 6).

Complaints handling by local authorities must be child and young person friendly and appropriate to the age and understanding of the child. The concerns of children and young people should be listened to. If a child or young person wishes to make a complaint, local authorities are required to provide him with information about advocacy services and offer help to obtain an advocate.

Looked after children

Section 34 further defines advocacy by saying it must be 'advocacy support that is independent and confidential' and refers to the Get It Sorted Statutory Guidance on the provision of advocacy.

It also sets out the role of the advocate is:

- to empower the child or young person by enabling him to express his views wishes or feelings, or by speaking on his behalf;
- to seek the resolution of any problems or concerns identified by the child or young person by working in partnership with child or young person and only with his agreement;
- to support the child or young person pursuing a complaint through every stage of the complaints procedure and to provide him with information about his rights and options, helping him clarify the complaint and the outcomes he is seeking;
- to speak for or represent the child or young person at any stage of the complaints process, including at the informal stage or at any formal hearing or interviews.

Children and young people living in children's homes

The registered person of every children's home must ensure each child is given appropriate advocacy support. Soon after the child's arrival at the home, the registered person must ensure an explanation has been given to him or her about:

- what advocacy support or services are available;
- how they may access that support or those services;
- any entitlement they have to independent advocacy provision.

This comes from *Regulation 7 The Children's Homes (England) Regulations 2015*

Children and young people living in children's homes

Whenever looked after child or young person who lives at a children's home and goes missing, the registered manager has to adhere to Standard 2 - the children's views, wishes and feelings standard:

"The registered person of every children's home must ensure each child is given appropriate advocacy support. Soon after the child's arrival at the home, the registered person must ensure an explanation has been given to him or her as to what advocacy support or services are available; how the child may access that support or those services; and any entitlement the child may have to independent advocacy provision"

Regulation 7 The Children's Homes (England) Regulations 2015 :

Children and young people in custody

There is no statutory duty to ensure children and young people in custody have access to independent advocates. However, the Youth Justice Board and the Ministry of Justice have interpreted the Secretary of State's power to appoint 'independent persons' to visit secure training centres and receive representations as a duty to provide advocacy (Rule 44 The Secure Training Centre Rules 1998).

Children and young people in custody

The children's charity Barnardo's has the national contract up to 2023 to provide advocacy to children in young offender institutions and secure training centres. The Ministry of Justice set out the following five goals:

- Children and young people in STCs and YOIs are able to identify and freely access independent children's rights and advocacy services;
- Children and young people in STCs and YOIs are provided with the skills to enable them to advocate for themselves and are supported at every opportunity to do so;
- Children and young people in STCs and YOIs, who have complex needs and are unable or not wishing to represent themselves, are supported;

Children and young people in custody

- The voice of children and young people in STCs and YOIs is heard in particular at key periods where the service provider has been made aware of those who are vulnerable and in crisis, through access to proactive children's rights and advocacy services; and
- Raising awareness of the issues facing Children and Young People in custody in order to promote resolution and prevention at a local and systemic level.

Children and young people detained under the MHA

Children and young people in England who are detained under the Mental Health Act (Mental Health Act 1983) have a legal right to access support from an independent mental health advocate. The IMHA has the legal right to:

- Interview a child or young person in private (ie meet with them);
- Interview any person who is professionally concerned with the child's medical treatment; and
- Obtain hospital and social services records relating to the child (as long as they consent).

Children and young people in child protection process

Where a child is judged to have suffered significant harm, or is likely to suffer significant harm, statutory guidance states social workers should:

“help prepare the child if they are attending [a child protection conference] or making representations through a third party to the conference. Give information about advocacy agencies and explain that the family may bring an advocate, friend or supporter.”

16 & 17 yr olds who lack capacity

Local authority must make arrangements for provision of independent mental capacity advocates. *Section 35 Mental Capacity Act 2005; and The Mental Capacity Act 2005 (Independent Mental Capacity Advocates) (General) Regulations 2006.*

The MCA Code of Practice (2007) deems a person who lacks capacity as 'means a person who lacks capacity to make a particular decision or take a particular action for themselves at the time the decision or action needs to be taken'.

It is relevant to anyone over the age of 16 and thus is relevant for those 16 and 17 yr olds. It applies whenever the young person lacks capacity to make a decision about serious medical treatment or a long term change of accommodation being arranged by their local authority or NHS.

16 & 17 yr olds who are homeless

Statutory Guidance – ‘Prevention of homelessness and provision of accommodation for 16 and 17 year old young people who may be homeless and/or require accommodation 2018’ - states that local authorities should ensure access to independent advocacy:

- 3.46 ‘Children and young people who have received services under the 1989 Act are able to be supported to make complaints and representation with the help of an independent advocate. Children’s services should provide information about access to advocacy services when they explain the assessment process to 16- and 17-year-olds seeking help because of homelessness’.
- 3.47 ‘Young people should have access to independent advocacy and support to assist them in weighing up the advantages and disadvantages and coming to a balanced decision and understanding and navigating the housing system. Independent advocacy and support services can play a key role in supporting 16- and 17-year-olds who are homeless or threatened with homelessness’.

Young people in transition

Local authorities must arrange an independent advocate for a young person who:

- Is the subject of a (transition) needs assessment (when they don't have anyone else independent and appropriate to assist them).
- Is the subject of a young carer's assessment (when they don't have anyone else independent and appropriate to assist them).

Section 67 Care Act 2014

This statutory entitlement is usually called 'Care Act Advocacy'

Young people with special educational needs and disabilities

The statutory Special Educational Needs and Disability Code of Practice states that:

“Local authorities should consider whether some young people may require support in expressing their views, including whether they may need support from an advocate (who could be a family member or a professional). Local authorities must not use the views of parents as a proxy for young people’s views. Young people will have their own perspective and local authorities should have arrangements in place to engage with them directly.”

Young people with special educational needs and disabilities

In relation to the local authority's duty to provide children information, advice and support relating to their special educational needs or disability, the Code states:

"Young people must have confidence that they are receiving confidential and impartial information, advice and support. Staff working directly with young people should be trained to support them and work in partnership with them, enabling them to participate fully in decisions about the outcomes they wish to achieve. Young people may be finding their voice for the first time, and may need support in exercising choice and control over the support they receive (including support and advice to take up and manage Personal Budgets). Advocacy should be provided where necessary."

Young people with special educational needs and disabilities

In relation to children with Education, Health and Care Plans, the Code states:

“Local authorities must ensure that the EHC plan review at Year 9, and every review thereafter, includes a focus on preparing for adulthood. It can be helpful for EHC plan reviews before Year 9 to have this focus too. Planning must be centred around the individual and explore the child or young person’s aspirations and abilities, what they want to be able to do when they leave post-16 education or training and the support they need to achieve their ambition. Local authorities should ensure that children and young people have the support they need (for example, advocates) to participate fully in this planning and make decisions.”

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