

National Children's Advocacy Consortium and National Children's Bureau<sup>1</sup>

Children and Families Bill

House of Lords - Committee stage

Independent advocacy for children in reviews

**Proposed new clause**

*"In section 26 of the 1989 Act (review of cases of looked after children, etc) in subsection (2) (regulations as to reviews) after paragraph (d) there is inserted -*

*'(dd) (1) requiring the authority when seeking the views of the child to make arrangements for the provision of independent advocacy for the child unless that child, being of sufficient understanding to do so, states that he or she does not wish to receive the services of an independent advocate.*

(2) For the purposes of this section,

a) 'advocacy' means the provision of independent and confidential information, advice, representation and support to a child

b) 'independent' means

Where the person appointed is not connected with the local authority by virtue of being -

(i) a member of the local authority or any of their committees or sub-

committees, whether elected or co-opted; or

(ii) an officer of the local authority employed by the Children's Services Department of that authority; or

(iii) a spouse or civil partner of any such person."

**Purpose**

This is a probing amendment to promote debate in the House about this very important issue for looked after children and young people and for consideration about measures that could be taken to strengthen existing statutory guidance and improve practice.

During the debate, we will seek assurances that the Government will take action to promote good practice in the provision of advocacy within the review process. This will include:

---

<sup>1</sup> The National Children's Advocacy Consortium (NCAC) is a consortium of third sector organisations working together to improving access to advocacy for vulnerable children and young people<sup>1</sup>. Members of NCAC are Voice, NYAS, NSPCC, Children's Society, Action for Children, Barnardos, and Voiceability

- Producing an ‘Advocacy Handbook’ that will replace the 2004 ‘Get it Sorted’ guidance and reflect current policy and practice
- Collecting data on the national provision of independent advocacy to support children in the review process, in order to determine whether children and young people are effectively listened too, and the impact this has on their outcomes.

### **Briefing**

Edward Timpson, the Under-Secretary of State for Children and Families, clearly recognises the importance of children being heard in decisions affecting them.<sup>2</sup> However, for this to be effective, children need to be able to access independent advocacy support when significant decisions are being made about their lives when they need this and other adults are unable to perform this role on their behalf.

### **What is independent advocacy?**

Many professionals advocate for children as part of their role but they are legally required to promote and safeguard the child’s best interests and are often bound by budgets and departmental priorities. Independent professional advocacy is different from the role of other professionals involved with the child because being independent of the system its primary role is to work exclusively on behalf of the child and to ensure that their views and rights are promoted.

Experience suggests that professional advocacy input leads to better decision-making and that children’s outcomes are improved as a result. The process of active engagement in making decisions about their lives is a very important element in promoting resilience and emotional well-being.

### ***Safety net***

Advocacy also acts as a safety net for many children and young people in care who do not have the natural support network of family to support and represent them. The APPG report on missing children<sup>3</sup> highlighted this point by illustrating that where children are involved in care and placement decisions they are less likely to go missing. This report recommended that all children in care have a statutory right to independent advocacy as part of care reviews and placement planning, not just as part of complaint processes.

Children with disabilities are particularly disadvantaged without independent advocacy support, especially those with communication difficulties: they are often placed out of their authority owing to the

---

<sup>2</sup> Hansard, Tuesday 19 March 2013, Column numbers 318 - 320;  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/205039/Corporate\\_parenting\\_\\_6\\_FINAL.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/205039/Corporate_parenting__6_FINAL.pdf)

<sup>3</sup> APPG for runaway and missing children and adult and APPG for Looked After Children and Care Leavers (2012) *Report from the Joint Inquiry of children who go missing from care*

specialist nature of their provision far away from family and their home authority.

### ***Role of the IRO***

It has been suggested that the IRO can fulfill the role of ensuring that the child's wishes and feelings are heard in their reviews. While they have a duty to inform the child about advocacy support, their role is to chair the meeting, draw together the views not only of the child but all the professionals concerned with the child in arriving at decisions in the **child's best interests**. They also have a duty to monitor the child's case.

National Advocacy Standards require an advocate to act on the child's instructions about their expressed wishes and feelings and to uphold their rights<sup>4</sup>. Non instructed advocacy is provided for younger children or those with communication difficulties. All advocates will discuss and seek to help the child understand the views of others but ultimately they are required to act on the **wishes and feelings** of the child reflecting the child's perceptions of their best interests.

### **Existing provision**

Looked after children, care leavers and children in need have a statutory right to an advocate in making or intending to make a complaint under the Children Act 1989.<sup>5</sup> Over the years since implementation of this statutory right in 2004, there has been an increased recognition by government of the important of advocacy for looked children and care leavers. This has been reflected in the 2011 revised Children Act statutory guidance<sup>6</sup> on care planning and reviews, transition to adulthood for care leavers and the IRO Handbook. In addition the National Minimum Standards for Adoption, Fostering and Children's Homes recognise stress the role of advocacy. Most recently OFSTED in its revised Framework for Inspection of Children's Services<sup>7</sup> states that local authorities will be judged as 'good' if 'children 'understand how to complain and have access to an advocate and independent visitor'.

### ***Inconsistency in implementation***

However, despite these good intentions there is inconsistency in implementation which means that children and young people still do not receive the advocacy support to which they are entitled.

In particular, the provision of services is patchy and inconsistent. A report from the Children's Commissioner<sup>8</sup> illustrated the postcode lottery in

---

<sup>4</sup>Department of Health (2002) National Standards for the Provision of Children's Advocacy Services Standard 2

<sup>5</sup> Section 26A Children Act 1989 introduced by section 119 Adoption and Children Act 2002

<sup>6</sup> The Children Act 1989 Guidance and Regulations, Vol. 2: Care Planning, Placement and Case Review 2010; IRO Handbook 2010; The Children Act 1989 Guidance and Regulations, Vol. 3: Planning Transition to Adulthood for Care Leavers; National Minimum Standards for Fostering Services 2011; National Minimum Standards for Children's Homes 2010

<sup>7</sup> OFSTED, (2013) Framework and evaluation schedule for the inspection of services for children in need of help and protection, children looked after and care leavers

Brady, L (2011) *Where is my Advocate?*, Children's Commissioner for England

provision of advocacy services in general and the legal categories of children covered by local authority contracts: for example some services are not commissioned to provide services to children in need. Research by the Children's Society showed that one third of local authorities do not report any spending on advocacy services.<sup>9</sup> Recent experience from one national advocacy service has shown a 53% increase in referrals in the first five months of this year with 56% of enquiries from care leavers. A number of these referrals are from young people whose home advocacy or children's rights services state that they are unable to help them.

Please see appendix for case studies that reflect key advocacy issues.

### **Proposals for change**

For these reasons we believe that the right to independent advocacy needs to be strengthened. We seek assurance from the government that it will commit to new statutory guidance about independent advocacy. This could take the form of an Advocacy Handbook in much the same way as there is a dedicated handbook for IROs.

The Advocacy Handbook would bring together in one document statutory and government requirements about the provision of advocacy. It would include:

- Updating the current statutory guidance 'Get it Sorted' (2004)
- Current statutory guidance (2010/2011) referred to above
- National Minimum Standards for Children's Homes, Fostering Services and Adoption Services (2011)
- Statutory Regulatory Frameworks (such as Ofsted's Inspection Framework for Children's Services).
- National Minimum Standards for the Provision of Children's Advocacy Services (2002)
- Provision of advocacy to children and young people in child protection conferences drawing on recent reports of good practice
- Routes of training for advocates
- Possible models of good practice

This would make it much clearer to local authorities and service providers about their respective roles and responsibilities in supporting children to access independent advocacy.

### **For further information please contact:**

Wendy Lewington, Coram Voice, Director of Policy - 020-7014 9584; 07956-673027

Laura Courtney, NCB, Head of Policy and Public Affairs - 020 7843 6005  
07850 718680

Nicola Wyld, Coram Voice, Principal Legal and Policy Adviser - 020 7520 - 3777, 07984 553656

---

<sup>9</sup> Pona, I. and Hounsell, D (2012) *The value of independent advocacy for looked after children and young people* London: The Children's Society

## **Appendix - case studies**

### **1. Care leavers - higher education bursary and housing**

Ahmed, a care leaver, initially referred himself to the helpline because he had not been given his Higher Education Bursary. His case was allocated to an advocate. During the course of supporting him on this issue, it became clear that Ahmed had never been told about his entitlement to bid for his own council flat, or his entitlement to additional bidding points as a care leaver, up until the age of 21. Ahmed was 24 when he approached Voice and had therefore missed this opportunity. A complaint was submitted by his advocate about both issues. The Asylum Team took on Ahmed's case and he was told that he would be supported with his housing, but the support offered was insufficient as the team did not want to admit to Housing that they had failed to inform Ahmed of his entitlement to bid as a care leaver. The advocate gave Ahmed his options and he decided to escalate his complaint to stage two of the complaints process.

The advocate says: this case has revealed that the Local Authority has been failing other care leavers by not giving them the Higher Education Bursary, and failing other young people from the Asylum Team by not telling them of their entitlement to bid as care leavers (with priority points). The housing issue remains unresolved as the Stage Two process has only just begun.

### **2. Looked after children - placement moves**

Anneka is a 16 year old looked after child, who is also a young mother. Anneka has been in care since she was eight years of age and had had 123 placement moves in this time, including both foster care and children's homes. Because of all these placement moves, Anneka has found it hard to trust carers and settle in placements and would often run away.

One month before the birth of her baby, Anneka was placed in a mother and baby foster placement. Anneka was very happy here and bonded with her foster carer. Her foster carer attended the birth of her baby and supported Anneka who experienced a difficult birth.

A month after the birth of the baby, Anneka's social worker visited her. The social worker stated that the placement was no longer appropriate as building works were being done, something that the foster carer had previously notified. She notified Anneka the following day that she would be arranging for Anneka to move immediately.

The foster carer arranged for herself, Anneka and the baby to temporarily move to home of the foster carer's mother; the approved secondary carer and fully CRB checked for a short period of time. However, the social worker deemed this was not appropriate.

Anneka was very distressed. She really liked living with her foster carer and felt very supported. For the first time she felt happy and safe in a foster placement.

Anneka contacted the advocacy service. The advocate contacted the social worker and then the team leader outlining all the reasons why Anneka wanted to stay with her foster carer and requested that a response be given within two days and that Anneka be given at least seven days notice prior to a placement move, so she could seek legal advice.

With the two day period, the team leader agreed that it was in the best interests of both Anneka and the baby for them to stay at the placement and the move was stopped. Anneka felt for the first time she was listened to and supported and that the needs of herself and her baby were put first.

### **3. Children in need and homelessness**

Samantha is a sixteen year old girl who has had a very difficult relationship with her mother. The mother kicked her out of home shortly after Christmas last year. Samantha was forced to sofa surf and also spent time with her grandmother who lived in a different local authority (Authority B). Things came to a head when the grandmother said that she had to leave by the end of the month.

Samantha contacted the advocacy service for help as she would become homeless when she had to leave her grandmother's and was unable to return to her mother. Because of the urgency, the case was dealt with on the helpline. The helpline advocate spoke with the social worker in Authority B and asked for an assessment so that Samantha was provided with accommodation under section 20 Children Act 1989 on the grounds that she was facing homelessness and had nowhere else to live. Authority B said that it was the responsibility of Authority A to accommodate Samantha where her mother lived and that Samantha had been in the area for only five months (a matter irrelevant for the purposes of assessment under the Children Act). Authority A denied responsibility as Samantha was currently living in the area of Authority B. Both authorities refused to carry out an assessment of her needs each passing the buck to the other and in the meantime Samantha was very soon to be homeless.

Despite strong representations on the part of the advocacy service neither authority would concede and it was necessary to refer Samantha to a lawyer for an action in judicial review. The lawyer argued in a pre-action letter that there was a clear duty to provide Samantha with accommodation under section 20 and that both authorities were responsible for her.

Without the support of the advocacy service it is very unlikely that Samantha would have received the legal advice and support necessary for her to be accommodated (and under section 20 to become a looked after child with local authority responsibility for all her needs). A vulnerable 16 year girl would have been living on the streets or placed in temporary accommodation by the housing department. Disputes between local authorities about which authority has legal responsibility for young people 'in need' are all too common.