

Children's Independent Advocacy Report

1. Purpose

The purpose of this report is to describe the Minister for Children and Education's policy direction on Independent Advocacy ahead of producing instructions for the Law Drafting Office to produce draft Regulations.

2. Background

The Children and Young People (Jersey) Law 202- (the Law) was passed by the Assembly in February 2022 and is a significant addition to the legislative framework designed to support children and young people in Jersey.

Article 44 of the Law provides the States with a power to make Regulations that require the Minister for Children and Education to make arrangements for the provision of an independent advocacy service. In summary the Law states that the regulations may extend to matters relating to the appointment, remit, role, conduct and powers of independent advocates. The law was subject to [consultation](#) including the proposed independent advocacy provision.

Independent professional advocacy can play a vital role in helping children and young people understand their rights, consider their choices and options, and voice their opinions. Independent advocates are an essential safeguard to ensure children do not get overlooked and their voice is heard alongside professionals and other stakeholders. Good quality independent advocacy services are a feature of mature and high performing systems.

United Nations Convention on the Rights of the Child¹ states that when adults are making decisions that affect children, children have the right to express their views freely in all matters affecting them and to have these views given due weight in accordance with their age and maturity².

Jersey has independent advocacy services for children that are commissioned by Government until 2024 to support two distinct groups of vulnerable children and young people – those with care experience (Jersey Cares) and those who are not looked after but under children's social care (Barnardo's). Similar advocacy services have been running locally for slightly longer period in the mental health system and are also commissioned by Government.

England, Wales, and Scotland all have different approaches to the provision of independent professional advocacy for children and young people. Generally, there is a level of consistency across the statutory service offers with a focus on children in public care and those classified as in need or as being more vulnerable. A summary of the position in these nations is provided in [Annex 1 Advocacy – Policy and Practice](#).

¹ Article 12 (Respect for the views of the child)

² GENERAL COMMENT No. 12 (2009) The right of the child to be heard
<https://www2.ohchr.org/english/bodies/crc/docs/advanceversions/crc-c-gc-12.pdf>

3. Key elements of proposed Independent Advocacy Regulations

3.1 Proposed primary duties of the Minister

The regulations should place a statutory duty on the Minister to appoint independent advocates or provision the advocacy service for qualifying people, either directly or through a provider.

3.2 Overarching Principles

As in the nations of the UK³ ⁴, the approach to independent advocacy provided in Jersey should be supported by some high level principles, for example as for those in the [Advocacy Charter](#). These can either be embedded in the regulations or the regulations can point to an external standard.

3.3 Role of the Independent Advocate

The role of an Independent Advocate acting under this provision for qualifying people should be made clear and should entail:

- Ensuring that they are aware of and are able to access independent advocacy, including by direct offer where that is indicated; helping the person to navigate the system by providing information, advice and assistance and aiding their understanding; empowering the individual; making sure the individual's rights are respected; ensuring the individual's views, wishes and feelings are heard; representing the person's views, wishes and feelings to decision-makers and speaking up for them on their behalf if the individual so wishes.
- An independent advocate must determine in all the circumstances how best to represent and support the individual in question but at all times must act with a view to promoting the individual's well-being.
- Where the individual does not have capacity, or is not competent, to communicate his or her views, wishes or feelings, the independent advocate must do so to the extent the independent advocate can ascertain them.

3.4 Statutory powers of the Independent Advocate

For the purpose of supplying independent professional advocacy the independent advocate may:

- visit and interview a child or care leaver in private;
- visit and interview any person professionally concerned with the child or care leaver;
- represent and accompany a qualifying person in relevant proceedings;
- represent a qualifying person who makes any complaint or other representations under the procedure referred to in Article 45; or
- require disclosure and inspection of records relating to a child or care leaver on the child or care leaver's behalf and with their consent.

³ Informed by the National Standards and Outcomes Framework for Children and Young People in Wales, 2019

⁴ [Advocacy-Charter-A3.pdf \(qualityadvocacy.org.uk\)](#)

3.5 Qualifying circumstances conferring entitlement to statutory independent advocacy

- **Children's Social Care:** Children in care; Care leavers; Children under Child Protection processes; Children with a Health or Development Need.
- **Education:** Children and young people excluded from school.
- **Parents and siblings of Children in Care:** Parents and siblings of children who are in care proceedings or in care
- **Ministerial discretion:** It would be useful to have the capacity in the regulations for the Minister to be able to extend provision to other circumstances where the Minister considers that a person would experience substantial difficulty making their views wishes and feelings known or are particularly at risk of not having their rights upheld and do not have a suitable and appropriate person to represent and support them.

3.6 Qualification period

Once qualified the entitlement should not cease for a specified period (e.g. 90 - 180 days) after the person ceases to qualify.

3.7 Matters in which the Independent Advocate can act

In carrying out the role of independent advocate, a professional independent advocate can act for a qualifying person in matters they are involved in under the following enactments:

- Parts 4, 5, 7 and 8 and 9 of the Children and Young People (Jersey) Law 2022
- Part 3, 4, 5 of the Children (Jersey) Law 2002
- Part 6 of the Education (Jersey) Law 1999
- Matters that have a bearing on that individual and are described under any connected subordinate legislation, published policy or statutory guidance relating to the enactments.

3.8 Accessibility of advocacy service

- **Information provision to all eligible persons:** The Minister and any relevant provider should have a duty to provide information concerning advocacy services to a qualifying person as soon as practicable after the person qualifies to receive the service.
- **Direct approach required for the following groups of eligible people:** To ensure the most vulnerable children have every opportunity to make use of the service there should be an additional duty for a direct approach and offer of advocacy by an independent advocate to be made directly to a qualifying child looked after, a care leaver or child in child protection proceedings as soon as reasonably practicable after they become eligible.
- **No obligation:** The child or young person does not have to accept support from an independent advocate if they do not want it. Equally, the qualifying child may choose to change their mind and seek support or end the support they are receiving at any time.

4. Other considerations

4.1 Delivery of independent advocacy

The review of advocacy in Jersey carried out by the Office of the Children's Commissioner in 2021 included a strong emphasis the importance of independence in the provision of advocacy services and took a view on the options for delivery locally:

"Government and the Care Commission Jersey should go on clarifying that the Office of the Children's Commissioner for Jersey does not now and will not in future offer professional advocacy"
(Recommendation 4)

The report made clear the distinctions the Care Commission Jersey made between different services and activities:

"All concerned in policy, service design and delivery, and members of Jersey's wider public, should be regularly reminded and assured of the separation of functions that must pertain between the following strands of service, provision, oversight, and activity:

- Services that are paid for, governed, led, and managed by and answerable to, Government - such as children's social care services at all levels and in all teams;
- The Childrens Commissioner Jersey who, though government funded, has guaranteed and legal independence of thought, action, investigation, and reporting, all of which were instituted by the law that governs Jersey's Human Rights Institute for children and young people;
- Independent, hopefully quickly non-governmentally funded bodies such as those envisaged to provide advocacy across a wide range of Jersey's children and young people;
- Services available through Jersey's voluntary and charitable organisations, which if they are to provide advocacy should be formally checked to ensure they are doing so to the same standards as the contracted and funded providers of independent advocacy, and
- Services and/or support provided by private and paid-for concerns such as solicitors, or Advocates in the courts; or those which may be available without cost by approaching, and gaining the support of, Jersey's various categories of duly Elected Representatives (recommendation 10).

The capacity for oversight by the Children's Commissioner should be augmented by the introduction of appropriate quality assurance checks and balances and a clearly communicated complaints pathways to further ensure the independence and quality assurance of the services.

4.2 Quality of independent advocacy

It is envisaged that complaints about the advocacy service will come under the standard Government of Jersey complaints mechanism and the proposed Public Sector Ombudsperson.

With reference to standards, as well as the existing capacity for the Jersey Children's Commissioner to report on the adequacy and effectiveness of provision, consideration should be given to making advocacy a regulated service under the Regulation of Care Law 2014.

4.3 Current and Future Allocated Financial Resource

- CYPES is planning a review of current advocacy service provision In February 2023. The review will anticipate further expansion of advocacy to Parent Advisory Service.
- Providing advocacy for children who have been excluded from school is not already delivered or planned for. However, a significant proportion will have cases open to children's social care and will therefore already be accounted for in the existing offer.

4.4 Rights / Impact

A pilot CRIA (Children's Rights Impact Assessment) was carried out in 2021 as part of the policy work for the Children and Young People Law 2022 including the provision for advocacy regulations. The law directly advances our compliance with the UNCRC (United Nations Convention on the Right of the Child) , and specifically addresses Article 12 'Voice of the Child'.

Annex 1 Advocacy – Policy and Practice

Jersey

CYPES has introduced two independent advocacy services who have been commissioned to deliver services through a contractual arrangement. For children in care and care leavers a service is provided by Jersey Cares. For children entering the child protection and 'child in need' system a service is provided through Barnardo's. These services have been established ahead of the new Children and Young People law 202-.

The advocacy provisions in the Children and Young People (Jersey) Law 202- were informed by the provisions introduced locally under Article 79 of the Mental Health (Jersey) Law, 2016⁵. This was followed by the Mental Health (Independent Mental Health Advocates) (Jersey) Regulations 2018.⁶ A code of practice⁷ issued under Art. 90 of the Mental Health (Jersey) Law 2016 provides statutory guidance on performing duties under the law. Chapter 7 provides additional detail on the role and function of Independent mental health advocates (IMHAs) which augments the regulations.

Jersey Children's Commissioner Review

In 2021 the Children's Commissioner has published a review⁸ into independent advocacy in Jersey⁹. The review called for a broadening of access to a rights-based independent advocacy for all children, which had a legal basis. The report and summary report¹⁰ highlighted 12 findings/recommendations, reproduced in Annex 2.

England

In England under the Children Act 1989 statutory entitlement to independent advocacy for children and young people in receipt of social care services is linked to making a representation or a complaint. The Children Act 1989 ("the Act") imposes a duty on local authorities to provide advocacy services for looked after children, care leavers and children in need who wish to make a complaint, detailed under subordinate Regulations¹¹.

These regulations make it clear that these groups of children have an entitlement to independent advocacy when making a complaint and for representations which are not complaints including those relating to improvements in the service they receive, and that children and young people should be made aware of their entitlement to independent advocacy and how to access it.

A complaint may be generally defined as an expression of dissatisfaction or disquiet in relation to an individual child or young person, which requires a response. Representations may not always be complaints; they might also be positive remarks or ideas that require a response from the local authority. Enquiries or comments about the availability, delivery or nature of a service which are not criticisms also constitute representations, for example, children and young people should be able to

⁵ <https://www.jerseylaw.ie/laws/current/Pages/20.650.aspx>

⁶ <https://www.jerseylaw.ie/laws/current/Pages/20.650.25.aspx>

⁷ <https://www.gov.ie/SiteCollectionDocuments/Crime%20and%20justice/ID%20COP%20Mental%20Health%2020180928%20SDF.pdf>

⁸ A review of Independent Advocacy for children and young people: Advice to policy makers and practitioners in Jersey Following a review by Professor Maggie Atkinson (Self-employed Independent Consultant) June 2021

⁹ [20210702-occ-jersey-advocacy-report-issued-final.pdf \(childcomjersey.org.ie\)](https://www.childcomjersey.org.ie/20210702-occ-jersey-advocacy-report-issued-final.pdf)

¹⁰ [8445-cco-ipas-report-summary-aw.pdf \(childcomjersey.org.ie\)](https://www.childcomjersey.org.ie/8445-cco-ipas-report-summary-aw.pdf)

¹¹ Under section 26A of the Act local authorities must make arrangements for the provision of assistance, including assistance by way of representation, to care leavers and children who make or intend to make representations using the procedures under sections 24D and 26(3) of the Act. Subordinate legislation issued under S26A are the Advocacy Services and Representations Procedure (Children) (Amendment) Regulations 2004, SI 2004/719 (made under sub-s (3), (4)) and the Children Act 1989 Representations Procedure (England) Regulations 2006, SI 2006/1738 (made under sub-s 3(b)). Under this is the Statutory guidance for local authority children's services on representations and complaints procedures, 2006.

put forward ideas or proposals about the service they receive, or the establishment they live in, without having this framed as a complaint¹².

There are two notable sets of statutory guidance under these provisions, both 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. The first is the National Standards for the Provision of Children's Advocacy Services 2002¹³ and the second is the guidance issued to local authorities directly on Providing Effective Advocacy Services for Children and Young People Making a Complaint under the Children Act 1989 (The Advocacy Services and Representations Procedure (Children) (Amendment) Regulations 2004)¹⁴

The Special educational needs and disability code of practice¹⁵¹⁶ which relates to Part 3 of the Children and Families Act 2014 also contains a number of provisions regarding advocacy. Specific situational entitlement for other vulnerable children and young people is also conferred through other pieces of legislation for example 16- and 17-year-olds who are homeless or threatened with homelessness, looked after children and young people who go missing, children and young people living in children's homes¹⁷.

Although it is spread over different pieces of legislation what the statutory provision all has in common is that it is targeted at children that are considered vulnerable or may have additional barriers making it more difficult for them to be heard.

Reviews and recommendations

The guidance and standards on independent advocacy have not been revisited in England since 2002 and 2004.

Anne Longfield (Children's Commissioner for England) reviewed the provision of advocacy in England in 2018¹⁸ and her recommendations for improvement are in Annex 3.

The government committed to an independent review of the children's social care system. This review was launched in March 2021 with the terms of reference being "a bold and broad approach to support a fundamental review of children's experiences"¹⁹.

The review was independently led by Josh MacAlister, a former schoolteacher who founded the social work charity Frontline and was supported by an 'experts by experience' group, an evidence group, and a design group. The experts by experience group helped the lead reviewer to hear the diverse experiences of children and families who are supported by social workers.

This independent review published its final report and recommendations in May 2022²⁰ and in summary recommended advocacy for children in care that is based on an opt out rather than opt in system and connected automatically to an independent advocate when they enter care, or at other key moments in their care journey. This professional will explain what advocacy is, and will offer their services,

¹² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/273895/getting_the_best_from_complaints.pdf

¹³ <https://article39.org.uk/wp-content/uploads/2019/02/National-advocacy-standards-Nov-02.pdf>

¹⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/273899/providing_effective_advocacy.pdf

¹⁵ <https://article39.org.uk/rights-to-advocacy/>

¹⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/398815/SEND_Code_of_Practice_January_2015.pdf

¹⁷ <https://article39.org.uk/rights-to-advocacy/>

¹⁸ <https://www.childrenscommissioner.gov.uk/wp-content/uploads/2019/06/CCO-Advocacy-for-children-June-2019.pdf>

¹⁹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/952624/terms_of_reference_independent_childrens_social_care_review.pdf

²⁰ <https://childrensocialcare.independent-review.uk/final-report/>

as is the statutory requirement in Wales. The Care Review said that the “government will need to do more work to determine the best option” for an advocacy delivery model. The emphasis is placed on finding a service independent of the local authority, with options including a new service, CAFCAS or the Children’s Commissioner.

Scotland

The Scottish Government’s guidance on Children’s Advocacy (2014)²¹ states that advocacy will most often be required where a child is engaging with a service, such as health, education, police, social work etc. However, until recently the only statutory rights to independent advocacy in Scotland for children was in respect of children with ‘mental disorders’²²²³ and for families and young people who were contesting an education authority’s decisions regarding the provision of educational support²⁴²⁵. For other children and young people, the offer was non-statutory.

Recently, Scotland has introduced new Advocacy Regulations under S122 of the Children’s Hearings (Scotland) Act 2011²⁶. A child or young person will be referred to a Children’s Hearing if one or more grounds²⁷ exist (stated in section 67(2) of Children’s Hearings (Scotland) Act 2011). The grounds include children who’s health or development is at risk of serious impairment due to a lack of parental care, if particular offences have been committed against the child or the child has or might develop a close connection to an offender or to people who are likely to pose a risk of harm or abuse or have other serious adverse impacts, an offence has been committed by the child or the child is misusing substances or is posing a risk to themselves or others, is out of control or is not attending school without good reason.

Under these 2020 Regulations the Scottish Government is developing a specialist statutory advocacy service for children and young people. Under these provisions an advocate must act in accordance with the National Practice Model for Advocacy within the Children’s Hearings System published by the Scottish Government on 31 March 2020²⁸. This has been informed by the 2014 Scottish Government’s guidance on Children’s Advocacy mentioned above and the Scottish Independent Advocacy Alliance’s document Principles, Standards & Code of Best Practice 2019²⁹

²¹ <https://www.gov.scot/publications/childrens-advocacy-guidance/#introduction-to-children-s-advocacy>

²² https://www.siaa.org.uk/wp-content/uploads/2021/02/1516SIA05_Childrens_digital-isbn.pdf

²³ The Mental Health (Care & Treatment) (Scotland) Act 2003

²⁴ <https://www.gov.scot/publications/childrens-advocacy-guidance/#introduction-to-children-s-advocacy>

²⁵ Education (Additional Support for Learning) (Scotland) Act 2004 (as amended)

²⁶ Children’s Hearings (Scotland) Act 2011 (Children’s Advocacy Services) Regulations 2020 (SSI 2020/370)
<https://www.legislation.gov.uk/ssi/2020/370/contents/made>

²⁷ The grounds are that— (a) the child is likely to suffer unnecessarily, or the health or development of the child is likely to be seriously impaired, due to a lack of parental care, (b) a schedule 1 offence has been committed in respect of the child, (c) the child has, or is likely to have, a close connection with a person who has committed a schedule 1 offence, (d) the child is, or is likely to become, a member of the same household as a child in respect of whom a schedule 1 offence has been committed, (e) the child is being, or is likely to be, exposed to persons whose conduct is (or has been) such that it is likely that— (i) the child will be abused or harmed, or (ii) the child’s health, safety or development will be seriously adversely affected, (f) the child has, or is likely to have, a close connection with a person who has carried out domestic abuse, (g) the child has, or is likely to have, a close connection with a person who has committed an offence under Part 1, 4 or 5 of the Sexual Offences (Scotland) Act 2009 (asp 9), (h) the child is being provided with accommodation by a local authority under section 25 of the 1995 Act and special measures are needed to support the child, (i) a permanence order is in force in respect of the child and special measures are needed to support the child, (j) the child has committed an offence, (k) the child has misused alcohol, (l) the child has misused a drug (whether or not a controlled drug), (m) the child’s conduct has had, or is likely to have, a serious adverse effect on the health, safety or development of the child or another person, (n) the child is beyond the control of a relevant person, (o) the child has failed without reasonable excuse to attend regularly at school, (p) the child— (i) [has been, is being] or is likely to be, subjected to physical, emotional or other pressure to enter into a . . . civil partnership, or (ii) is, or is likely to become, a member of the same household as such a child, [(q) the child—(i) has been, is being or is likely to be forced into a marriage (that expression being construed in accordance with section 1 of the Forced Marriage etc (Protection and Jurisdiction) (Scotland) Act 2011 (asp 15)) or, (ii) is, or is likely to become, a member of the same household as such a child].

²⁸ <https://www.gov.scot/publications/advocacy-childrens-hearings-system-national-practice-model-guidance/documents/>

²⁹ [SIAA-Principles-Final-2nd-print-run-with-ISBN.pdf](#)

In addition, under work being proposed after the Independent Care Review and the publication of 'the Promise'³⁰ the Scottish Government has committed to ensure that all care experienced children and their families will have access to independent advocacy at all stages of their experience of care by 2024³¹. Advocacy provision will follow the principles set out in the promise and care experienced children and young people will be able to easily access child centred legal advice and representation.

Wales

In 2014 the Welsh Government introduced legislation to replace Part 3 of the Children Act 1989 with (Parts) of the Social Services and Well-being (Wales) Act 2014³².

Under Part 10 of the Social Services and Well-being (Wales) Act 2014 local authorities have a duty to make arrangements for the provision of assistance to looked after children, former looked after children, and children who have needs for care and support. This assistance must include assistance by way of representation.

In Wales, the recently produced National Approach to Advocacy³³ makes it clear that any child with a social worker should be provided with advocacy services, and there should be an active offer' to any child entering the child protection or care system. This National Standards and Outcomes Framework for Children and Young People in Wales sets out the underpinning standards and outcomes in relation to advocacy.

The Welsh Government have taken steps to further embed advocacy within the Act with a dedicated Code of Practice on advocacy under Part 10, produced in 2019³⁴. This has been done in alignment with the development of regulations placing requirements on providers of advocacy services, under the Regulation and Inspection of the Social Care Act 2016 (RISCA (Regulation and Inspection of the Social Care Act)) – the Regulated Advocacy Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019 and associated guidance³⁵.

³⁰ https://www.carereview.scot/wp-content/uploads/2020/03/The-Promise_v7.pdf pg. 114 and 115

³¹ <https://thepromise.scot/plan-21-24-pdf-standard.pdf#page=13>

³² Section 174 of the Social Services and Well-being (Wales) Act 2014 requires local authorities to establish a procedure for considering representations including complaints made by a child in relation to services received either as a looked after child or a child needing care and support.

³³ [Independent Professional Advocacy cover english \(gov.wales\)](https://www.gov.wales/independent-professional-advocacy-cover-english)

³⁴ [social-services-and-well-being-wales-act-2014-part-10-code-of-practice-advocacy.pdf \(gov.wales\)](https://www.gov.wales/social-services-and-well-being-wales-act-2014-part-10-code-of-practice-advocacy.pdf)

³⁵ <https://gov.wales/sites/default/files/publications/2019-04/guidance-for-providers-and-responsible-individuals-of-regulated-advocacy-services.pdf>