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## **7. Mental health advocates**

Local authorities have a duty to commission an independent mental health advocate or an independent mental capacity advocate for children who are subject to the Mental Health Act or 16- and 17-year-olds subject to the Mental Capacity Act.

In total, 447 children were reported to be subject to the Mental Health Act, with an average of six children per local authority, a minimum of zero and a maximum of 65 children in one local authority on 31 March 2023. Fewer children (278 in total) were reported as subject to the Mental Capacity Act, with an average of four children per local authority, a minimum of zero and a maximum of 41 children in one local authority. When asked about the commissioning of these services for these children around half of local authorities were unable to provide estimates of the number of children who were subject to the Mental Health Act and 16- and 17-year-olds subject to the Mental Capacity Act in their area on 31 March 2023 (47% and 53% respectively).

The quality of data provided for referrals was particularly poor, 49% of local authorities were unable to provide data on the number of referrals made on behalf of children subject to the Mental Health Act and 61% of local authorities were unable to provide data for 16- and 17-year-olds subject to the Mental Capacity Act.

## **8. The way forward**

It is the Children's Commissioner's mission to ensure that every vulnerable child in need of advocacy has access to a high-quality, independent advocate who can listen to their wishes and views, uphold their rights and support them to get the help they need.

For this vision to become a reality there will need to be changes to the way that advocacy is commissioned, how the quality of advocacy is assessed, and vitally, a national strategy to increase the number of well trained and skilled advocates.

As this report and the CCo's previous report on homeless 16- and 17-year-olds have shown, there is still a significant way to go<sup>13</sup>. The following recommendations sets out what the government will need to do to provide a high-quality service that truly delivers for children, and to fulfil its commitment to roll out an opt-out model of advocacy.

### **8.1. The need for truly independent advocacy services that children trust**

As this report has found, the vast majority (83%) of advocacy services in England are currently wholly or partly externally commissioned. Local authorities commission services from a range of external providers and have responsibility for assessing the quality of these services, funding and managing their contracts. As interviews conducted for this project have shown, advocates and children see this structure as a conflict of interest. That is why, as the government shifts to the opt-out model of advocacy, an independent organisation should be established to oversee the commissioning of advocacy services for children in England.

Moreover, as the CCo has observed through its own independent advocacy service Help at Hand, advocates acting in the best interest of a child must have access to a national service that can escalate their concerns about the issues children are facing. As the office's recent annual review of the Help at Hand service shows, this escalation point is vital as it provides as the team can address persistent issues that advocates have struggled to resolve, as well as monitor trends in the issues that children are facing.

**Recommendation:** A new independent, national advocacy service should ensure local authorities have access to a sufficient number of advocates who can provide independent and high-quality advocacy for children and young people. The Department for Education should fund this organisation to act as a broker between local authorities and external advocacy providers to ensure the needs of children and young people are met across local authorities and independence is maintained. While a national service, the advocates would not operate nationally, but be allocated to individual local authorities, so they can build relationships and understanding of local systems.

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**Recommendation:** The Children's Commissioner's office should be formally established as escalation point for all commissioned advocacy services in England through an amendment to the Advocacy Services and Representations Procedure Regulations 2004. Where an advocate believes a child's rights have been breached and the formal complaints process is not sufficient or appropriate, the Advocacy Services and Representations Procedure Regulations 2004 should specify that the advocate can escalate their concerns to the CCo's independent advocacy service Help at Hand.

In the immediate future there are changes that can be made to strengthen the independence of advocates.

The office welcomes the recognition in Standard 7 that for children to be confident in the advocacy they receive they will need to be confident that there are not conflicting interests or pressures on advocates. Yet as this report has shown, there are currently concerns that advocates are not able to act independently as a result of current commissioning arrangements. In the immediate term, while the independent national advocacy service is established, the Department for Education should strengthen Standard 7 of the National Standards for the Provision of Advocacy.

**Recommendation:** The Department for Education should strengthen Standard 7.18 of the National Standards for the Provision of Advocacy to ensure that advocacy services have to set out how their independence statement will be enacted to ensure its independence from its funders. Standard 7.16 should state that local authorities must also set out how their funding and management arrangements will support the advocacy provider's independence statement.

## **8.2. Greater accountability for the quality and effectiveness of services**

While the office welcomes the revised National Standards, it is currently unclear how the implementation of these standards will be monitored.

The National Standards outline that, through the framework for inspecting local authority children's services, Ofsted will assess children's access to advocacy; whether children are listened to; whether practice is informed by their wishes and feelings; feedback from children and families on the effectiveness of advocacy services; how children and care leavers understand their rights and how complaints are managed. However, Ofsted's framework for inspecting local authority children's

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services does not define how these aspects of local authority advocacy services will be inspected, and currently advocacy services are not always reported on within Ofsted reports. While the CCo welcomes the intention in the National Standards, it is not how this will happen in practice without significant changes to the Ofsted framework.

There is currently a dearth of data on the availability, quality and effectiveness of advocacy services at a local authority, as well as at national level. While it is essential that timely and consistent data is collected at a local authority level to enable close monitoring of services, it is also vital at a national level to inform government policy.

**Recommendation:** The evaluation criteria for leadership within Ofsted inspections of local authority children's services should focus on assessing the effectiveness of the advocacy services that local authorities commission for children with an entitlement to advocacy.

**Recommendation:** To improve accountability the Department for Education should collect and publish annual data from local authorities on referrals and representations for children. This should include all groups of children who are eligible for statutory advocacy support.

### **8.3. Quality of advocacy – training for advocates**

As we see in section 4.1.1., there is substantial variation in the quality of training across services. The data in this report shows that in house services have substantially lower levels of qualification requirements than services that are externally commissioned. This variation is unsurprising given the lack of minimum qualifications or certification for advocates.

While the revised Advocacy Standard recognise that advocates need to be equipped with relevant knowledge and skills to support children, and advocates should have access to continuous development opportunities, there is no mention of what a minimum qualification standard for advocates should be.

The role of non-instructed advocates is complex and specialist. While there are references within the revised Advocacy Standards (particularly 3.9. and 6.2.) to the need for non-instructed advocates to have sufficient training and resource, there is not currently a qualification requirement for non-instructed advocates.

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**Recommendations:** As the government adopts an opt-out model of advocacy, a minimum qualification standard for all advocates should be established in recognition that advocates need a grounding in relevant knowledge and skills to support them to effectively advocate for children and young people. A qualification that teaches advocates about the legal framework for children's rights should be developed and should be reflected in Advocacy Services and Representations Procedure Regulations 2004 and the revised Advocacy Standards.

#### **8.4. Advocacy for specific groups of children**

Government plans for an opt out model of advocacy appear to focus solely on children who interact with the care system, namely looked-after children, children in need and care leavers. Yet there are other vulnerable groups of children for whom having access to an independent advocate who can listen to their wishes and feelings and uphold their rights is essential. This section presents recommendations for how advocacy services should be provided to particular groups of vulnerable children.

**Recommendation:** The opt out model of advocacy provision should be explicitly extended to all children who have a statutory entitlement to advocacy, including for example young carers and children with special educational needs and disabilities.

#### **Children with complex needs and disabilities**

The abuse perpetrated towards children with complex needs and disabilities in residential settings in Doncaster was deeply distressing. The office was glad to be involved in follow up work which informed the Child Safeguarding Practice Review Panel's final report. It is good to see the government's response to the Panel's report acknowledge the seriousness of the failings and recognise the vital importance of high quality advocacy. However, a great deal more is needed to ensure that the Panel's recommendations are implemented in full and that this abuse is never repeated.

In its recommendations the panel concluded that, every child with *"disabilities and complex health needs in residential settings should have access to independently commissioned, non-instructed*









commissioned in local areas, the cost of these services and to attempt to identify the level of demand. In total, 119 local authorities responded to the request, however the completeness of the data varied greatly between local authorities. No new analysis of the 2019 data was conducted for this report.

## **Case studies from the CCo Help at Hand service**

The experiences of the CCo's Help at Hand team have also informed this report through case studies which were selected as typical examples of children's experiences of advocacy services in England. All case studies used or referred to in this report are from between 2021 to 2023 and have been anonymised, using pseudonyms in place of real names and removing any potentially identifiable information.

## **Interviews with advocates, other professionals and homeless young people**

### Interviews with advocates and professionals

The CCo conducted 8 interviews with 10 advocates and other professionals including instructed and non-instructed advocates and commissioning managers between July and September 2023, to hear directly from those who currently provide or have recently provided advocacy services to children in England. These interviews spanned six local authorities. The purpose of the interviews was to hear their personal experiences, including their professional background and examples of good advocacy provision, as well as their opinions on how advocacy provision can be improved in England.

### Interviews with young people

The CCo conducted four interviews with young people aged 17 to 21 years old who had received advocacy services between June and July 2023. These interviews were primarily conducted as part of a CCo report on young people's experiences of homelessness in England<sup>18</sup>.

### Analysis of interview data

All interviews with professionals took place virtually using Microsoft Teams between July and August 2023. Interviews were audio recorded, transcribed and analysed thematically by a CCo social researcher by grouping similar quotes and responses across interviews into related themes.

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## References

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- <sup>6</sup> Children's Commissioner for England, 2019. Advocacy for Children: Children and young people's advocacy in England. [Link](#).
- <sup>7</sup> Children's Commissioner for England, 2019. Advocacy for Children: Children and young people's advocacy in England. [Link](#).
- <sup>8</sup> Children's Commissioner for England, 2023. Homeless 16- and 17-year-olds in need of care. [Link](#).
- <sup>9</sup> Department for Education, 2023. Characteristics of Children in Need. [Link](#).
- <sup>10</sup> Children's Commissioner for England, 2023. Homeless 16- and 17-year-olds in need of care. [Link](#).
- <sup>11</sup> Children's Commissioner for England, 2019. Advocacy for Children: Children and young people's advocacy in England. [Link](#).
- <sup>12</sup> Inflation rate calculated between 2019 and March 2023 based on the Consumer Price Index including owner occupiers' housing costs (CPIH) inflation data from the Office for National Statistics. [Link](#).
- <sup>13</sup> Children's Commissioner for England, 2023. Homeless 16- and 17-year-olds in need of care. [Link](#).
- <sup>14</sup> House of Commons Justice Committee, 2023, Pre-legislative scrutiny of the draft Victims Bill: Government Response to the Committee's Second Report. Section 61. [Link](#).
- <sup>15</sup> Children's Commissioner for England, 2019. Advocacy for Children: Children and young people's advocacy in England. [Link](#).
- <sup>16</sup> Inflation rate calculated between 2019 and March 2023 based on the Consumer Price Index including owner occupiers' housing costs (CPIH) inflation data from the Office for National Statistics. [Link](#).
- <sup>17</sup> Children's Commissioner for England, 2019. Advocacy for Children: Children and young people's advocacy in England. [Link](#).
- <sup>18</sup> Children's Commissioner for England, 2023. Homeless 16- and 17-year-olds in need of care. [Link](#).

