

Cynulliad National
Cenedlaethol Assembly for
Cymru Wales

Children and Young People Committee

Advocacy Services for Children and Young People in Wales

March 2008

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CHAIR'S INTRODUCTION



Since the Waterhouse report, *Lost in Care*, was published in 2000, a wide range of recommendations have been made about independent advocacy services for children and young people. It has taken a long time to get these delivered.

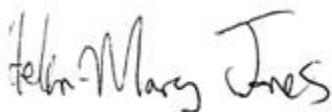
The Welsh Assembly Government's drive to introduce a new model for delivering advocacy services for children and young people is therefore welcome. The Children and Young People Committee (CYPC) recognised the urgency of delivering improvements in commissioning structures, and unanimously agreed to scrutinise the Welsh Assembly Government's proposals within a tightly focussed timescale. The Committee recognised that structures are urgently needed but if there are problems with those structures, they need to be put right now rather than further down the line.

An inquiry into the commissioning of advocacy services is particularly appropriate for the Children and Young People Committee to undertake as its first inquiry.

We often do not take the views of children and young people seriously enough, even if some of those young people over 16 are able to marry, join the Armed Forces and pay taxes. There is a responsibility on us as politicians to represent those without a voice and our children need to have the opportunity to voice their opinions and be listened to. It was in that spirit that the Children and Young People Committee was established. It is in that spirit that independent advocacy services are needed by children and young people.

In the course of this inquiry, we have heard from a wide range of organisations. Some of the most powerful voices have been those of young people themselves. They have told us that advocates enable the communication of their views and feelings, ensuring these are taken into account when decisions are made about their lives. They have shown us that advocates need to be able to listen, to understand, to get their voices heard, to stick with things and make them happen. Some have also described breaches of confidence and trust that have fundamentally damaged their relationships with advocates, and tainted their trust in 'the system' to help them. Perhaps above all they have told us that they need to really be able to believe their advocate is 'on their side' and completely independent of any other organisation in their lives.

Putting in place the best possible structures to enable independent advocacy will enable children to make themselves heard.

A handwritten signature in black ink that reads "Helen Mary Jones".

Helen Mary Jones
Chair, Children and Young People Committee

INTRODUCTION AND BACKGROUND

There have been many reports and inquiries, dating back to 1997, calling for the voice of the child to be listened to. In his investigation into the abuse of children in public care, *People Like Us* (1997), Sir William Utting concluded that looked after children needed independent advocacy as a source of protection, and as a means of ensuring that their voices were heard within an otherwise closed system. Advocacy was also a central issue of the Waterhouse report, *Lost in Care* (2000), which recommended that children making a complaint should have access to advocacy. The Carlile report, *Too Serious a Thing* (2002) on safeguards for children in the NHS in Wales recommended the same, and listening to the voice of the child was one of the main themes running through Lord Laming's report into the death of Victoria Climbié, *Keeping Children Safe* (2003).

The Children's Commissioner for Wales also added his voice to the debate, with the report *Telling Concerns* (2003), which reviewed arrangements for the provisions of advocacy and made recommendations for improvements to social services complaints procedures and advocacy services at national and local level. Concern about advocacy services has been a recurring theme in subsequent Children's Commissioner Annual Reviews.

In response to recommendations in the Utting, Waterhouse and Carlile reports, the Welsh Assembly Government made a long-standing commitment to review advocacy services for children and young people.

In March 2007, the Welsh Assembly Government launched a consultation on a *New Service Model for Delivering Advocacy Services for Children and Young People*. This consultation presented a model for delivering advocacy services, based on a principle of regional commissioning through Children and Young People's Framework Partnerships (CYPPs).

Responses to the consultation indicated a wide range of views on the best means to commission advocacy services. However, to enable these ideas to be openly debated, the Children and Young People Committee unanimously resolved to scrutinise the Welsh Assembly Government's proposals.

Bearing in mind the Welsh Assembly Government's intention to deliver improvements in advocacy services for children as swiftly as possible, the Committee agreed to aim to report by Easter 2008.

In conducting their inquiry, the Committee took evidence from a range of witnesses, including the Deputy Minister for Social Services, representative bodies and organisations and directly from young people, with one young person attending a Committee meeting. Committee Members also undertook rapporteur visits to groups of young people.

Terms of Reference

The terms of reference for the inquiry were:

- to scrutinise the Welsh Assembly Government's proposals to deliver advocacy services to the children of Wales following the consultation on a new service model for delivering advocacy services for children and young people; and
- to make recommendations on the action that needs to be taken in order to improve the delivery of advocacy services to young people and children in Wales.

A Definition of Advocacy

The Welsh Assembly Government's *National Standards for the Provision for Children's Advocacy Services*, (2003), defined advocacy as:

“Advocacy is about speaking up for children and young people. Advocacy is about empowering children and young people to make sure that their rights are respected and their views and wishes are heard at all times. Advocacy is about representing the views, wishes and needs of children and young people to decision-makers, and helping them to navigate the system.”

THE LEGISLATIVE FRAMEWORK

Current Responsibility on Local Authorities

Advocacy is a cross-cutting issue, impacting on devolved responsibilities, such as education, health and social services, and non-devolved matters such as immigration and justice.

Under existing legislation, local authorities in Wales with social services responsibilities have specific duties, under section 26A of *The Children Act 1989*, to 'make arrangements' to provide assistance to:

- (1) persons who make or intend to make representations under section 24D of *The Children Act 1989*; and
- (2) children who make or intend to make representations under section 26(3) of *The Children Act 1989*.

Under the current legal framework a local authority must 'make arrangements' for the provision of assistance, including assistance by way of representation/advocacy. This assistance must be available to care leavers, children in need, looked after children and children who make or intend to make representations under section 24D and 26(3) of *The Children Act 1989*.

The wording of the statute means that a local authority can provide an advocacy service itself, or contract it out to a third party provider. The local authority can commission advocacy services, including voluntary agencies, providing they meet the national standards for the provision of children's advocacy services issued in 2003.

Primary legislation would be required to remove the responsibility on local authorities in Wales to 'make arrangements' for the provision of advocacy services.

Children and Young People's Partnerships

Children and Young People's Partnerships, made up of a local authority and partners, are a statutory requirement under *The Children Act 2004* (as amended). Such Partnerships are designed to bring together all local partners who provide services for children and young people. The Partnerships are responsible for services for all children and young people from the ante-natal stage to the age of 18 years, together with those participating in or receiving youth support services up to the age of 25 and care leavers up to 21 or 25 if in education or training.

The *Children Act 2004* (as amended) describes relevant partners of the local authority as being:

- the police authority and the chief officer of police for the area;
- the local probation board;
- the youth offending team;

- the Local Health Board;
- NHS trusts providing services in the area of the authority;
- the Welsh Assembly Government to the extent that it is discharging functions under Part 2 of the *Learning and Skills Act 2000*.

The Welsh Assembly Government's 2006 Circular, *Stronger Partnerships for Better Outcomes*, also recommends that the Partnerships include:

- a representative of the Local Safeguarding Children Board;
- representatives of local schools;
- representatives from Welsh medium organisations/groups
- a representative of the Fire and Rescue Service;
- a representative of relevant voluntary organisations, usually the Director of the County Voluntary Council (CVC).

Procurement Arrangements in the UK

In the UK, *The Public Contracts Regulations 2006* implement relevant EU procurement directives. Under these Regulations, a contract commissioning the provision of 'advocacy services,' would be classified as a 'Part B services contract'.

Contracts that are designated 'Part B services contracts' only attract certain Regulations: for example, only the award of the contract need be advertised in the Official Journal of the European Union.

All 'Part B services contracts' enjoy a threshold of £144,371 (€211,000) and the Regulations only apply if the value of the contract is above this amount.

Services contracts let by local authorities have a value threshold of £144,371 (€211,000) for both Part A and Part B type activities.

The tendering process for Part B contracts should not take longer than advertising locally via the contracting authority's usual tendering process.

KEY ISSUES AND RECOMMENDATIONS

In conducting their inquiry, Members of the Committee took evidence from a wide range of witnesses including the Deputy Minister for Social Services, advocacy providers and commissioners, umbrella organisations, organisations representing young people and directly from young people.

Evidence was received in a number of ways: written responses to a call for evidence, oral evidence in Committee meetings, and through rapporteur visits to groups of young people. Annex 2 details the evidence received.

Members also noted the Ministerial Statement made in Plenary on 11 December 2007 by the Minister for Children, Education, Lifelong Learning and Skills, Jane Hutt AM.

There was a general agreement amongst witnesses that the Welsh Assembly Government had shown a commitment to attempting to drive through improvements in the provision of advocacy services for children and young people. However, Committee Members were presented with a range of concerns regarding the new service model put forward by the Welsh Assembly Government.

In the rapporteur visits, young people also expressed the view that whatever model for commissioning advocacy services was adopted, there would inevitably be some unanticipated problems that had to be worked through.

Four key themes emerged during the course of the inquiry:

- The need for independent advocacy;
- The need for skilled advocates;
- The need for accessible advocacy;
- The need for continuity of service

1. The Need for Independent Advocacy

Witnesses universally agreed that advocacy services needed to be independent, and that children and young people must have confidence and trust in a system which is reflective of their need.

However, Committee Members were presented with a range of views on what constituted independence and consequently what commissioning arrangements were appropriate to ensure independence.

Broadly, these can be summarised as follows:

- Some witnesses supported the Welsh Assembly Government's proposed model of service delivery of regional commissioning by CYPPs, with some suggestions for strengthening governance and accountability arrangements;
- Some supported a mixed economy with regional/local commissioning for universal type advocacy and national commissioning of specialist advocacy for specific vulnerable groups;
- Some disagreed with the model of regional commissioning and proposed national commissioning of local advocacy services.

Each commissioning arrangement was considered to have certain strengths.

The Welsh Assembly Government's Proposed Model

Those arguing in favour of the Welsh Assembly Government's proposed model suggested that with appropriate scrutiny and monitoring, and the professionalism of advocacy providers, services commissioned through CYPPs would be appropriately independent.

The **Association of Directors of Social Services (ADSS)** contended that to suggest that services commissioned by local government were not independent undermined both the role and the professionalism of the sector, a view shared by **Wrexham Second Voice** and the **Welsh Local Government Association (WLGA)**. Similarly, the **National Society for the Prevention of Cruelty to Children (NSPCC)** argued that:

"We provide an independent service, not beholden to authority in any way."

Arguments were also put forward that commissioning in this manner enabled essential dialogue with local authorities, enabling service improvements and swift solutions to local problems experienced by children and young people. This view was put forward by advocacy providers **NSPCC** and **Tros Gynnal**, the latter arguing that:

"To return to the days when relationships between local authorities and advocacy providers were strained and confrontational would be a retrograde step."

The **WLGA** proposed that commissioning through CYPPs would enable advocacy services to be relevant to the needs of local children and young people. The **Association of Directors of Education in Wales (ADEW)** argued was imperative that services were delivered locally, determined by local need and informed by local service users. **National Children’s Home Cymru (NCH Cymru)** also emphasised the need for local knowledge as an integral element in commissioning.

A ‘Mixed Economy’ Approach

A ‘mixed economy’ approach, meanwhile, was favoured by a number of witnesses, who recommended commissioning through CYPPs for the majority of advocacy services, but commissioning at a national level for more specialist services, such as advocacy for asylum seeking children. This view was put forward by **Blaenau Gwent CYPP**, the **ADSS**, and the **National Deaf Children’s Society Cymru (NDCS Cymru)**, who suggested that:

“For lower incidence needs, where there might be fewer specialist providers, a national commissioning approach might be more appropriate.”

A National Advocacy Unit

The primary argument in favour of commissioning of local services, by a national unit, was that this would enable advocacy services to be independently funded.

Several witnesses commented that under the CYPP commissioning approach, advocacy providers would still be funded by those they may have to challenge. **Voices from Care** argued that:

“Only advocacy that is truly independent of local authorities will have the capacity to improve the currently scandalous outcomes of looked after children.”

Similarly, the **Children’s Commissioner for Wales** commented that while joint commissioning, and commissioning through CYPPs was an improvement on local authorities individually commissioning, this would still not ensure independence. The Commissioner suggested that independence could not be measured in degrees of independence: either a service was independent or it was not. Concerns about whether commissioning through CYPPs would deliver independence were also put forward by **Bridgend CYPP**, **Bro Morgannwg NHS Trust**, the **All Party Group on Looked After Children**, and **Children in Wales**. Indeed, in oral evidence Professor Andrew Pithouse, from **Cardiff University**, noted that this was not a unique problem to Wales, but rather that:

“There are always issues and dangers about incorporating advocacy into the system, because it may then become neutered and part of the system.”

Children in Wales also commented that commissioning through CYPPs could potentially stifle whistleblowing, as advocacy providers would be funded by those they might have to challenge.

Furthermore, several witnesses suggested that a national unit with responsibility for commissioning would offer greater 'stability' than commissioning through CYPPs. **Voices from Care** and the **Children's Commissioner for Wales** both noted that CYPP commissioned contracts could be terminated because of local authorities' financial difficulties, making it possible for advocacy provision to be suddenly lost.

Moreover, a number of witnesses were concerned that many CYPPs lacked experience in commissioning, with the **Children's Commissioner for Wales** contending that:

"Advocacy is too important a service in safeguarding children to be a guinea pig for the new arrangements."

The **National Public Health Service, SNAP Cymru**, and the **All Party Group on Looked After Children**, expressed similar concerns that CYPPs were not an experienced commissioning body, other than for Cymorth grant funding.

Several witnesses, including **Voices from Care** and **Children in Wales**, also suggested that a national advocacy unit would enable a greater consistency of service provision across Wales, with similar service level agreements in place.

At the Bethesda, Bridgend, Neath, Swansea and Haverfordwest rapporteur meetings, young people all emphasised the need for advocacy services to be independent, arguing that an advocate should not be paid for by an organisation young people might have a problem with. This was not raised as a concern, however, by young people at the Merthyr Tydfil rapporteur visit.

Members' Considerations

Committee Members considered the arguments put forward in favour of a national advocacy unit, responsible for commissioning local services and some national services for low incidence groups, such as children seeking asylum, to be more compelling than those put forward in favour of other models.

Bearing in mind the findings of the 2000 Waterhouse Report, *Lost in Care*, Members considered independence to be a critical issue for advocacy. In doing so, Members stressed that their recommendations were not a criticism of CYPPs or the professionalism of advocacy providers and commissioners.

Indeed, Committee Members praised the work of the CYPPs, as enabling engagement across areas of health, education, social services and also with voluntary sector groups, children and young people. It was considered that

this joined up approach was a significant step towards offering services that could appropriately respond to children and young people's needs.

However, Members considered there to be an inherent conflict of interests in any system whereby advocacy providers were paid, and had contracts renewed or terminated, by the same authorities they were charged with challenging.

In the majority of instances, Members considered that this conflict would be assuaged by the professionalism of the CYPPs and advocacy services. Indeed, at the rapporteur meetings, while Members heard about poor experiences of advocacy, many young people also talked about positive experiences, indicating the professionalism of advocacy providers.

However, Members considered that the fact this potential for a conflict of interests existed at all, in commissioning through CYPPs, was sufficient reason to look to a national unit commissioning approach.

Moreover, Members considered that the potential for a conflict of interests could be realised, even with the best of intentions of all parties. Members noted that whereas social services had a duty to a child's best interests and wellbeing, advocacy services had a duty to speak on behalf of a child, even when a child's wishes could be detrimental to their wellbeing.

Members also noted that CYPPs were relatively new and inexperienced, with partners having different cultures and starting from different baselines, whereas models for national units commissioning local providers already existed, such as Business Eye.

However, Members also considered that the local knowledge of CYPP members would be invaluable to the commissioning of local advocacy services, by a national advocacy unit. Members considered that CYPPs would need to work in partnership with a national advocacy unit. Indeed, at the Haverfordwest rapporteur meeting, young people considered that this might take the form of CYPPs feeding general information to the national advocacy unit, to help inform their decision-making, or might take the form of CYPPs making a recommendation of advocacy provider to the national advocacy unit.

Members also considered that a national advocacy unit could be responsible for commissioning specialist advocacy services, for low incidence groups, such as children and young people seeking asylum, in addition to generic advocacy services.

Members also considered the **Deputy Minister for Social Services'** comments that a national commissioning service would have to be done through open tender, under the commissioning rules of the Official Journal of the European Union. Members considered that this would be the case, were a single advocacy provider commissioned to be responsible for the whole of Wales. However, a national advocacy commissioning unit would not normally have to advertise in the Official Journal of the European Union when seeking

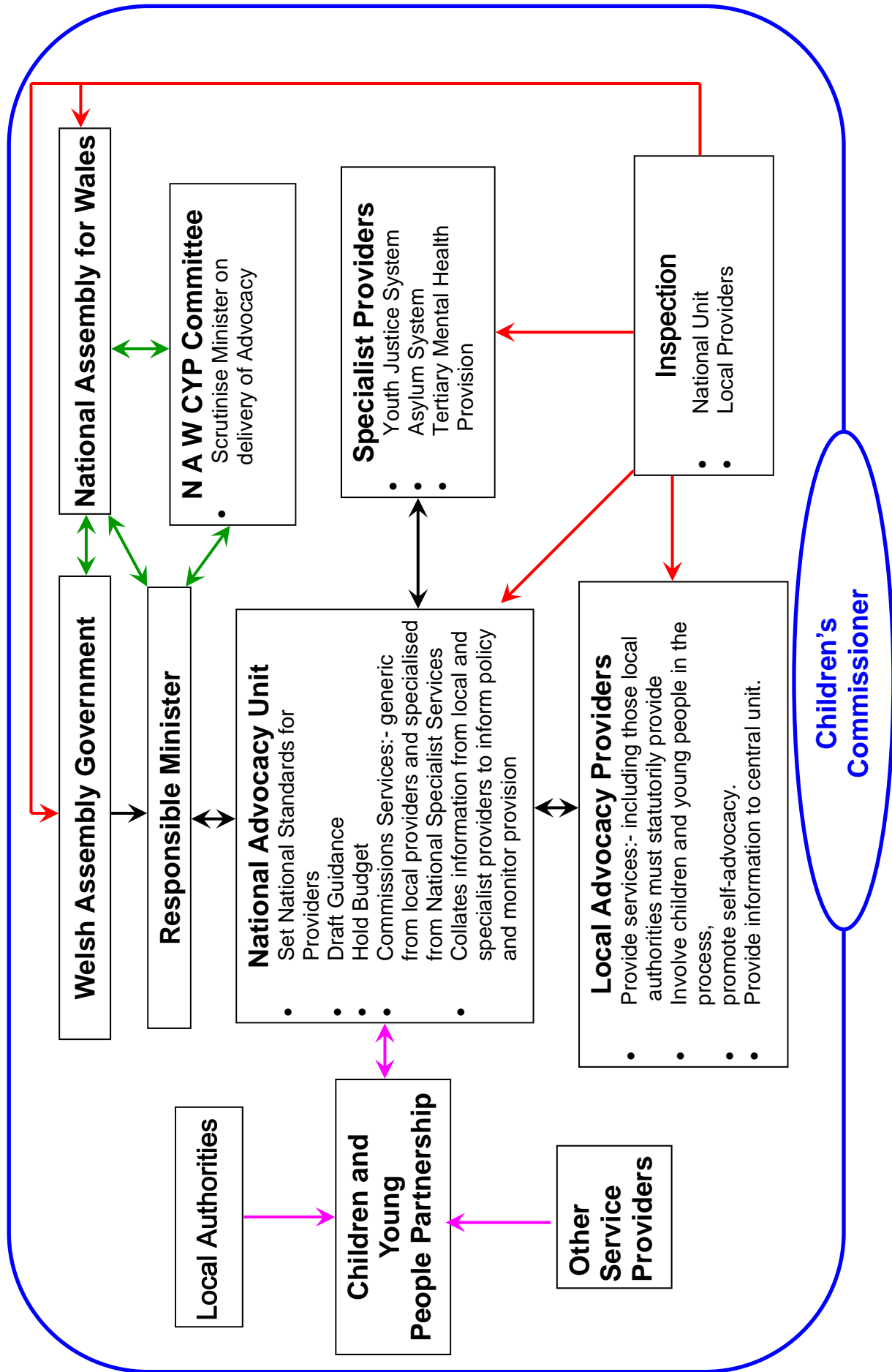
to contract an advocacy provider for a local area. Furthermore, the Committee noted that were an advert in the Official Journal required, the process that must be followed would not necessarily take any longer than the ordinary tendering process.

Members also noted that on 11 December 2007, the **Minister for Children, Education, Lifelong Learning and Skills** advised in Plenary that a national commissioning model would require primary legislation to remove duties from local authorities. After taking legal advice, Members considered that primary legislation would be required to remove the responsibility on local authorities to 'make arrangements' for the provision of advocacy services. Members also noted this could potentially be done under the Legislative Competence Order on Vulnerable Children, which has been considered by the National Assembly.

Members noted that the principle of a national advocacy unit being responsible for the commissioning of local advocacy providers could be delivered in practical terms through a number of mechanisms. The **Children's Commissioner for Wales** had noted that:

"Whether that advocacy unit is based in the Assembly or is some sort of body outside the Assembly, funded by the Assembly that is the debate that should be had about the practicalities."

One potential model for commissioning through a national advocacy unit, noted by the Committee, is presented overleaf. However, Members were keen to emphasise that the practical arrangements for commissioning on the principles of a national commissioning unit should be developed in consultation with young people, advocacy providers, local government and CYPPs.



Recommendation 1: *Following appropriate consultation, the Welsh Assembly Government should establish a centrally funded national advocacy unit, with responsibility for commissioning independent advocacy services in local areas. The unit would not commission a single advocacy service providing for all local areas, but would build on existing arrangements. In commissioning services in local areas, the advocacy unit would take into account regional and local structures, geography and work of CYPPs. The unit would also have responsibility for commissioning specialist services, on a national basis for children and young people dealing with specialist issues, such as immigration and mental health.*

Recommendation 2: *The Welsh Assembly Government's advocacy unit should involve children and young people in determining which advocacy provider should be awarded a contract, except in exceptional circumstances. This recommendation would apply both when the unit was commissioning local, generic advocacy services, and specialist national services.*

Key to Model

Black lines - responsibility
Red lines - inspection
Green lines - scrutiny
Pink lines - information sharing
Blue lines - overarching body

2. The Need for Skilled Advocates

Several witnesses commented that advocacy should be a recognised profession, including **Bridgend CYPP**, **National Association of Schoolmasters Union of Women Teachers (NASUWT)** and **Children in Wales**. This concern was also raised at the Bethesda rapporteur visit.

Children in Wales also commended the accreditation of training, referred to in the Welsh Assembly Government's consultation on a New Service model for delivering advocacy services for Children and Young People. The importance of training was also noted by **Blaenau Gwent CYPP**, which suggested that a national advocacy unit could provide training for advocates in a portfolio of recognised skills, on a national basis, enabling this qualification to be achieved. Training for advocates was also commended by young people at the Bethesda rapporteur visit.

Voices from Care suggested that advocates should possess listening and counselling skills, but also noted that it should not be essential for advocates to have social work degrees or academic qualifications, as this could limit the potential pool of possible advocates.

Indeed, at the Haverfordwest rapporteur meeting, young people commented that unlike other professions, such as social work, where it was necessary for professionals to keep an emotional distance from those they worked with, advocates did need to be emotionally involved, and to see things through. Similar comments were made at the Bridgend rapporteur meeting, where young people commented that an advocate should follow things through and stick with them.

Committee Members considered that limiting advocates to only those with particular qualifications could potentially prevent skilled persons, including former users of advocacy, from becoming involved as advocates. However, they considered that inspection of advocacy services should ensure advocates had an appropriate range of skills. To supplement this they considered that training for existing advocates should be developed.

Furthermore, Committee Members noted the importance of lay advocates, as people trusted by young people who could raise concerns. At the Bridgend rapporteur meeting it was agreed that any national plan for advocacy should recognise peer and lay advocacy. Consequently, the Committee resolved that training for lay advocates should also be developed.

Additionally, Members noted the comments of **Voices from Care** that peer-to-peer advocacy and self advocacy were critical elements in a national advocacy strategy. Members considered that local advocacy providers could play a significant role in developing the confidence and skills of children and young people using their services, to enable them to advocate for themselves in the future.

Recommendation 3: *The Welsh Assembly Government should ensure that the national advocacy unit make arrangements for the provision of a training programme for advocates, in a portfolio of nationally recognised skills (including, but not limited to, listening, understanding, relationship building, and counselling skills). Trainers should include former users of advocacy and children and young people.*

Recommendation 4: *The Welsh Assembly Government should ensure that the national advocacy unit make arrangements for the provision of training courses, through local providers, for potential lay advocates, such as teachers, counsellors, doctors, learning coaches, cooks and cleaners. The advocacy unit would provide training for local providers themselves in training lay advocates. Lay advocate training would never, however, be a pre-requisite for a potential lay advocate to raise concerns on behalf of a child or young person, and a lack of training would never exclude a potential lay advocate from acting in this role.*

Recommendation 5: *The Welsh Assembly Government should ensure that the advocacy unit provides training for local advocacy services, to assist them in coaching children and young people, using their services, to ‘Self Advocate’ and ‘Peer Advocate’ in the future.*

Recommendation 6: *The Welsh Assembly Government should make arrangements for robust, independent inspection of:*

- *the national advocacy unit;*
- *local services providing advocacy;*
- *national services providing specialist advocacy.*

Recommendation 7: *The Welsh Assembly Government should make arrangements for inspection of advocacy services to incorporate analysis of advocacy providers’ skills (including, but not limited to, listening, understanding, counselling and relationship building).*

3. The Need for Accessible Advocacy Services

Knowledge of advocacy services was identified by young people at the Haverfordwest rapporteur meeting as a significant problem for accessing services. Rob commented that:

“I only found out about advocacy because I wanted to put a complaint in. I was on the phone every day, trying to get more information about what I could do. One day the NSPCC called me.”

Young people commented that information had not been provided for getting in contact with advocacy services at all, let alone information explaining what advocacy services were, or what they could do. Several suggestions were made for making information more accessible, including posters and flyers on noticeboards at youth clubs, schools, mental health establishments etc. It was also suggested that young people entering or leaving care should be given contact numbers for advocacy providers as a matter of course.

Several witnesses, including **Bridgend CYPP** and the **Children’s Commissioner for Wales**, praised the Welsh Assembly Government’s intention to create a free phone and text service. **Bridgend CYPP** also suggested that young people should be involved in designing this service.

Young people at the Haverfordwest rapporteur meeting felt this would be a significant step towards making advocacy services more accessible, emphasising that a ‘free’ phone line would need to be free to mobiles as well as landlines. They noted that having one phone number, which could direct callers onto other advocacy services, would be significantly easier to advertise.

Committee Members considered that making children and young people aware of advocacy services was essential to making them accessible. Members considered that advertisement could take place directly, through posters and television campaigns, and indirectly, through storylines on popular children’s television programmes.

Committee Members considered that advocacy services should be accessible whenever possible, and that the Welsh Assembly Government’s free phone and text service should ideally be available on a 24 hour basis, and certainly whenever advocacy providers were not available, such as evenings and weekends.

Committee Members noted the suggestion by some witnesses, including the **NSPCC**, for 24 hour drop-in centres for advocacy to be set up, to enable advocacy services to be accessed more readily, but considered the resources required to implement such could more effectively be directed towards establishing a 24 hour phone service.

Recommendation 8: *The Welsh Assembly Government should involve children and young people in developing a free advocacy phone and text service for children and young people. This phone service should be free to mobile telephones as well as landlines. In addition to listening to callers' concerns, this service would be able to provide callers with information on advocacy providers able to help with their particular concern. This service should be available 24 hours a day.*

Recommendation 9: *The Welsh Assembly Government should involve children and young people in developing advertising for its free advocacy phone and text service for children and young people. This advertising should explain what advocacy is, and how it can help children and young people.*

A number of witnesses, including **Voices from Care** and the **NSPCC**, also suggested that advocacy services would be more accessible if children and young people had choices about their advocate. **Voices from Care** reported that one young person had told them:

"I wasn't given a choice, and if I had, I definitely wouldn't have chosen her."

This concern was also raised at rapporteur meetings, with young people consistently reiterating a desire to have choice about who their advocate was, and about where they met their advocate. At these meetings, young people commented they wanted someone who is easy to get to see, accessible on the phone, and who they didn't have to wait weeks for an appointment to meet.

Committee Members considered that, normally, children and young people should be given choices about their advocate. The Committee considered that in certain specialist fields, such as advocacy for asylum seeking children, this might not always be possible, but should normally be the case.

Recommendation 10: *Through service level agreements, set by the advocacy unit, the Welsh Assembly Government should ensure that children and young people would normally have choices about the identity of their advocate.*

The **NSPCC** and **Voices from Care** both recommended that children and young people should be able to keep their own advocate, and that advocates should be able to use their own initiative to share details about themselves, without having to keep a written record of their conversation. Both groups expressed the need for advocates to remain confidential with information.

Moreover, at rapporteur meetings, young people emphasised the need for confidentiality. At the Neath rapporteur meeting, young people commented that they wanted to be able to talk privately to an advocate, if they wanted to, without other people, family or professionals, knowing. At the Haverfordwest rapporteur meeting, it was suggested that when an advocate met a young person, they should talk through what would and would not be confidential. It

was felt that this would build trust between the advocate and child/young person, while enabling an advocate to raise concerns were they told anything that could put a child or young person at risk of harm.

Committee Members considered that confidentiality was a significant issue, which should normally be delivered through the professionalism of advocacy providers. They considered, however, that the Welsh Assembly Government could assist in driving such professionalism forward.

Recommendation 11: *Through service level agreements, set by the advocacy unit, and through training and inspection, the Welsh Assembly Government should ensure that comments made by children and young people are kept in confidence by their advocate, unless to do so would expose that child or young person, or another vulnerable person, to a risk of immediate danger to significant harm. A policy definition of 'significant harm' and 'immediate danger' is provided by the Children's Commissioner for Wales' Confidentiality Policy, Annex 3.*

4. The Need for Continuity of Service

Continuity of service was identified by a wide range of witnesses as a key requirement for successful advocacy. **Children in Wales** expressed concerns that advocacy services' fears that contracts would not be renewed if they were too challenging could be detrimental to the quality of service delivered, because:

“It is difficult to develop the service if you are not sure what will happen in two year’s time or, whether you will still be providing the service.”

Similar concerns were also identified at the rapporteur meetings in Neath and Bridgend, with stable funding considered vital for staff to be secured from jobs in the statutory sector, such as teaching and social work, to work in advocacy. Indeed, at the Merthyr Tydfil rapporteur meeting, continuity and adequacy of funding were identified as key concerns, with advocates unable to plan ahead for future years, when their funding was determined on an annual basis.

Members considered that continuity of service was a key issue. It was noted that in introducing the commissioning of local services by a central, national advocacy unit, it would be important to build on what was already in place, to avoid disruption in local service provision. Commissioning of services for local areas would, in practical terms, need to involve a long lead in time, rather than all local areas having local services commissioned for them, individually, at the same time.

Members also noted the need to assure local providers that a national advocacy unit would not commission a single advocacy provider to cover the whole of Wales. Rather, the advocacy unit would commission individual local services for local areas for ‘generic’ advocacy. The only providers covering the whole of Wales would be specialist services addressing issues such as immigration or mental health. Members were concerned that local providers should be assured that commissioning from a national unit would still enable advocacy to be provided by different local providers in different areas.

Recommendation 12: *The Welsh Assembly Government should instruct the advocacy unit to normally commission advocacy services on three year contracts, with the opportunity for extensions, to ensure stability and continuity.*

Summary of Recommendations

Recommendation 1: *Through appropriate consultation, the Welsh Assembly Government should establish a centrally funded advocacy unit, with responsibility for commissioning advocacy services in local areas, and for commissioning specialist services at a national level for groups such as asylum seeking children. In commissioning services in local areas, the advocacy unit would take into account regional and local structures, geography and views of CYPPs.*

Recommendation 2: *The Welsh Assembly Government's advocacy unit should involve children and young people in determining which advocacy provider should be awarded a contract, except in exceptional circumstances. This recommendation would apply both when the unit was commissioning local, generic advocacy services, and specialist national services.*

Recommendation 3: *The Welsh Assembly Government should ensure that the national advocacy unit make arrangements for the provision of a training programme for advocates, in a portfolio of nationally recognised skills (including, but not limited to, listening, understanding, relationship building, and counselling skills). Trainers should include former users of advocacy and children and young people.*

Recommendation 4: *The Welsh Assembly Government should ensure that the national advocacy unit make arrangements for the provision of training courses, through local providers, for potential lay advocates, such as teachers, counsellors, doctors, learning coaches, cooks and cleaners. The advocacy unit would provide training for local providers themselves in training lay advocates. Lay advocate training would never, however, be a pre-requisite for a potential lay advocate to raise concerns on behalf of a child or young person, and a lack of training would never exclude a potential lay advocate from acting in this role.*

Recommendation 5: *The Welsh Assembly Government should ensure that the advocacy unit provides training for local advocacy services, to assist them in coaching children and young people, using their services, to 'Self Advocate' and 'Peer Advocate' in the future.*

Recommendation 6: *The Welsh Assembly Government should make arrangements for robust, independent inspection of:*

- *the national advocacy unit;*
- *local services providing advocacy;*
- *national services providing specialist advocacy.*

Recommendation 7: *The Welsh Assembly Government should make arrangements for inspection of advocacy services to incorporate analysis of*

advocacy providers' skills (including, but not limited to, listening, understanding, counselling and relationship building).

Recommendation 8: *The Welsh Assembly Government should involve children and young people in developing a free advocacy phone and text service for children and young people. This phone service should be free to mobile telephones as well as landlines. In addition to listening to callers' concerns, this service would be able to provide callers with information on advocacy providers able to help with their particular concern. This service should be available 24 hours a day.*

Recommendation 9: *The Welsh Assembly Government should involve children and young people in developing advertising for its free advocacy phone and text service for children and young people. This advertising should explain what advocacy is, and how it can help children and young people.*

Recommendation 10: *Through service level agreements, set by the advocacy unit, the Welsh Assembly Government should ensure that children and young people would normally have choices about the identity of their advocate.*

Recommendation 11: *Through service level agreements, set by the advocacy unit, and through training and inspection, the Welsh Assembly Government should ensure that comments made by children and young people are kept in confidence by their advocate, unless to do so would expose that child or young person, or another vulnerable person, to a risk of immediate danger to significant harm. A policy definition of 'significant harm' and 'immediate danger' is provided by the Children's Commissioner for Wales' Confidentiality Policy, Annex 3.*

Recommendation 12: *The Welsh Assembly Government should instruct the advocacy unit to normally commission advocacy services on three year contracts, with the opportunity for extensions, to ensure stability and continuity.*

Advocacy Services for Children and Young People in Wales

The Committee agreed to undertake an inquiry into advocacy services for children and young people at its meeting on 29 November 2007. The Committee wished to scrutinise the Welsh Assembly Government's proposals to deliver advocacy services to the children and young people of Wales following the consultation on a new service model for delivering advocacy services for children and young people concluded on 23 July 2007.

The Chair and Committee are very grateful to all those who have given both written and oral evidence to this inquiry and are extremely appreciative to those organisations Committee Members visited.

Oral evidence was received as follows:

CYP(3)-03-07 13 December 2007

Professor Andrew Pithouse, School of Social Sciences, Cardiff University
Sean O'Neil, Policy Director, Children in Wales

CYP(3)-01-08 17 January 2008

David Melding AM, Chair of All-Party Group on Looked After Children,
National Assembly for Wales
Deborah Jones, Director, Felicity Waters and Aisling Donovan, Voices from
Care

CYP(3)-02-08 31 January 2008

Albert Heaney, Association of Directors of Social Services
Maria Battle, Children's Commissioner for Wales (Acting) and Gareth Jones, Children's
Commissioner for Wales Office
Beverlea Frowen and Daisy Seabourne, Welsh Local Government Association

Written evidence was received from:

Association of Directors of Education in Wales
Association of Directors of Social Services
Blaenau Gwent County Council
Board of Community Health Council
Brecknock and Radnor Community Health Council
Bridgend Children and Young People's Partnership
Bro Morgannwg NHS Trust
Children's Commissioner for Wales
National Association of School Masters Union of Women Teachers
National Children's Home Cymru
National Deaf Children's Society Wales/Cymru
National Public Health Service (Wales)

National Society for the Prevention of Cruelty to Children (NSPCC)
Powys Local Health Board
Second Voice Advocacy For Children
SNAP Cymru
The Fostering Network
Tros Gynnal
Voices from Care
Welsh Local Government Association

Visits were made to:

Children's Commissioner for Wales – Young people in Cardiff
Forward Steps, Neath Port Talbot
Merthyr Tydfil Advocacy and Participation Services
North Wales Children's Right Service, Bethesda
Sure Start – Wrexham Partnership
Tros Gynnal – Young people in Bridgend
Voices from Care – Young people in Pembrokeshire

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Wales**

CONFIDENTIALITY POLICY

Children's Commissioner for Wales

Date of Policy: November 2007

**Confidentiality Policy for all staff when working with children and young
people**

Policy Statement

“The Children’s Commissioner for Wales offers children and young people complete confidentiality where there is no risk of immediate danger to the child or young person in direct contact with the office or any other child or young person implicated”

Exceptions to this statement only apply to children and young people that are considered not to be of an age and /or understanding to be able to make an informed choice or ascertaining their direct wishes is not possible.

Context of Policy

First and foremost the Commissioner and his staff accept and promote that the *United Nations Convention for the Rights of the Child* (UNCRC) underpins all the work undertaken by staff of the office of the Children’s Commissioner for Wales. This is in accordance with Regulations 2001 as the legislation clearly states that the Commissioner shall have regard to the UN Convention in the exercising of the duties of the office and have particular regard to:-

Article 12 which promote the rights of children and young people to have a say in what they think should happen when adults are making decisions about them and to have their opinions taken into account.

In addition the Commissioner and staff shall have due regard to the statutory aim of promoting and safeguarding the rights and welfare of children in Wales and the importance of working together with other agencies. Information shall be shared with third parties giving due consideration to the UNCRC. *The Children Act 1989, The Human Rights Act 1998 and the All Wales Child Protection Procedures.*

Confidentiality will be considered taking into account the UNCRC and the statutory aims of all agencies in working together to promote and safeguard the welfare and protection of children and young people. Also the Commissioner and staff will treat the child or young person with respect and consider the level of infringement upon privacy more than is necessary to safeguard a child or young person’s safety and welfare. All decisions in relation to confidentiality issues will be clear and precise and will be recorded in detail.

Recording of Information

The Commissioner and staff will explain to children why we need to keep records of our conversations with them, and the use to which such information will be put.

A comprehensive and immediate record (same day or within 24 hours) will be written of all circumstances where children are reporting harm, including those where confidentiality may be broken.

Where a child or young person is making a direct allegation of significant harm, or potential serious self-harm, the staff must record:

- All relevant details of the circumstances, and if specific acts are alleged this will include the date, time, venue and who was present etc. This record should be in the child or young person's own words wherever possible.
- All conversations with line managers and any decisions made.
- Information passed to a third party including name, position, agency and details shared. This information should be confirmed in writing to that third party and acknowledgement of receipt requested.
- All subsequent conversations with the child or young persons shall be recorded immediately.
- All notes in relation to the allegation and any subsequent conversations with the child or young person shall be typed within three days and countersigned by a manager. These notes must then be placed on the file.
- **All original notes** are to be retained for possible evidential purposes and also placed on file.

DEFINITIONS OF SIGNIFICANT HARM

Significant physical harm

The *All Wales Child Protection Procedures* defines significant physical harm as follows:

- Physical abuse may involve hitting, shaking, throwing, poisoning, burning or scolding, drowning, suffocating, or otherwise causing physical harm to a child. Physical harm may also be caused when a parent or a carer feigns the symptoms of, or deliberately causes, ill health to a child whom they are looking after. This situation may be described as fabricated or induced illness by carer.

Sexual harm

The *All Wales Child Protection Procedures* defines sexual harm as follows:

- Forcing or enticing a child or young person to take part in sexual activities, whether or not the child is aware of what is happening, including physical contact, including penetrative or non penetrative acts. Non-contact activities, such as involving children in looking at, or in the production of, pornographic material or watching sexual activities; or encouraging children to have in sexually inappropriate ways.

- A child under thirteen involved in sexual activity. A child under thirteen is deemed not legally capable of consenting to sexual activity. (Children Act 2004 and the Sexual Offences Act 2003).

Emotional harm

The *All Wales Child Protection Procedures* defines emotional harm as follows:

- The persistent emotional ill-treatment of a child such as to cause severe and persistent adverse effects on the child's emotional and behavioural development.

Neglect

The *All Wales Child Protection Procedures* defines neglect as follows:

- The persistent or severe neglect of a child, or the failure to protect a child from exposure to any kind of danger, including cold, starvation or extreme failure to carry out important aspects of care, resulting in the significant impairment of the child's health or development, including non-organic failure to thrive.

Decision Making

All decision in relation to confidentiality **must** be made with the explicit involvement of a senior manager (member of the Senior Management Team)

The decision as to what is deemed to be immediate danger will lie with the case worker and the senior manager. The overall responsibility will reside with the senior manager.

The senior manager should be kept informed of all developments and subsequent actions.

Children and young people NOT at risk of immediate danger

In circumstances where a child or young persons is **not** at risk of immediate danger of significant physical harm, immediate sexual harm, immediate emotional harm or neglect:

- There is a responsibility on staff to make a case by case decision in conjunction with a senior manager as to the balance between the need to respect confidentiality against the need to ensure the child or young person's welfare and protection from immediate danger.
- If a decision is reached that no child or young person is at risk of immediate danger no information given by a child or young person is to be shared with a third party without their consent

- If an allegation is made the Commissioner and staff will continue to support the child or young person indefinitely.
- The child or young person should be empowered and assisted to resolve the circumstances they face and to seek help and assistance from the appropriate agencies to address the issues raised. Work with the child or young person should be at their pace.
- The child or young person concerned should always participate in decisions made and then kept informed of any developments.
- Recording of all information shared and a clear explanation as to the decisions reached must be placed on the file the same day or the next day (within 24 hours)

Children and young people AT RISK of immediate danger

In circumstances where a child or young person is at risk of immediate danger of significant physical harm, immediate sexual harm, immediate emotional harm or neglect:

- There is a responsibility on staff to make a case by case decision in conjunction with a senior manager as to the balance between the need to respect confidentiality against the need to ensure the child or young person's welfare and protection from immediate danger.
- Time scale for a decision to be made: Same day as the allegation is known to the Commissioner or staff. Recording of detailed information including all decisions made to be completed the same day or the next day (within 24 hours)
- The child or young person concerned will always be informed of our decision and actions unless the Commissioner and staff believe that to do so would compromise the ability to ensure their survival or the survival of another child.

Referral to a third party agency

- The decision to make a referral to a third party which is either in conflict with, or ignorance of, the child or young person's expressed wishes, will always be made in conjunction with a Senior Manager.
- The child or young person will normally be told of the decision, unless to do so would compromise the ability to ensure their survival or that of another child.
- A referral sharing confidential information about a child or young person must be made to the appropriate agency by the staff member that has had direct contact with the child or young person.

- A telephone discussion should happen immediately followed by a written account of the allegations faxed through followed by a hard copy in the post
- **All original notes** are to be retained for possible evidential purposes and also placed on the file.

Disseminating the Policy

All staff, including support staff, will receive a copy of the policy.

Review of the Policy

This policy will be reviewed following the appointment of the new Children's Commissioner in March 2008

References

United Nations Convention for the Rights of the Child (UNCRC)

The Children Act 1989

The Human Rights Act 1998

All Wales Child Protection Procedures