

# The Social Services and Well-being (Wales) Act 2014

## Part 10 Code of Practice (Advocacy)

# Part 10

Code of Practice on the exercise of social services functions in relation to Advocacy under Part 10 and related parts of the Social Services and Well-being (Wales) Act 2014

*This code of practice is issued under Section 145 of the Social Services and Well-being (Wales) Act 2014.*

***This code revokes the Part 10 code of practice (advocacy) issued in April 2016.***

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## 1. Preamble

1. This Code of Practice on Advocacy (code) is issued under section 145 of the Social Services and Well-being (Wales) Act 2014 (the Act).
2. The Social Services and Well-being (Wales) Act 2014 is available at:  
<http://www.legislation.gov.uk/anaw/2014/4/enacted>.
3. Local authorities, when exercising their social services functions, **must** act in accordance with the **requirements** contained in this code. Section 147 (departure from requirements in codes) does not apply to any **requirements** contained in this code. In addition, local authorities must have regard to any **guidelines** set out here.
4. In this code, a **requirement** is expressed as “must” or “must not”. **Guidelines** are expressed as “may” or “should/should not”.
5. This code should be read in conjunction with all relevant codes of practice issued under the Act to require local authorities to consider people’s needs for advocacy where a local authority exercises a specific function in relation to that person. Specific regard should be given to Part 2 (general functions), Part 3 (assessing the needs of individuals) Part 4 (meeting needs) Part 5 (charging and financial assessment) as well as statutory guidance issued under Part 7 (safeguarding) and Part 9 (co-operation and partnership) of the Act.
6. The Welsh Government has sought to support implementation through a process that engages our stakeholders. Central to this approach has been the establishment of technical groups made up of representatives with the relevant expertise, technical knowledge and practical experience to work with officials on the detailed policy necessary to develop the codes of practice which in turn will deliver the policy aspirations underpinning the Act. This updated code is also an outcome of such an exercise of co-production.

## 2. Purpose

7. This code sets out the requirements for local authorities to: -
  - a) ensure that access to advocacy services and support is available to enable individuals to engage and participate when local authorities are exercising statutory duties in relation to them and
  - b) to arrange an Independent Professional Advocate (IPA) to facilitate the involvement of individuals in certain circumstances.
8. The over-arching duties under section 6 of the Act require that any person exercising functions under the Act in relation to an individual must:
  - in so far as reasonably practicable, ascertain and have regard to people's views, wishes and feelings.
9. In addition, any person exercising functions under the Act must: -
  - have regard to the importance of providing appropriate support to enable the individual to participate in decisions that affect them, to the extent that it is appropriate in the circumstances, particularly where the individual's ability to communicate is limited for any reason.
10. These over-arching duties, together with the United Nations Principles and Convention under section 7 of the Act are integral in understanding and assessing people's well-being outcomes; what matters to people; and people's needs for care and support to enable them to achieve their personal well-being outcomes.
11. This code sets out:
  - people's choice to have someone to act as an advocate for them
  - a clear framework to support and empower individuals to make positive informed choices
  - a clear recognition of the benefits of advocacy
  - the range of advocacy available to people
  - the key points when people's need for advocacy **must** be assessed
  - when independent advocacy **must** be provided
  - the circumstances that impact on peoples' need for advocacy
  - the circumstances when it is inappropriate for certain people to advocate
  - the arrangements for publicising advocacy services and charging

### 3. Context

12. The Act provides the statutory framework to deliver the Welsh Government's commitment to integrate social services to support people of all ages, and support people as part of families and communities.
13. It will transform the way social services are delivered, primarily through promoting people's independence to give them stronger voice and control. Integration and simplification of the law will also provide greater consistency and clarity to people who use social services, their carers, local authority employees and their partner organisations, the courts and the judiciary.
14. The Act promotes equality, improvements in the quality of services and the provision of information people receive, and a shared focus on prevention and early intervention.

## 4. Principles

15. Chapter 2 sets out the distinct duties under the Act to ascertain people's views wishes and feelings and provide support to enable people's participation in decisions that affect them.
16. To have voice and control, an individual must be able to feel that they are a genuinely equal partner in their interactions with professionals. It is, therefore open to any individual to exercise choice and to invite any advocate to support them in expressing their views, wishes and feelings.
17. It is a principle of the Act that a local authority respond in a person-centred, co-productive way to each individual's particular circumstances. Individuals and their families must be able to participate fully in the process of determining and meeting their well-being outcomes through a process that is accessible to them.
18. The process must ensure people are empowered to express their needs and are able to participate fully as equal partners. This must include enabling an individual to indicate that they want to have someone sitting alongside them when weighing up options and making decisions about their well-being outcomes.
19. The importance of family and friends in assisting the person to engage and participate fully is fundamental. Participating fully enables the individual to clarify, express and have their views, wishes and feelings heard, acknowledged and acted upon; and feel empowered and in control of the process. Family and friends are only one element of an effective advocacy framework. Chapter 8 sets out the different forms of advocacy.
20. A key role of the information advice and assistance service which must be secured by a local authority under Part 2 of the Act, will be to provide individuals with information about the range of advocacy services in their area and to assist them to access it where required as part of achieving their well-being outcomes.
21. Consistent with the commitments to secure strong voice and control, this specific code on advocacy, supplemented by all relevant codes of practice issued under the Act, enables local authorities and individuals, in genuine partnership, to consider the range of advocacy support available and put the necessary arrangements in place. This will include the specific requirements on the local authority to arrange an IPA to support the individual wherever a local authority exercises a relevant function under the Act in relation to that person. Relevant functions are set out in Annex 3.

## 5. The benefits of advocacy

22. Advocacy should be considered as an inherent element of the Act to focus social care around people and their well-being. Advocacy helps people to understand how they can be involved, how they can contribute and take part and whenever possible, to lead or direct the process.
23. Through advocacy, people are active partners in the key care and support processes that identify and secure solutions through preventative services; information, advice and assistance; assessment; care and support and support planning; review and safeguarding.
24. The Act: -
  - places the person and their well-being outcomes at the centre of this framework;
  - gives them a voice in, and control over, achieving those outcomes;
  - supports people to achieve their own well-being; and
  - measures the success of this care and support based upon all contributions to well-being; including people, families, supporters, formal and informal services.
25. Despite the barriers individuals may be experiencing, local authorities **must** involve people to help them express their views, wishes and feelings, to support them to weigh up options and to make decisions about their well-being outcomes. These requirements apply irrespective of where an individual is living, including the secure estate.



## 6. What is advocacy?

26. Section 181(2) of the Act defines “advocacy services” as: services which provide assistance (by way of representation or otherwise) to persons for purposes relating to their care and support. Similarly, advocacy, is one of the examples specified in section 34(2)(e) of what may be provided or arranged to meet individuals’ care and support needs under sections 35 to 45 of the Act.
27. Advocacy is one of several forms of support available for people who need assistance in working through life issues.

*“**Advocacy** supports and enables people who have difficulty representing their interests, to exercise their rights, express their views, explore and make informed choices.*

*Independent Advocacy supports the person regardless of the demands and concerns of others. It challenges the causes and effects of injustice, oppression and abuse and upholds human rights.” (OPAAL National Forum, 2008)*

*“Advocacy is taking action to help people say what they want, secure their rights, represent their interests and obtain services they need. Advocates and advocacy schemes work in partnership with the people they support and take their side. Advocacy promotes social inclusion, equality and social justice.”*

*(Action for Advocacy, 2002)*

28. Other forms of support include information, advice, counselling, befriending, mentoring and mediation, each of which can be helpful in different circumstances. This code focusses solely on advocacy and local authorities’ duties to ensure people are supported by advocates in securing their well-being outcomes and for working in partnership with relevant others to secure those outcomes.

## 7. Why is advocacy important?

### 29. Advocacy:

- safeguards individuals who are at risk and discriminated against or face barriers in accessing and engaging with/or using services.
- speaks up on behalf of individuals who are unable to do so for themselves
- empowers individuals who need a stronger voice by enabling them to express their own needs and make their own informed decisions
- enables individuals to gain access to information, explore and understand their options, and to make their views, wishes and feelings known, and
- actively supports people to make informed choices.

### 30. Advocacy has two main themes:

- speaking up for and with individuals who are not being heard helping them to express their views and make their own informed decisions and contributions, and
- advocacy secures and upholds the rights of individuals.

## 8. What are the different forms of advocacy?

31. Advocacy can take many forms, each with the common aim of supporting individuals to have their voices heard, to clarify options and to express their views, wishes and feelings. Each form of advocacy has its own benefits and local authorities should recognise and value all these forms. Advocacy can be instructed or non-instructed.
32. Social care and other professionals play a key role in acting as an advocate on behalf of individuals as part of the exercise of their daily professional roles. However, there will be occasions where a conflict of interest may arise in relation to the decision being made. Professionals will need to be alert to situations where they believe that the objectivity or independence of the decision making process is, or could be seen to be undermined. In such circumstances, the roles of other forms of advocacy must be considered. These include:-

**Self-advocacy** - when individuals represent and speak up for themselves.

**Informal advocacy** - when family, friends or neighbours supporting an individual in having their views wishes and feelings heard which may include speaking on their behalf.

**Collective advocacy** - involves groups of individuals with common experiences, being empowered to have a voice and influence change and promote social justice.

**Peer advocacy** - one individual acting as an advocate for another who shares a common experience or background.

**Citizen advocacy** - involves a one-to-one long-term partnership between a trained or supported volunteer citizen advocate and an individual.

**Independent volunteer advocacy** - involves an independent and unpaid advocate who works on a short term, or issue led basis, with one or more individuals.

**Formal advocacy** - may refer to the advocacy role of staff in health, social care and other settings where professionals are required as part of their role to consider the wishes and feelings of the individual and to help ensure that they are addressed properly.

**Independent professional advocacy** – involves a professional, trained advocate working in a one-to-one partnership with an individual to ensure that their views are accurately conveyed and their rights upheld. This might be for a single issue or multiple issues.

Independent professional advocacy under the Social Services and Well-being (Wales) Act 2014, is specific to supporting an individual in relation to their care and/or support needs. Advocates which undertake this form of advocacy are

referred to as an Independent Professional Advocate (IPA). Further information about the role of the IPA and that of the local authority in supporting them is in Annex 1.

It should be noted that under other legislation such as Mental Capacity Act 2005, there are statutory independent advocacy requirements i.e. Independent Mental Capacity Advocate known as IMCA. See Chapter 19.



## 9. Instructed and non-instructed advocacy

33. An important distinction needs to be made between instructed and non-instructed approaches to advocacy. Usually, advocates are instructed by the individual, even if the latter has not referred themselves to the advocacy scheme. Together, they are able to establish a relationship and identify the advocacy issues, goals and intended outcomes in accordance with the wishes and preferences and consent of the user.
34. Non-instructed advocacy may be needed when matters of communication and capacity mean that instruction and the expression of choices and concerns are not forthcoming. It is: -  
  
*“...taking affirmative action with or on behalf of a person who is unable to give a clear indication of their views or wishes in a specific situation. The non-instructed advocate seeks to uphold the person’s rights; ensure fair and equal treatment and access to services; and make certain that decisions are taken with due consideration for their unique preferences and perspectives.”*  
(Henderson (2006))
35. Non-instructed advocates may adopt different approaches to representing the person based upon human rights, being person-centered, maintaining oversight or acting as a witness and observer.

### Summary of Approaches to non-instructed Advocacy

The four currently recognised approaches to non-instructed advocacy are briefly set out below. It is acknowledged that an integrated approach is most effective in delivering non-instructed advocacy.

#### **Rights based Approach**

With this approach, the role of the advocate is to ensure, using a variety of means, that the basic human rights of service users are promoted, defended and where necessary used to take affirmative action on behalf of the service user. Where the advocate believes that the injustice being done to the service user may be illegal, they should seek appropriate legal representation for the person.

#### **Person-Centred Approach**

In spending time with the service user, and may be others who the service user knows and trusts the advocate builds up a picture of their lifestyle, preferences and needs. The advocate can independently represent the person’s views ‘as if they were the advocate’s own’ (O’Brien 1981). In doing so the advocate is raising the profile of the service user’s unique perspectives, and as such is promoting a person-centred approach to service delivery and decision making.

#### **The Watching Brief Approach**

This approach centres around 8 quality of life domains which are used as the basis for a series of questions that the advocate can put to the decision maker or service provider on behalf of the service user. Watching Brief provides a framework for questioning and

challenging the decision maker or service provider in a non-confrontational way and encourages service providers to put the service user at the centre of the decision making process.

Using the Watching Brief model advocates have to ensure that a number of issues are clear.<sup>1</sup>

### **Witness-Observer Approach**

The advocate, in observing the way in which a client lives their life may see or hear things that are unacceptable or which pose a threat to the person's well-being. They may also pick up on the service user's preferences and pleasures, which can in turn be used to enhance positive relationships. This approach does not require the advocate to make judgements or assumptions, merely to report on the facts of his or her observations and bring them to the attention of service providers and decision makers.

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<sup>1</sup> <http://asist.co.uk/watching-brief>

## 10. When must a local authority consider individuals' needs for advocacy?

### Strategically

36. Local authorities need to understand and support the well-being outcomes that people wish to achieve. The outcome statements set out in the Code of Practice on General Functions specify the key areas where care and support can make a difference to improve well-being outcomes for people, these include:
- **Well-being** - I know and understand what care, support and opportunities are available to me and I get the help I need, when I need it, in the way I want it;
  - **Securing rights and entitlements** - My rights are respected, I have voice and control, I am involved in making decisions that affect my life, my individual circumstances are considered, I can speak for myself or have someone who can do it for me and I get care through the Welsh language if I need it.
37. Advocacy services are fundamental to supporting people to engage actively and participate in the development of their own well-being outcomes.
38. **Preventing, delaying or reducing needs** - increasing preventative services within the community to support independence and reduce and delay the escalation of critical need.
39. The Code(s) of Practice on General Functions (well-being, population assessment prevention promotion of social enterprises and provision of information, advice and assistance) set out the requirements for local authorities to provide or arrange the provision of a range of preventative services. Advocacy will have a role in preventing, delaying or reducing people's needs for care and support. Consideration of the provision of advocacy services **must** form part of the local authority and local health board joint assessment under section 14 of the Act of their population's needs for the range and level of preventative services under section 15 of the Act.
40. **Information Advice and Assistance** - everyone should have access to information advice and assistance on how to meet their care and support needs. Prior to making contact with the local authority, there may be some individuals who require advocacy to support them to access that information and advice. Local authorities **must** consider such needs in ensuring that the information and advice service is accessible and that the appropriate assistance is available.
41. Individuals' needs for advocacy should be capable of identification from the moment of first contact. Individuals themselves or those close to them, will often provide this but staff must be suitably skilled to identify those individuals who need an advocate.

42. Informal, collective, peer, citizen and independent volunteer advocacy can offer good sources of advocacy support for individuals to enable them to engage, understand and participate in the development of their well-being outcomes. However, there will be occasions when this support is not available and an IPA will be required.
43. Local authorities **must** utilise the outcomes from their shared population assessment, which they carry out with Local Health Boards to inform commissioning and partnership arrangements under Part 9 for the provision of advocacy services. Advocacy includes the full range of provision set out in Annex 3. Some element of this should be targeted at those using front-line services i.e. to support those approaching and using the information advice and assistance service.
44. Effective joint commissioning arrangements enable improved experiences for individuals through a holistic approach that mitigates duplication; improves communication between and across individuals and practitioners, delivering integrated services and shared outcomes.
45. Local authorities have significant experience of recognising the factors that impact on individuals' ability to engage and participate in shaping the services and support necessary to enable them to lead fulfilled lives.
46. Each of the codes of practice specifically recognise and require professionals and individuals to reach a judgement about the role advocacy can contribute.

### Operational

47. Local authorities **must** arrange for the provision of an IPA when a person can only overcome the barrier(s) to **participate fully in the assessment, care and support planning, review and safeguarding processes** with assistance from an appropriate individual, but there is no appropriate individual available.
48. **Participating fully** enables the individual to express or have represented and taken into account their views, wishes and feelings; that they understand their rights and entitlements; the decision making process; what matters to them; the personal well-being outcomes that they wish to achieve; the barriers to achieving those outcomes, and the options and choices available to them.
49. The Social Services and Well-being (Wales) Act 2014 gives a statutory entitlement to independent professional advocacy for all children in need of care and support, the Act also includes a presumption that a disabled child is a child in need of care and support under Section 21 (7) of the Act.
50. **Assessment, care and support planning, review and safeguarding processes** encompasses the full range of functions under the Act listed in Annex 3.



51. In certain circumstances the appointment of an IPA may not be appropriate and an alternative form of statutory advocate may be required for further guidance see chapter 19.
52. The document at Annex 3 lists the functions where local authorities **must** consider the individual's need for the provision of advocacy support.

## 11. What are the types of circumstances when individuals may require advocacy services?

53. Annex 3 sets out the full range of functions when local authorities in partnership with an individual must consider the role of advocacy. There are particular circumstances and periods of change or transition which will be significant to the individual and when their needs for advocacy may be heightened. These include but not exclusively: -
- when making decisions that will have a significant impact on their day to day life including: -
    - a) assessment, care and support planning, reviews
    - b) safeguarding
    - c) accessing information, advice and assistance
    - d) where they are going to live
    - e) the assessment of or changes to informal care and support arrangements and
    - f) moving from receiving care and support via a care and support plan, or support plan if they are a carer, to receiving care and support from preventative wellbeing support in the community.
  - when external factors impact on their care and support arrangements, for example, provider failure; care home closure; changes of management or ownership arrangements in care homes
  - when suspected of being at risk of harm or neglect, subject of safeguarding concerns including when subject of any enquiry under Section 126 of the Act (adults at risk) or section 47 of the Children Act 1989 (local authority's duty to investigate), action under section 127 of the Act (adult protection and support orders), under section 128 of the Act (duty to report adults at risk) or section 130 of the Act (duty to report children at risk), and
  - when preparing to leave hospital and return to the community.
54. Ensuring individuals and those that support them have the information they need to understand and fully contribute to the decision making process is a fundamental component to securing well-being. Decisions should be taken in full consultation with those concerned.
55. Where parties are unable to reach agreement on the need for the local authority to secure an IPA, the individual must be informed of their rights to access the complaints procedure and be supported through that process.

56. The local authority should inform the complainant about the availability of advice and assistance, which can include advocacy services. This does not prevent a local authority from helping individual complainants to find an advocate or from arranging this support itself.

## 12. What constitute the barriers which can impact on an individual's ability to engage and fully participate?

57. Local authorities **must** in partnership with each individual consider whether that individual is likely to experience barriers to participate fully in determining their well-being outcomes and reach a conclusion on their needs for advocacy support. Key barriers will include issues and situations that will impair individuals' ability to:
- understand relevant information
  - retain information
  - use or weigh information
  - communicate their views, wishes and feelings.
58. Individuals may experience barriers as a result of or in addition to these key barriers identified. For example:
- An individual may be unable to identify sources of information without advocacy support
  - An individual's physical and emotional health and well-being may impact upon their ability to access information and determine their well-being outcomes
  - An individual may face language barriers to accessing information and/or services
  - Individuals with one or more protected characteristics can experience difficulties in accessing information and services, which may result in a need for advocacy support

### Understanding relevant information

59. Many individuals can be supported to understand relevant information, if it is presented appropriately and if time is taken to explain it. Some individuals, however, will not be able to understand relevant information.

### Retaining information

60. If an individual is unable to retain information long enough to be able to weigh up options and make decisions, then they are likely to be experiencing barriers in engaging and participating in determining their well-being outcomes.

## Using or weighing the information as part of the process of being involved

61. An individual must be able to weigh up information, in order to participate fully and express preferences for or choose between options. For example, they need to be able to weigh up the advantages and disadvantages of moving into a care home or terminating an undermining relationship. If they are unable to do this, they are likely to be experiencing barriers in participating fully in determining their well-being outcomes.

## Communicating their views, wishes and feelings

62. An individual must be able to communicate their views, wishes and feelings whether by talking, writing, signing or any other means, to aid the decision making process and to make priorities clear. If they are unable to do this, they are likely to be experiencing barriers in participating fully in determining their well-being outcomes.
63. If a person is experiencing one or more of these barriers and this is because of an impairment of, or disturbance in, the functioning of the mind or brain, the person may lack capacity to make a decision and an assessment of their capacity under the Mental Capacity Act 2005 should be made. This may affect the type of advocacy which is appropriate to be provided for the person.
64. Local authorities in commissioning advocacy services must give consideration to their public sector equalities duty to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The protected characteristics are:-

- Age
  - Disability
  - Gender reassignment
  - Marriage and civil partnership (in employment only)
  - Pregnancy and maternity
  - Race
  - Religion or belief
  - Sex
  - sexual orientation
65. An Individual with one or more protected characteristics can experience specific barriers to accessing information and services, without advocacy support. For example:
- An Individual with learning, cognitive or mental health impairments who may require advocacy support to understand or retain information
  - An individual with sensory impairments who may require advocacy support in addition to communication support
  - An Individual whose family or friends may have a conflict of interest with them based on protected characteristics.

66. Welsh language

Local authorities in Wales have a statutory duty to comply with Welsh Language Standards which explain how they as organisations should use the Welsh language. This will be a driver for enhancing Welsh language provision in services delivered by, or contracted by local authorities.

### 13. When is an individual appropriate or inappropriate to act as an advocate?

67. Local authorities in partnership with the individual **must** consider whether there is an appropriate individual who can facilitate that individual's involvement in the assessment, care and support planning, review or safeguarding process (see paragraph 49 above), and this includes three specific considerations. The appropriate individual cannot be:
- someone the individual does not want to support them
  - someone who is unlikely to be able to, or available to, adequately support the individual's involvement, and
  - someone implicated in an enquiry into abuse or neglect or whose actions have influenced a local authority decision to consider adult protection and support order actions or protection activity in respect of a child.
68. Social care and other professionals play a key role in acting as an advocate on behalf of individuals as part of the exercise of their daily professional roles. However, there will be occasions where a conflict of interest may arise in relation to the decision being made. Professionals will need to be alert to situations where they believe that the objectivity or independence of the decision making process is, or could be seen to be undermined. In such circumstances, the roles of other forms of advocacy outlined in Annex 3 to secure individuals' views, wishes and feelings and well-being outcomes must be considered.
69. Appropriate individuals are expected to support, represent and to facilitate the individual's involvement in securing their well-being outcomes. Whilst often this will be a family member, friend or someone in the wider support network it is likely that some people may not find it that easy to fulfil this role. For instance, a family member who only has occasional contact with the person; a spouse who also finds it difficult to understand the local authority processes; a friend who expresses strong opinions of their own prior to finding out those of the individual concerned. It is not sufficient to know the person well. The role of the appropriate individual is to support the individual's full engagement and participation in determining their well-being outcomes.
70. An individual's wishes not to be supported by friends or family should be respected, where the individual has capacity to consent, their wishes must be followed. An individual may not wish to be supported by a relative, for example, because there is a conflict of interest in moving forward.
71. If an individual has been judged to lack the capacity to make a decision, then the local authority must be satisfied that it is in an individual's best interests to be supported and represented by that family member or friend.
72. It will clearly not be suitable for a person to be regarded as an appropriate individual where they are implicated in any enquiry of abuse or neglect against an adult or a child or whose actions have influenced a local authority's

decision to consider exercising their safeguarding responsibilities.



## 14. Safeguarding

73. Local authorities **must** have regard to the need to help protect adults and children from abuse and neglect. Local authorities are experienced in supporting adults in deciding how much risk they are able to manage. Chapter 13 identifies circumstances where it is inappropriate for someone to act as an advocate.
74. The local authority in partnership with the individual, **must** consider and reach a conclusion on arrangements to appoint an IPA for an individual who is the subject of a safeguarding enquiry under section 126 of the Act or section 47 of the Children Act 1989 or who is subject to arrangements for an adult protection and support order under section 127 of the Act. Where an IPA has already been arranged under this Act or an IMCA under the Mental Capacity Act 2005 then, unless inappropriate, the same advocate may be used.
75. If a safeguarding enquiry needs to start urgently, it can begin before an advocate is appointed but one must be appointed as soon as possible. All safeguarding agencies need to know how advocacy services can be accessed and what their role is.
76. It is critical in this particularly sensitive area that the individual is supported in what may feel a daunting process which may lead to some very difficult decisions. An individual who is thought to have been abused or neglected may be so demoralised, frightened, embarrassed or upset that independent advocacy provided under the Act to enable them to express their views, wishes and feelings and participate fully will be crucial.

## 15. Commissioning an effective service

77. One or more local authorities are able to co-ordinate their commissioning of advocacy services on a joint or regional basis. Part 9 of the Act further enables local authorities, health boards, trusts and other relevant partners to establish formal and informal partnership arrangements and to contribute to a pooled fund in order to secure improved well-being of children and adults.
78. Local authorities and local health boards have a range of responsibilities to secure advocacy services for individuals of all ages. Local authorities **must** consider with local health boards how joint commissioning arrangements can contribute to the delivery of value for money for commissioners and sustainability for providers.
79. Effective joint commissioning arrangements ensure that services are available and responsive to people's needs and preferences including regular monitoring to ensure the arrangements are effective and utilise feedback to inform improvement.
80. The following principles should be reflected in the arrangements for the planning, commissioning, monitoring and review of advocacy services in their area. Advocacy services are: -
- are led by the views and wishes of the individual
  - champion the rights and needs of individual
  - work exclusively for the individual
  - are well-publicised, accessible and easy to use
  - provide appropriate assistance to individuals taking into account their specific needs
  - are well managed and provide value for money
  - listen to and reflect the views and ideas of individuals to improve the service provided
  - are responsive and provide help and advice quickly when contacted
  - operate to a high level of confidentiality and ensure individuals and partner agencies are aware of its confidentiality policies
  - have effective and easy to use complaints procedure, and
  - ensure clear policies to promote equality issues and monitor services to ensure that no one is discriminated against.
81. The independence of the advocate is essential to enable them to act on behalf of the individual. Services providing advocacy should, as far as possible, be funded and managed in a way that ensures independence from the commissioning organization.

82. Current practice in Wales is to achieve independence by commissioning advocacy services from an external provider which reinforces the perception and the experience that the service is independent. To preserve independence of advocacy arrangements, commissioners and providers should ensure that any issues of challenge and conflict are transparent and robust, and identified and addressed in the service level agreement between the commissioner and service provider. Equally providers delivering other services to the commissioners must ensure there is no actual or perception of conflict of interest.

## 16. Publicising advocacy services

83. Local authorities **must** ensure that individuals who may require or benefit from advocacy services are aware of and able to access it. This will require information to be available in accessible and appropriate formats and be able to reach out to the hardest to reach groups. The table at Annex 3 identifies the key areas where local authorities **must** consider individuals' needs for advocacy.
84. Local authorities and local health boards **must** assess as part of their population assessment, the range of advocacy services in their area and secure and promote their availability as part of their portfolio of preventative services.
85. Local authorities **must** as part of their general duties to provide information, advice and assistance ensure arrangements are in place to support people to prevent, delay or reduce their needs for care and support. This **must** include signposting individuals to advocacy services.
86. Certain individuals may require advocacy services to enable them to access the information, advice and assistance service. Similarly, individuals' needs for advocacy services will be heightened because of where they are accommodated. For example, foster care, children's homes, care homes and other forms of residential accommodation, sheltered housing schemes and shared lives schemes.
87. The effective commissioning and delivery of advocacy services promotes early detection and early resolution, so that concerns and problems are put right quickly and effectively.
88. Where local authorities commission services as part of their duties under the Act, they should consider including requirements on service providers to make information available about advocacy services in their area and how to access advocacy services.
89. Local authorities should regularly update information and publicity about advocacy services for children and young people, staff and foster carers and ensure that new staff and carers are able to properly inform children and young people of what support they can access.

90. Regulations made under the Regulation and Inspection of Social Care (Wales) Act 2016<sup>2</sup> require a provider of regulated social care services to prepare a written guide to the service which must contain information about how to raise a concern or complaint, and information about the availability of advocacy services. The service provider must ensure that all individuals receive such support as is necessary to enable them to understand the information contained in the guide.

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<sup>2</sup> <http://www.legislation.gov.uk/wsi/2017/1264/made>

## 17. Charging for advocacy

91. The Care and Support (Charging) (Wales) Regulations 2015 prevent Local Authorities from charging for advocacy services, which are provided in fulfilment of their duties under Part 4 (Meeting Needs) of the 2014 Act which provides for:

- i) the circumstances in which needs for care and support or support for carers may or must be met by local authorities;
- ii) how needs are to be met.

## 18. Deprivation of liberty consideration

92. If following assessment the care and support a person requires in order to meet their well-being outcomes may amount to a deprivation of liberty the appropriate assessments and referrals must be made and completed<sup>3</sup>. The local authority **must** also have regard to ensuring that any restriction on the person's rights or freedom is kept to the minimum necessary. Restrictions should be carefully considered and reviewed. Any potential deprivation of liberty must be authorised, either by a Deprivation of Liberty Safeguards Authorisation under the Mental Capacity Act 2005 or by the Court of Protection as appropriate.
93. Local authorities should consider how advocacy services can be utilised from the earliest possible opportunity where it is apparent that individuals may after a period of time fall within the Deprivation of Liberty safeguards because of their increasing needs for care and support.
94. Where there is a deprivation of liberty local authorities should consider the need to appoint an Independent Mental Capacity Advocate (IMCA) under the Mental Capacity Act 2005.

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<sup>3</sup> Links to the codes of practice for the Mental Capacity Act 2005 and the Deprivation of Liberty Safeguards are attached here:  
<https://www.wales.nhs.uk/sites3/page.cfm?orgid=744&pid=36235>  
<https://www.wales.nhs.uk/sites3/page.cfm?orgid=744&pid=36239>

## 19. Existing advocacy services

95. In addition to the provision within the Social Services and Well-being (Wales) Act 2014 there are a number of different statutory provisions which impose requirements about advocacy, as listed below, and set out within Annex 4.
- section 130E of the Mental Health Act provides for the appointment of an Independent Mental Health Advocate (IMHA);
  - section 35 of the Mental Capacity Act 2005 provides for the appointment of an Independent Mental Capacity Advocate (IMCA)
  - an advocate appointed on behalf of a child or young person (entitled child) for the purpose of making representations under section 178 of the Act
  - an advocate appointed under section 332BB of the Education Act or paragraph 6D of Schedule 17 to the Equality Act 2010; or
  - an advocate appointed under section 187 of the National Health Services (Wales) Act 2006
96. There will be occasions when different entitlements to statutory advocacy may overlap.
97. For example during discussions about individuals' well-being outcomes, local authorities may identify a duty to provide an Independent Mental Capacity Advocate (IMCA) under the Mental Capacity Act 2005, such as when a decision needs to be taken about the person's long-term accommodation.
98. In these circumstances, consideration should be given to maximise where appropriate the opportunities to secure continuity in individuals' advocacy needs, minimising duplication including the need for the individual to have to repeat their experiences and desired outcomes to different advocates. Wherever possible, the parties should seek to agree a single advocate to support the person.
99. Caution should be taken when appointing/instructing a single advocate to fulfill more than one advocacy entitlement, as the advocate must meet the requirements/be authorised (as applicable) to carry out each advocacy function in respect of which they are instructed.
100. Where it is not possible/practicable for a single advocate to be appointed to carry out more than one entitlement to advocacy, the advocates should liaise/work with each other where possible minimising the need for duplication where individuals have to repeat their experiences.
101. The plans and strategies which are prepared in response to the population assessment will evidence local authority and local health board commissioning arrangements for advocacy services enabling them to recognise and respond to the potential overlap in arrangements



## 20. Advocacy for looked after and other entitled children and young people

102. Advocacy empowers entitled children and ensures their rights are respected and their views, wishes and feelings are fully reflected in decision making about what is happening in their lives. Advocacy is also an additional safeguard to protect from the risk of abuse. Advocacy can ensure assistance and support is provided enabling concerns to be listened to and dealt with effectively. Advocacy supports active participation in the decision-making processes and ensures views and wishes are heard at all times.

103. A local authority must make arrangements for the provision of advocacy for the following children and young people ('entitled child(ren)');

- A looked after child, or a child who is not being looked after but may have needs for care and support;
- a child in respect of which a Special Guardianship Order is in force
- an adopted child or a child who may be adopted; or
- a young person who is a former looked after child as defined under section 176 and 104 of the Act;

who make or intend to make representations (including complaints) under section 174 or 176 of the Act, about the discharge of the local authorities functions under;

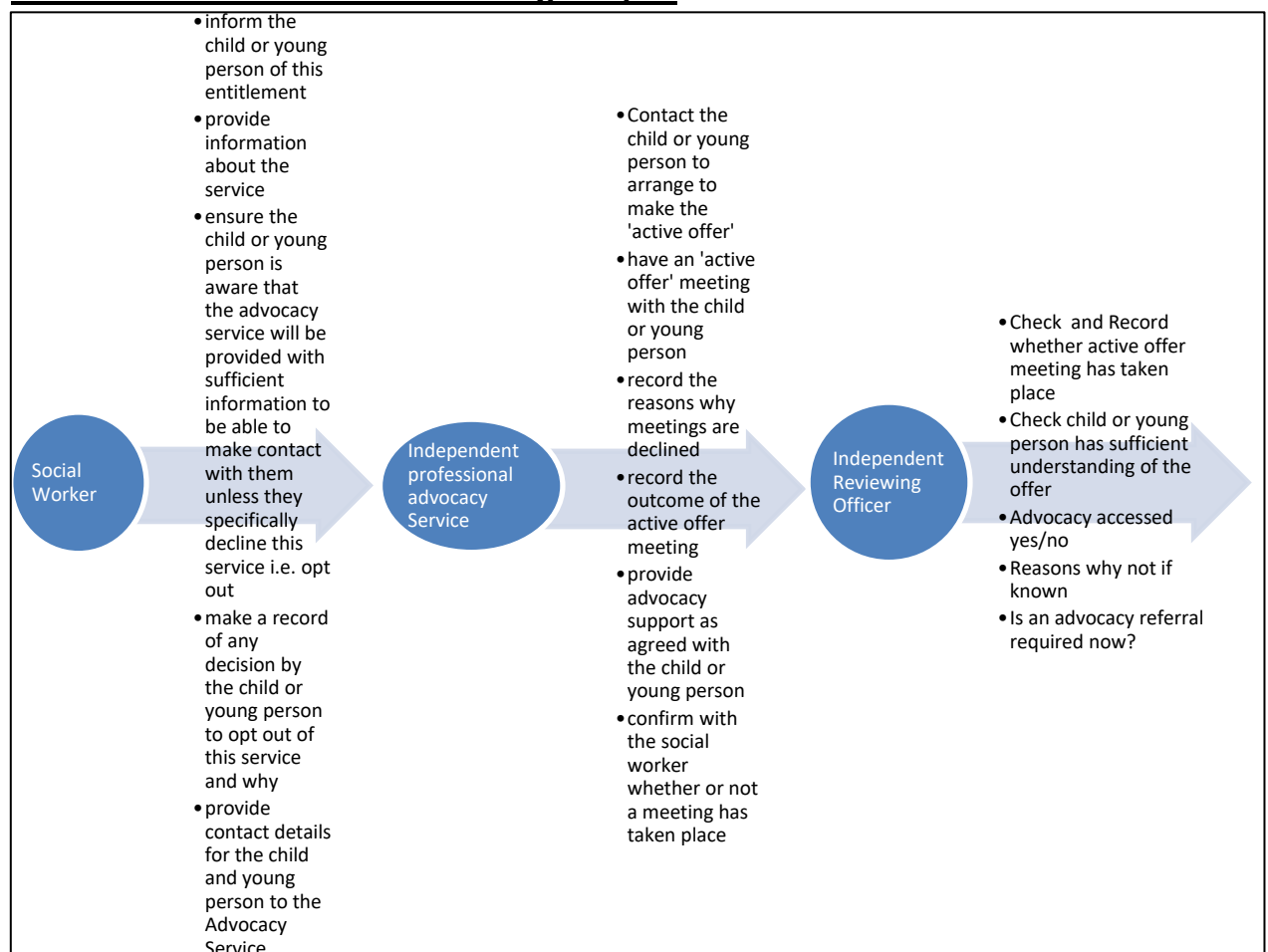
- Parts 3 (assessment of needs); Part 4 (meeting needs); Part 5 (charging and financial assessment); Part 6 (looked after and accommodated children); and Part 7 (safeguarding) of the Act;
- section 14F (special guardianship support services), Parts 4 (care and supervision) and 5 (protection of children) of the Children Act 1989; and /or
- the Adoption and Children Act 2002 (in respect of an adopted child or a child who may be adopted).

104. The provision of an advocacy service for a child or young person who makes or intends to make representations under section 174 and 176 of the Act, is an 'advocacy' service for the purpose of paragraph 7(1) of Schedule 1 of the Regulation and Inspection of Social Care (Wales) Act 2016, and is accordingly a regulated service and must comply with the provisions/requirements set out within the Regulated Advocacy Service (Service Providers and Responsible Individuals) (Wales) Regulations 2019.

## 21. A National Approach to Statutory Advocacy for Children and Young People

105. The National Approach to Statutory Advocacy (NASA), is a standardised approach to statutory advocacy services being delivered by the six Regional Social Services Collaboratives.
106. The NASA sets out shared national expectations on access and availability of (independent professional) advocacy. Underpinned by the National Standards and Outcomes Framework, common components of a service specification and reporting template, the NASA reinforces and secures a consistent offer and experience for children and practitioners. The NASA further evidences and informs future delivery and improvement through quantitative and qualitative reporting at local, regional and national levels.
107. An active offer of advocacy forms part of the NASA and is provided in the circumstances as listed in paragraph 107 below.
108. *“Children and young people are entitled to an active offer of advocacy from a statutory Independent Professional Advocate (IPA) when they become looked after or become subject of child protection enquiries leading to an Initial Child Protection Conference”*. (National Standards and Outcomes Framework for Children and Young People in Wales)<sup>4</sup>

### Active Offer for Children and Young People



## 22. Choosing an advocate for children and Young People

109. There will be times when entitled children will wish to choose their own advocate, for example, a relative, teacher, carer, friend or family member. Children should be helped to understand the choices open to them and the differences between the options, and should be helped to understand the differences in the kind of support available and should therefore be able to make an informed choice between lay advocacy and an IPA.
110. Entitled children may select an advocate of their choice unless the person is prohibited by regulations<sup>5</sup> from acting as an advocate, or there are conflicts of interest, which cannot be resolved satisfactorily to enable them to act as an advocate.
111. In making arrangements for the provision of assistance, including advocacy, to a child or young person a local authority may not allow the assistance to be provided by a person who;
- (a) is or may be the subject of the representations;
  - (b) is responsible for the management of a person who is or may be the subject of the representations;
  - (c) manages the service which is or may be the subject of the representations;
  - (d) has control over the resources allocated to the service which is or may be the subject of the representations;
  - (e) is or may become involved in the consideration of the representation on behalf of the authority;
  - (f) the child or young person making or intending to make representations objects to being the provider of assistance.
112. Local Authorities and advocacy providers will need to ascertain whether the child has sufficient understanding to be capable of making their own decision on a matter. Where children are identified as having such capability, the requirement to secure consent of the person with parental responsibility for the child does not apply. However, local authorities and advocacy providers will want to consider the potential impact of their exclusion including whether it would not be safe to do so.
113. If the local authority has good reason to believe that the entitled child's preferred choice of advocate poses a risk of significant harm to the child, the authority **must** take steps to protect the child and seek to find another person, acceptable to the child, who will act as their advocate.
114. The local authority will have a key role in decisions about the appropriateness of a lay advocate chosen by the entitled child. Central to this must be the need to ensure that the child's rights and safeguarding requirements are being upheld.

115. Where children request a change in advocacy arrangements or the need to do so has been brought to the local authority's attention, this should be acted upon.
116. Where a child chooses his or her own advocate, the local authority should facilitate the support and advice required to enable the individual to assume the role.
117. When a child or young person believes that a concern or problem is not being resolved and they intend to or are considering making a representation, local authorities **must** ensure that entitled children are advised of the availability of independent advocacy services and support specified children to access those services. Rights to advocacy do not extend to a parent or another person making a complaint on behalf of an entitled child but these individuals or other person may be invited by the child to advocate on their behalf.

## 23. Complaints and Representations for children

118. The *Representations Procedure (Wales) Regulations 2014*<sup>6</sup> and *Social Services Complaints Procedure (Wales) Regulations 2014*<sup>7</sup> establish a procedure which local authorities must follow in the consideration of representations made to them about the discharge of specific functions under the *Children Act 1989* (“the 1989 Act”) and under the *Adoption and Children Act 2002* (“the 2002 Act”) and the 2014 Act including:-
- designation of a senior officer to be responsible for ensuring compliance with arrangements made by the local authority, and
  - appointment of a complaints officer to manage the procedure for the handling and consideration of complaints and representations.
119. Complaints officers may be appointed for more than one local authority. The individual should have sufficient capacity, authority and independence to manage the complaints and representations process effectively. There should be no conflict of interest or any perception Officer must be independent of both professional line management and direct service providers.
120. Detailed guidance on the complaints and representations process including the roles and responsibilities of key individuals including the complaints officer, the independent investigator and the independent person in representations is set out in *A guide to handling complaints and representations by local authority social services*<sup>8</sup>.
121. Effective advocacy is dependent upon entitled children understanding what advocacy is and when and how to access it. This includes accessing an advocate to assist a complainant in making complaints. Local authorities **must** provide entitled children with information and advice about advocacy services routinely, together with assistance to access an advocate. This role is imperative during the process of the assessment, recording and review of their care and support needs. Key components will include the name, telephone number and contact point for the service and include an offer to facilitate initial contact with the advocacy service or support them to do so.
122. Children who are looked after and placed out of area or those with communication difficulties can be especially at risk. The local authority **must** ensure that these children are aware of and understand the complaints and representation procedures and their rights. Local authorities **must** ensure they agree suitable arrangements with those providing day to day care to children to satisfy themselves children are aware of and understand how to access advocacy.
123. This will require a range of measures that reflect individual needs and vulnerabilities. Measures can include the placing authority making

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<sup>6</sup> [http://www.legislation.gov.uk/wsi/2014/1795/pdfs/wsi\\_20141795\\_mi.pdf](http://www.legislation.gov.uk/wsi/2014/1795/pdfs/wsi_20141795_mi.pdf)

<sup>7</sup> [http://www.legislation.gov.uk/wsi/2014/1794/pdfs/wsi\\_20141794\\_mi.pdf](http://www.legislation.gov.uk/wsi/2014/1794/pdfs/wsi_20141794_mi.pdf)

<sup>8</sup> <http://gov.wales/docs/dhss/publications/140730complaintsen.pdf>

arrangements with their advocacy service or with the local authority or advocacy service where the child is placed.

124. The complaints officer will play a key role in ensuring children are aware of advocacy and in working with other professionals working with children to promote awareness of advocacy and understanding of how to access it. Complaints officers have specific responsibilities to ensure that eligible children are aware of and understand their role. This should be informed and underpinned by arrangements that:
- consult with entitled children when they express their intention to make a complaint to help them understand the options available and how the complaints procedure works
  - provide information and advice about the options of advocacy services and support in accessing these services
  - work with entitled children and their advocates in dealing with complaints, and provide information and advice about options for resolution both within the complaints procedure, or alternative routes of remedy and redress where appropriate, and
  - keeping a written record of complaints made, the procedure followed and the outcome.
125. Other key professionals and key workers have parallel roles to ensure entitled children are aware of and supported to access advocacy where they believe that child is considering or intending to make a representation or complaint. These will include social care staff, independent reviewing officers, education staff, health staff, residential care staff, foster parents, third sector staff and those who exercise formal and informal supervisory or management responsibilities for any of these individuals. Similarly, elected members who have formal or informal corporate parenting responsibility for entitled children will need to satisfy themselves children and staff understand and exercise their rights.
126. Independent reviewing officers (IROs) monitor the review process of the care plans of looked after children by local authorities and challenge poor practice by local authorities, including drift in care. IROs chair review meetings, and ensure that the local authority involves the child and significant adults in their review process. They have a specific responsibility to check children are aware of their right to advocacy.
127. The process of advocacy and complaints must run alongside the IRO's actions in resolving an issue and it will be good practice for the IRO, the complaints officer and any advocate to agree channels of communication and their respective roles to resolve a complaint.
128. The advocate's role is to help the entitled child initiate the complaint procedures as well as supporting the child to pursue their complaint until a resolution is achieved. The advocate's role in the complaints procedures is:
- to empower the child by enabling him or her to express views, wishes or feelings, or by speaking on his or her behalf
  - to seek the resolution to any problems or concerns, identified by the child, by working in partnership with them and only with their agreement

- to speak for or represent the child at all stages of the complaints procedures by providing information, advice and support
  - to provide the child with information about their rights and options, helping to clarify the complaint and the outcomes they are seeking,
  - encourage the child to keep their own record of the complaint, by way of becoming involved in the process.
129. Complaints and representation procedures should be planned, commissioned and delivered in a manner that encourages entitled children to speak out and encourages decision-makers to hear and listen to their views. Effective complaints and advocacy procedures operate within a culture that promotes participative practice, encourages feedback and utilises feedback to drive improvement. It is therefore an important aspect of a performance management and improvement framework.
130. Local authorities must have robust communication and publicity mechanisms to ensure that children, including those with additional communication needs, are aware of their right to make a complaint and to receive support through advocacy. This must include
- providing information for entitled children about advocacy and associated services which are available
  - informing entitled children about advocacy when they intend or wish to make a complaint, and
  - providing help and assistance when entitled children want an advocate to speak for them.
131. Where a local authority first becomes aware that a child or young person wants to make a complaint they should provide age appropriate materials and guides about making a complaint. Information about children's rights/advocacy services should also be given to all children and young people when they are assessed or being assessed for care and support needs and when they become looked after. It should be recorded on the child's file that this information has been provided, and this should be reviewed by the IRO at each looked after child review meeting.

## Annex 1: The role of the Independent Professional Advocate (IPA)

1. The IPA will decide with the individual they are advocating for the best way of supporting and representing that individual.
2. The IPA, will where possible, seek to meet the individual in private to ascertain their views, wishes and feelings. Where it is not possible to do so the IPA will record the reasons why in their professional judgment it has not been possible to do so.
3. Where an individual has capacity, the IPA must ask their consent to speak to any third parties in relation to the particular issues they are supporting the individual with.
4. Where an individual does not have capacity, consultation should take place where the IPA considers this is the most appropriate course of action and would enable the individual's view to be appropriately and adequately gathered and conveyed. A record should be kept of the decision made.
5. To advocate for an individual who is experiencing barriers in participating fully with relevant assessment, care and support planning and review or safeguarding processes is a responsible role. The following are aspects of the role:
  - To assist an individual to understand the relevant processes requires IPA's to understand local authority policies; other agencies roles and processes; the available assessment tools; the planning options; the options available at the review of a care or support plan; required and good practice in safeguarding enquiries as well as adult or child practice reviews.
  - To assist an individual to communicate their views, wishes and feelings to professionals enabling the individual to participate fully in the decision making process wherever possible. This may involve an IPA spending time with the individual, considering their communication needs, their views, wishes and feelings and/or their life story.
  - To assist an individual to understand how their needs can be met by the local authority or otherwise - understanding for example how a care and support plan can be individualised; how it can be tailored to meet specific needs; how it can be creative, inclusive; and how it can be used to promote an individual's rights to liberty and to family life.
  - To assist an individual to make decisions about their care and support arrangements by for example, assisting them to weigh up various care and support options and to choose the ones that best meet the individual's needs and wishes.
  - To assist an individual to understand their rights under the Act, i.e. for an assessment which considers their views, wishes and feelings and which



considers the views of other people; their right to have their eligible needs met; to have a care or support plan that reflects their needs and their preferences; and in relation to safeguarding, understanding their right to have their concerns considered.

- To assist an individual to understand their wider rights, including their rights to liberty and family life. An individual's rights are complemented by the local authority's duties, for example to involve the individual, to meet needs in a way that is least restrictive of an individual's rights.
  - To assist an individual to challenge a decision or process made by the local authority; and where an individual cannot challenge the decision even with assistance, then to challenge it on their behalf.
6. There are particular important safeguarding issues for IPAs to support an individual with.

These can include assisting an individual to:

- decide what outcomes/changes they want;
- understand the behaviour of others that are abusive/neglectful;
- explore how they can protect themselves from abuse or neglect;
- decide what actions they can take to safeguard themselves;
- understand what advice and help they can expect from others including the criminal justice system;
- understand what parts of the process are completely or partially within their control, and
- express their views, wishes and feelings about what help they might want to avoid reoccurrence and also recover from their experience.

## Annex 2: The local authority role in supporting the advocate

1. The local authority is expected to recognise that an advocate's responsibility is to support and represent a person who is experiencing barriers in participating fully with the local authority processes. The local authority must take into account any representations made by an advocate. The local authority must provide a written response to a report from an advocate, which outlines concerns about how the local authority has acted or what decision has been made or what outcome is proposed. The local authority should understand that the advocate's role incorporates 'challenge' on behalf of the individual.
2. The local authority is responsible for ensuring that the relevant people who work for the authority or who provide services and support on behalf of the authority are aware of advocacy services, an individual's choice to invite someone to advocate on their behalf and the authority's duty to provide independent professional advocacy. It may engage with advocates to support this awareness raising.
3. The local authority should consider requiring those who provide services on its behalf to identify and refer individuals who are likely to benefit from advocacy. In doing so, the local authority should engage with domiciliary and residential care and support workers and agencies.
4. The local authority should take reasonable steps to assist the advocate in carrying out their role. For example, they should let other agencies know that an advocate is supporting a person, facilitate access to the person and if appropriate, to the records. They should propose a reasonable timetable for the assessment and the care and support plan taking into consideration the needs of the person. Where the advocate wishes to consult family, friends or paid staff, the timetable should allow this. They should keep the advocate informed of any developments and of the outcome of the assessment and the care and support plan.
5. The local authority may make reasonable requests of the advocate for information or for meetings both in relation to particular individuals and in relation to the advocate's work more generally, and the advocate should comply with these.
6. The local authority must meet its duties in relation to working with an IMCA provided under the Mental Capacity Act 2005 as well as those in relation to working with an IPA under the Act when that advocate is acting in both roles. These duties have been closely aligned so as to facilitate this.

## Annex 3: Local Authority Functions - Provision of advocacy and the individual's need for advocacy support

Functions local authorities <b>must</b> consider as set out in Part 2 General Functions of Social Services and Well-being (Wales) Act 2014	
<b>General functions</b>	<b>Sections</b>
Assessment of needs for care and support, support for carers and preventative services	14
Preventative services	15
Promoting social enterprises, co-operatives, user-led services and the third sector	16
Provision of information, advice and assistance	17
<b>Part 3 - Assessing the Needs of Individuals</b>	
Assessing the needs of adults, children and carers	19; 21; and 24
Combining needs assessment	28; 29
<b>Part 4 - Meeting Needs</b>	
Duties and powers to meet needs of adults, children and carers	35 to 38; 39; 40 to 45
Direct payments for adults children and carers	50 to 53
Preparing, maintaining or reviewing care and support plans	54
Portability of care and support plans	56
Expressing preference for particular accommodation	57
Protecting property of persons cared for away from home	58
<b>Part 5 - Charging and Financial Assessment</b>	
Power to impose charges	59 to 62
Financial assessment	63 to 65
Determination of persons ability to pay a charge	66 to 67
Deferred payments	68
Charging for preventative services	69
Recovery of charges	70

Creation of charge over interest in land	71
Transfer of assets to avoid charges	72
Reviews relating to charging	73
<b>Part 7 - Safeguarding</b>	
Adults at risk	126
Adult protection and support orders	127
Duty to report adults at risk	128
Duty to report children at risk	130
<b>Part 9 - Co-operation and partnership</b>	
Arrangements to promote co-operation; adults with needs for care and support and carers	162
Arrangements to promote co-operation; children	163
Duty to co-operate and provide information in the exercise of social services functions	164
Promoting integration of care and support with health services	165
Partnership arrangements	166
Resources for partnership arrangements	167
Partnership boards	168
<b>Part 10 - Complaints and representations</b>	
Complaints about social services. Complaints about social services: supplementary. Assistance for complaints	173
Representations relating to certain children etc.	174
Representations relating to certain children etc. further provision	175
Representations relating to former looked after children etc.	176
Further consideration of representations	177
Assistance for persons making representations	178

## Annex 4: Other statutory advocacy duties

### **(a) Section 178 of the Act**

Section 178 provides that a local authority must make arrangements for the provision of assistance including advocacy, in respect of;

- (a) a looked after child, a child who is not looked after but may have needs for care and support or a child in relation to whom a Special Guardianship Order is in force, an adopted child or a child who may be adopted who makes or intends to make representation about a qualifying function under section 174.
- (b) a former looked after child who make or intend to make representations which fall within section 176.

The Arrangements for Assistance for Persons Making Representations (Wales) Regulations 2019 make provision as to persons prohibited from providing assistance, information to be provided to the person making representations and for monitoring compliance with the regulations.

A service carried on to provide advocacy for children and young people who make or intend to make representations (including complaints) which fall within section 174 or 176 of the Act, is an 'advocacy service' for the purpose of paragraph 7(1) of Schedule 1 of the Regulation and Inspection of Social Care (Wales) Act 2016, and is accordingly a Regulated service and must comply with the provisions/requirements set out within the Regulated Advocacy Service (Service Providers and Responsible Individuals) (Wales) Regulations 2019.

### **(b) Section 35 of the Mental Capacity Act 2005 which provides for the appointment of an Independent Mental Capacity Advocate (IMCA)**

Sections 35 to 41 of the Mental Capacity Act create a scheme designed to provide the input of an independent mental capacity advocate ('IMCA') where certain decisions need to be taken for particularly vulnerable people who lack capacity.

This may include older people with dementia who have lost contact with all friends and family, or people with severe learning disabilities or long term mental health problems who have been in residential institutions for long periods and lack outside contacts. Such people will be represented and provided with support when decisions are to be made about;

- (a) serious medical treatment; and/or
- (b) where the person is to be provided with accommodation in a hospital for more than 28 days or in a care home for more than 8 weeks

There is also a discretion to provide an IMCA under Regulation 8 and 9 of The Mental Capacity Act 2005 (Independent Mental Capacity Advocates) (Wales) Regulations 2007, in relation to care reviews (accommodation) and/or safeguarding where there is no person, other than a person engaged in providing care or treatment for person in a professional capacity or for remuneration, whom it would be appropriate to consult in determining what would be in persons' best interests; and where it would be of benefit to for the person to be

so represented and supported.

The Mental Capacity Act 2005 Code of Practice provides guidance and information as to how the Mental Capacity Act works in practice.

**(c) Section 130E of the Mental Health Act 1983 which provides for the appointment of an Independent Mental Health Act Advocate (IMHA)**

An IMHA is appointed under section 130E of the Mental Health Act 1983 (as amended) in respect of a Welsh qualifying compulsory patient or a qualifying voluntary patient under the Mental Health Act.

The following patients are entitled to receive support from an IMHA

- (a) all patients liable to be detained under the Mental Health Act (excluding those subject to sections 4, 5(2), 5(4), 135 or 136)
- (b) patients discharged onto supervised community treatment
- (c) patients subject to guardianship

The right to IMHA support also applies to:

- (a) informal patients who discuss, with a registered medical practitioner or approved clinician, the possibility of being given a form of treatment to which section 57 treatment applies
- (b) informal patients under the age of 18 who discuss, with a registered medical practitioner or approved clinician, the possibility of being given a form of treatment to which section 58A applies

The Mental Health (Independent Mental Health Advocates) Wales Regulations 2011, make provision as to the requirements for independent mental health advocates, including requirements as to their independence.

The Mental Health Act 1983, Code of Practice for Wales (Revised 2016) provides guidance to professionals when exercising functions under the Mental Health Act.

**(d) Section 332BB of the Education Act 1996 or paragraph 6D of Schedule 17 of the Equality Act 2010**

**Section 332BB of the Education Act 1996** provides that Local Authorities must;

- (a) make arrangements for provision of independent advocacy services in their area;
- (b) refer any child, or case friend for a child in their area who requests an independent advocacy service to a service provider.

Within section 332BB Independent Advocacy Services are services providing advice and assistance (by way of representation or otherwise) to a child;

- (a) who makes, intends to make or is considering issuing an appeal to the special educational needs tribunal; or

who is taking part or intends to take part in a dispute resolution arrangements under Section 332BA.

**Paragraph 6D of Schedule 17 of the Equality Act 2010** provides that a local authority must;

- (a) make arrangements for provision of independent advocacy services in their area;
- (b) refer any disabled child or person acting as a case friend for a disabled child, in their area, who requests independent advocacy to a service provider.

Within paragraph 6D of Schedule 17 Independent Advocacy Services are services providing advice and assistance (by representation or otherwise) to a disabled child who is;

- (a) making, intending or considering making a claim that a responsible body has contravened chapter 1 of part 6 (Education: Schools) because of the child's disability; or
- (b) taking part in or intending to take part in dispute resolution arrangements made under paragraph 6C

**(e) Section 187 of the National Health Service (Wales) Act 2006**

Section 187, as set out below, relates to the provision of advocacy services in relation to complaints made or intending to be made in respect of health service functions.

*'Section 187*

*(1) The Welsh Ministers must arrange, to such extent as they consider necessary to meet all reasonable requirements, for the provision of independent advocacy services.*

*(2) "Independent advocacy services" are services providing assistance (by way of representation or otherwise) to individuals making or intending to make—*

*(a) a complaint under a procedure operated by a health service body, independent provider or independent palliative care provider,*

*(b) a complaint under section 113(1) or (2) of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43),*

*(c) a complaint to the Public Services Ombudsman for Wales which relates to a health service body or independent palliative care provider,*

*(d) complaint of a prescribed description which relates to the provision of services as part of the health service and—*

*(i) is made under a procedure of a prescribed description, or*

*(ii) gives rise, or may give rise, to proceedings of a prescribed description.'*