

Introduction

Independent advocacy is vital to enable children to have their voices heard in line with Article 12 of the United Nations Convention on the Rights of the Child (UNCRC), particularly at times when they are trying to access a service or to complain. Advocacy can safeguard children's rights and welfare and is an important element of children's participation.

The need for advocacy for children has been highlighted in a number of reports including the Waterhouse report¹, the Carlile report, *Too Serious a Thing*² and *Keeping Us Safe*³, the report of the Safeguarding Vulnerable Children Review of the National Assembly for Wales. As the Deputy Minister for Health and Social Services, Gwenda Thomas, stated there is a '*need to embed advocacy for children and young people in structures for direct service provision.*'⁴

In his annual reports, Peter Clarke called on the Welsh Assembly Government to fully realise advocacy for **all children** in Wales (to assist Committee members, the full texts relating to advocacy from the Commissioner's annual reports are appended to this paper). He also published two reviews of advocacy and complaints, *Telling Concerns* in relation to social services and *Children Don't Complain* relating to education.

In these reports, the Children's Commissioner consistently stressed the need for a 'one stop shop approach'; a clear linkage between whistle-blowing procedures and the formal child protection systems; and the establishment of a Welsh Assembly Government (WAG) co-ordinating unit for advocacy.

Welsh Assembly Government Proposed Advocacy Model from 2007

Before the consultation paper was issued, Maria Battle, Deputy/Acting Children's Commissioner made representations on the proposals in meetings with WAG officials. She also gave a presentation at each of the Welsh Assembly Government consultation events clearly setting out our views. This was summarised in a briefing for all Assembly Members ahead of the plenary debate on advocacy services in July 2007 and produced below;

Children's Commissioner for Wales Assembly Members' Briefing July 2007

The Children's Commissioner's for Wales' vision for an advocacy service is that it should be a truly independent, centrally funded national advocacy service with local bases, a one stop shop for all children, quality assured and centrally monitored. We will continue to campaign for this model.

The Proposed Model

There is only one proposed model which is disappointing considering the number of reports and discussions that have taken place.

¹ Waterhouse Report *Lost in Care* (2000)

² Carlile Review The Review of Safeguards for Children and Young People Treated and Cared for by the NHS in Wales *Too Serious a Thing* (2002)

³ National Assembly for Wales (2006) *Keeping Us Safe* the report of the Safeguarding Vulnerable Children Review

⁴ Children and Young People's Committee 29th November 2007

Regional Commissioning through Children and Young People's Framework Partnerships

Regional commissioning is a step towards greater independence for advocacy providers than at present. However, this commissioning is very complex in reality and will not overcome the current problems such as:

- Independence and avoidance of a conflict of interest for advocates who will still be commissioned by agencies they have to challenge on behalf of children. This causes tension and difficulties.
- The Framework Partnerships are relatively new with partners having different cultures and starting from different baselines. Working together in one partnership is complex, between a number of partnerships it will be even more difficult and is untested. Advocacy is too important a service in safeguarding children to be a guinea pig for the new arrangements
- Contracts can still be terminated because of financial difficulties or where providers withdraw leaving vulnerable children without trusted support.
- Framework Partnerships may lack the in-depth understanding and knowledge of the crucial role of advocacy

The Staged Approach

In talks with officials, we have stated that we do not wholly agree with the staged approach. The current draft model requires partnerships to discriminate and choose between the needs of vulnerable groups of children and young people as to whether they receive advocacy services or not. It is artificial and not in the interests of the child. We believe that instead of trying to deliver advocacy via a staged approach and artificially setting the needs of different groups of very vulnerable children against each other, Welsh Assembly Government should seek to combine stage 1 and stage 2 in order to provide advocacy services to all vulnerable groups.

Single Free- Phone Number

We welcome the proposal to improve children's access to advocacy services through the provision of a single free-phone and text number - a virtual one stop shop. However, advocacy services must be available and in place for children who use this service and we are concerned children may be told that they are not currently eligible to receive advocacy services if the staged approach is implemented.

All Wales Advocacy Unit

An All Wales Children's Advocacy Unit should be established as recommended in ***Telling Concerns***, and accepted by Welsh Assembly Government in 2003:

The Welsh Assembly Government should establish a Children's Advocacy Unit. It should seek to extend the range of advocacy services provided for children and young people in Wales and promote the development of excellence within the field.

An independent advocacy unit would help to raise standards within the profession and could ensure compliance and governance in line with the National Minimum Standards. The advocacy unit proposed in *Telling Concerns* provides the best means for ensuring this independence.

The alternative proposal in the draft model to have a board of non-executive members which would advise Welsh Assembly Government, is vague and they would have neither the independence nor the authority to develop the sector for the benefit of all children and young people. Should Welsh Assembly Government go ahead with the regional commissioning model, this central Unit would also be crucial in ensuring an independent, quality service for children and young people.

The Recent Welsh Assembly Government Statements on the Future Direction of Advocacy

We have considered the statements by both Gwenda Thomas the Deputy Minister for Health and Social Services, and Jane Hutt the Minister for Children, Education, Lifelong Learning and Skills about the future direction of advocacy arrangements in Wales.

We welcome their commitment to abandoning the proposed staged approach to advocacy^{5,6}. Clearly the most vulnerable children need to be at the forefront of advocacy service provision.

We also welcome the development of a one stop telephone and text service within the performance and development unit.

The proposed role and remit of the new performance and development unit is outlined briefly by the Minister as a unit *whose key function will be to develop the national service, establish an independent scrutiny board, and provide a strategic framework and leadership for implementing advocacy nationally and locally. The unit would commission, manage and monitor any national advocacy resource, and would monitor the implementation of a specialist integrated service.*⁷ We welcome the Government's commitment to some form of a national unit. We have consistently asked the Welsh Assembly Government to realise its commitment to a national advocacy unit since it accepted our recommendation in 2003⁸. We believe that the performance and development unit functions should be strengthened so that it fulfils the vision of a national advocacy unit as laid out in *Telling Concerns*. The Commissioner envisaged its role as extending the range of advocacy, ensuring that the national standards were adhered to and developing excellence in the field.

⁵ Plenary 11th December 2007 Statement on Child Advocacy Services - *I am currently of the view that any new framework for delivering advocacy services should make some form of universal provision, as well as more specialist provision for particularly vulnerable groups*

⁶ Children and Young People's Committee 29th November 2007, [52] Gwenda Thomas *It (advocacy) must be a universally available service.... A staged implementation of any plan would not facilitate that.*

⁷ National Assembly for Wales Plenary 11th December 2007 Jane Hutt Statement on Child Advocacy Services

⁸ Welsh Assembly Government (2003) *Advocacy services for children are to be strengthened* says Jane Hutt

The monitoring role of this new unit is unclear particularly when the Minister also announced that the Care and Social Services Inspectorate for Wales (CSSIW) will be responsible for the regulation and inspection of advocacy.

The roles of CSSIW and the unit raise a number of questions.

- What will be the extent of the unit's monitoring remit?
- Will it be to monitor contract compliance and commissioning arrangements?
- Will the unit also have a role in following up recommendations for improving advocacy services made in CSSIW reports?
- What will be the role of CSSIW?

Currently CSSIW's role is confined to local authority social services. Given that it is proposed that advocacy will be commissioned by regional groupings of Children and Young People's Framework Partnerships and shall be available in all services, in particular education and health, what will be the role of other inspection bodies such as Healthcare Inspectorate Wales and Estyn? What exactly and how will advocacy be inspected, monitored? As a minimum it should include children and young people's views of the service and measure how the service has improved their lives. Inspections must be rigorous and support the further realisation of children's rights.

Consideration should be given to additional funding being made available to the inspectorate (s) to support this extension of their remit (s) and whether the inspectorate (s) has/ have the workforce to undertake inspections of advocacy.

The establishment of an independent board of non-executive directors was proposed in the consultation document and the Minister's recent statement again included reference to such a body.⁹ What will be the role of this body and how will it interrelate with the unit, CSSIW and other inspectorates?

It appears that there will be a number of bodies who will have some role in overseeing advocacy arrangements:

- The independent board of non-executive directors
- The national performance and development unit
- The Care and Social Services Inspectorate for Wales
- The Children's Commissioner for Wales

We are concerned that with so many bodies having a role in overseeing advocacy arrangements the overview may become fragmented and the strategic vision lost. Wales has waited too long to realise children's advocacy and in our view there is a need to ensure that one body has the role of ensuring compliance with the strategic overview and following up on inspection reports (the performance and development unit) and another has the role of independent review (the Children's Commissioner for Wales) and a further body has the role of inspection (the relevant inspectorate).

We do not see what additional benefit the board would bring to the provision of children's advocacy although the Minister seemed to suggest that it could have a strategic role and a leadership role. The Minister also stated that it would have a scrutiny and quality assurance function but this could be provided by the performance and development unit and the Children's Commissioner for Wales.

⁹ National Assembly for Wales Plenary 11th December 2007 Jane Hutt Statement on Child Advocacy Services

During the deliberation of the Committee on the Vulnerable Children and Child Poverty Legislative Competence Order we submitted that Matter 15.7, which includes the Commissioner's current remit in relation to review arrangement for complaints, does not explicitly include the current power to review arrangements for whistleblowing and advocacy. We asked the Committee members to recommend the retention of the Commissioner's current powers to review whistleblowing and advocacy in the LCO. This is significant because the Children's Commissioner for Wales was established following a recommendation by Sir Ronald Waterhouse who was of the opinion that the ability of the Commissioner to review advocacy arrangements was essential to safeguarding children's rights.

We are disappointed that the proposed regional commissioning has been retained and the central question of the independence of advocacy has not been clarified in the recent Ministerial statements¹⁰. We repeat the risks inherent in this model outlined in our briefing paper to Members. Children's advocacy is too important an issue to trial regional commissioning arrangements.

We remain concerned about the understanding of and commitment to advocacy services by all the members of the regional partnerships. We are also concerned about the equitable financial commitment of each of the partnerships in a regional commissioning model and how service level agreements and contracts will be delivered in each of the areas. Advocacy is a well established part of social services, however, such a service will be a new feature for education and much of health. There will be differing levels of understanding of the role of advocacy from members of the partnerships. Their different stages of development and commitment will lead to an inconsistent service for children across Wales.

The current proposed system of regionally commissioned advocacy provision compromises the independence of the advocacy service. Advocacy providers will continue to be commissioned by those agencies they have to challenge on behalf of children. This concern was pointed out by most of the advocacy providers that were contacted during the *Telling Concerns* review and indeed by many of the local authorities.

Despite the Minister's insistence that a *strong set of governance arrangements*¹¹ will be put in place, independence is not a question of degrees of independence, either a service is independent or it is not. *In order for a relationship of trust to flourish and grow, children and young people need to know that their advocate is independent and working with and for them. This has very important implications for any service level agreements drawn up between commissioning agencies and providers of advocacy services. As young people have told us, they have an expectation that an advocate is, 'There for me and me only'*¹²

Care must also be taken where agencies are already commissioned to provide other services within the local authority area as well as advocacy as there may be an

¹⁰ National Assembly for Wales Plenary 11th December 2007 Jane Hutt Statement on Child Advocacy Services *The nub of the matter, and the tension, if you like, about which we still have to reassure you—and I have listened to your concerns—is the commissioning relationship, and ensuring that there is fundamental independence*

¹¹ National Assembly for Wales Plenary 11th December 2007 Jane Hutt Statement on Child Advocacy Services

¹² Children's Commissioner for Wales (2003) Consultation response to *Providing Effective Advocacy Services for Children Making a Complaint*

actual, potential, or perceived conflict of interest. All this could be avoided by a national model.

We acknowledge the Minister's statement that a change to full independence and a national commissioning model away from local authorities would require a change to primary legislation¹³ and would urge the Committee to seek a commitment from the Welsh Assembly Government to that significant change. However this does seem to contradict another statement made by the Minister that the proposed development and performance unit would '*commission, manage and monitor any national advocacy resource, and would monitor the implementation of a specialist integrated service*'.¹⁴

In the published summary of consultation responses that there was a suggestion that generic advocacy should be commissioned at a local level with specialist advocacy being commissioned at a national level. This is an interesting concept. Whilst generic advocacy should be widely and easily accessible to all children and young people, specialist advocacy, for example for children seeking asylum would require skills and experience better provided nationally. Currently, there is no long-term funding stream for this type of specialist advocacy. We would welcome a clear statement on the future development of both generic and specialist advocacy from the Welsh Assembly Government.

In summary, this is an opportunity not to be missed to provide the children of Wales in particular those most vulnerable, with an easily accessible one stop shop, quality assured independent national advocacy service across Wales.

¹³ National Assembly for Wales Plenary 11th December 2007 Jane Hutt Statement on Child Advocacy Services

¹⁴ National Assembly for Wales Plenary 11th December 2007 Jane Hutt Statement on Child Advocacy Services

Appendix 1

Children's Commissioner for Wales' annual report comments on independent advocacy services

2004-2005

Independent Advocacy Services

In 2003, I reviewed the provision of advocacy services for children by local authority social services and made a number of important recommendations to Welsh Assembly Government, local authorities and others in *Telling Concerns*. Since publication its whole pattern of advocacy provision in Wales has changed. There is little evidence that this change has been the consequence of any strategic vision and little evidence of children and young people being consulted or involved in the changes. The services in question are primarily aimed at young people who are looked after and who will have already experienced much disruption in their lives. If we are causing their relationships with advocates to be broken we are adding to their distress and denying them the support longer-term relationships with reliable and trustworthy adults can bring.

These changes have arisen chiefly due to individual decisions by individual local authorities commissioning advocacy, often on a year-by-year basis. Concerns have also been raised about the degree of real independence the providers of advocacy enjoy when they are beholden so directly to their paymasters, who may dispense with them when the contract ends. Despite the commitment advocates will have to children's rights, it is understandable that without security for their own job or for their service there can be an impact on performance. Challenging and questioning the actions of a local authority on behalf of a young person is difficult enough under any circumstance – but imagine how much harder that may be if it is perceived that their job could be at direct risk as a consequence.

My concern also extends to the role identified within the Children (Leaving Care) Act 2000 – that of Personal Advisor. This role is meant to safeguard and promote the well being and continued development of care leavers. They are required to act as a negotiator between the young person and their social worker – the representative of the local authority. We have received many calls from young people, some of them distressed, anxious, and angry about the leaving care plans produced by the local authority. Not one of the young people felt that their personal advisors had represented their views or indeed had negotiated on their behalf. I will be reviewing how these roles are monitored and regulated in the coming year.

I believe that Welsh Assembly Government must take a more proactive role on Advocacy by thoroughly reviewing the way in which advocacy contracts are dealt with. This is part of the role of the Advocacy Unit as recommended and described in my report *Telling Concerns* and accepted by WAG following publication over two years ago.

I remain extremely concerned and disappointed by the lack of activity. Sir Ronald Waterhouse clearly identified the importance of independent advocacy for children and young people and, despite his and my several reports reiterating this message, provision remains patchy with questionable independence and changes of provider. I am at a loss to understand why WAG has not pursued these matters more

vigorously. The resource consequences are not likely to be great, but the risks of not acting are.

2005-2006

Independent advocacy services

In my report, *Telling Concerns*, I made recommendations that addressed what I consider to be the key requirements of a national strategy to meet the needs of children and young people. I consider the establishment of a national advocacy unit by Welsh Assembly Government, to monitor and advise on the provision of consistent standards of advocacy for children across Wales, to be essential. The purpose of advocacy is of course to enable children and young people to participate in decisions about their lives and to give appropriate support at stages that present particular difficulty – such as when they have serious concerns or want to complain about an aspect of their care. Advocacy should be available for all children wishing to make a complaint about any local authority service; providers of advocacy should be able to act independently and purely on behalf of the child they represent. Such advocacy must also be easily accessible to children and young people, wherever they live.

When *Telling Concerns* was published, Welsh Assembly Government stated that they accepted all of the recommendations. Key elements of the report were that there should be a central advocacy unit to ensure an adequately resourced, independent, consistent and quality assured service for children. This recommendation was made with a view to addressing many of the long-standing and persistent concerns about how provision is currently commissioned and handled, with providers regularly changed and young people often deprived of an opportunity to develop relationships of trust with an adult who is there to represent them. Such instability is unhelpful, particularly when we are considering the rights and welfare of children and young people who may be very vulnerable and have had extremely negative relationships with adults in the past.

However, I have been severely disappointed by developments since that date. Notably, recent draft guidance makes no mention of an Advocacy Unit and I have serious concerns about the proposed model. I am therefore unconvinced that the resulting services will be an improvement on those currently provided. The document appears to espouse a model for commissioners, rather than attempt to meet the needs for advocacy of children and young people.

It is equally disappointing that the draft makes no mention of the report on my second review of advocacy, whistleblowing and complaints arrangement, *Children don't complain ...*, which looked at local education authorities. This report recommends the extension of advocacy services to children and young people who may wish to make a complaint about education services. The draft guidance is unclear about whether advocacy services would be available under these circumstances.

I believe that a vital opportunity to improve and extend children's advocacy – to give them a voice they are entitled to – has been missed. At the time of writing I am giving careful consideration to using the legal powers available to me to review the ways in which WAG makes decisions affecting children. It is sad that I am in a position where I feel that the exercise of these powers is necessary in relation to the institution which created my post as part of its response to the need identified in the Waterhouse Report to give children and young people a voice.

2006-2007

Telling Concerns and Children don't complain...

Both these reports examined the arrangements, in social services and local education authorities respectively, for children's complaints and advocacy and the opportunities for workers to confidentially report malpractice.

We have contributed to considerable movement in implementing the recommendations contained in both reports, in particular the *Guidance for School Governing Bodies on Procedures for Complaints involving Pupils (National Assembly for Wales Circular No: 39/2006)* and the consultation on whistleblowing procedures for use in schools

A constant theme running through our reports and echoed in 2006 in *Keeping us Safe (2006)*, the report of the National Assembly's Safeguarding Vulnerable Children Review, recommended the setting up of a central Advocacy Unit to promote and monitor good practice and develop the advocacy sector. We have continued to campaign for centrally funded Independent Advocacy for all children in Wales.

Independent Advocacy Services for children and young people

Independent Advocacy which has the trust of children and young people is fundamental to safeguarding their welfare and promoting their rights. Our vision has always been for an advocacy service centrally funded and commissioned, truly independent with local bases, a one stop shop for all children and young people, especially those most at risk, quality assured and centrally monitored. Assembly members have joined us in debating and calling for such a service. Welsh Assembly Government's proposed model meets few of these criteria.

Peter Clarke stated very clearly in last year's annual report that a vital opportunity to improve and extend children's advocacy - to give them a voice they are entitled to - had been missed. He was giving careful consideration to using his legal powers to review the ways in which WAG makes decisions affecting children. Although the published consultation model is some improvement on the draft he had seen it still does not meet the needs of children in Wales.

The proposal for a board of non-executive members to advise WAG is a poor and powerless substitute for an Independent Advocacy Unit. Regional Commissioning does not provide real independence as advocacy providers will still be funded by those they may have to challenge. Neither does it overcome the problems of the past with the risk of providers being changed and young people being deprived of an opportunity to develop or continue relationships of trust with an adult who is there to represent them. Although universal advocacy will take some time to develop, the proposed staged approach in the model is illogical and exclusive. All children that are recognised as being vulnerable should be able to access advocacy services in the first stage with universal advocacy following as soon as possible thereafter.

The draft model has improved by including a single freephone for all children in Wales to access advocacy and other services. This is a bold vision which will reduce confusion and increase access in a non stigmatising way, a virtual one stop shop.

We await the final proposals of the Welsh Assembly Government following their consultation. There is still time to give the children of Wales an independent, secure, consistent, easily accessible and quality advocacy services now and in the future. This vital opportunity must not be missed.