



FIGHTING FOR
CHILDREN'S RIGHTS
IN INSTITUTIONAL SETTINGS

**Department for Education's consultation on revised
national standards and local authority guidance for
children and young people's advocacy services**

Article 39 response
18 December 2023

Article 39 is a registered charity which fights for the rights of children living in state and privately-run institutions in England. We do this through awareness-raising of the rights, views and experiences of children; legal education; practice development; and policy advocacy, research and strategic litigation. We run the Children and Young People's Advocates Network which has over 480 members working directly with children and young people in different settings. Our ON YOUR SIDE advice service provides legal information to independent advocates and others to help protect the rights of individual children. We take our name from Article 39 of the United Nations Convention on the Rights of the Child, which entitles children who have suffered rights violations to recover in environments where their health, self-respect and dignity are nurtured.

1. Would you like us to keep your responses confidential?

No.

2. In sharing findings from this consultation, may we quote from your response?

Yes – attribute to my organisation.

3. May we contact you if we have any follow-up questions about your response?

Yes.

4. What is your name?

Carolyne Willow

5. What is your email address?

carolyne.willow@article39.org.uk

6. Are you:

An organisation.

7. If responding on behalf of an organisation, what is the name of your organisation?

Article 39.

8. To help us analyse our responses, could you please tell us in what capacity you are responding to this consultation?

Charity

9. N/A

10. If you are responding on behalf of an organisation, what is your role within that organisation?

Senior leader (Director, Chief Executive).

11. To what extent do you agree that standards 1 to 3 put children and young people at the heart of advocacy?

Strongly agree.

12. Do you think there is anything missing from standards 1 to 3?

Yes.

13. Please tell us the reasons for your answer:

Existing national standards for children's advocacy services were issued as statutory guidance in 2002. This gives them legal weight and reflects the statutory nature of the majority of children and young people's professional advocacy. We are pleased that these revised standards are also issued as statutory guidance. However, this fact is hidden in Annex A; it needs to be clear in the opening page of the standards (as with the existing standards).

We make four other proposals for strengthening standards 1-3:

- A new requirement in standard 1 for named advocates for certain groups of children and young people;
- A brand new standard on visiting advocacy;
- Clarification that standard 3 relates only to children who do not have the capacity, at the present time, to instruct an advocate; and
- Moving important text from what appears to be introductory content (and therefore could be easily missed or bypassed) into the standards themselves.

Proposal 1: Named advocates

We would like a new requirement in standard 1 for a named advocate to be appointed to every looked after children and care experienced adult up to the age of 26, to (other) children and young people living in institutional settings, and to children who are the subject of child protection enquiries, conferences and plans.

This would be a development of the MacAlister care review recommendation for an 'opt-out' system of advocacy for looked after children. It would also be a very tangible and positive policy development in response to the Independent Inquiry into Child Sexual Abuse (IICSA), which consistently found institutional reputations and adult networks and relationships taking precedence over children's rights, welfare and interests – including when children explicitly communicated that they had endured sexual abuse and other forms of violence.

Children's rights and advocacy services were first established by local authorities in the aftermath of the abuse scandals within children's homes and foster care of the 1980s and 1990s. IICSA has provided very substantial child protection evidence for significantly strengthening these services for children and young people who are especially vulnerable to being isolated, silenced and ignored. The inquiry's investigations, together with other evidence of sustained rights violations in institutional settings (recent examples include: Hesley Group's residential

special schools in Doncaster; G4S's secure training centre in Milton Keynes; and Tees, Esk and Wear Valleys NHS Foundation Trust's child and adolescent mental health services) underline that abuse within the care system and in institutional settings persists today.

Children and young people need the guarantee of assistance from an advocate whom they can be confident will help them whenever they feel their wishes, views and feelings are not being taken seriously. The named advocate could operate rather like a named GP – with the advocacy service on occasion proactively contacting the child or young person when advocacy help may be needed (GP practices similarly have proactive public health functions and services for patients with long-term health conditions), and generally being available for the child or young person at other times. Children and young people would continue to be in charge of the advocacy process, and they would choose whether or not they receive help from their advocate. Just as some people never call upon their named GP, there may be children and young people who never need or want help from their named advocate.

There would have to be arrangements in place for children and young people to be able to change their named advocate, without this being seen as problematic. Both the existing (2002) standards (standard 6.7) and the revised version (standard 1.16) expect children and young people to have a choice of advocate. Importantly, advocacy services would require increased funding to operate this named advocate service.

Having a named advocate (rather than an opt-out arrangement) would provide much greater protection for highly vulnerable children and young people for the following reasons:

- A named advocate would signal the importance of advocacy to children and young people, and to the adults in their lives. This would be a professional available and ready to assist children and young people whenever required.
- The language of 'opt-out' is negative and could be very easily used to dissuade children and young people from accessing advocacy. Since the first words a child or young person hears are likely to be 'you can opt-out', this could be construed as advocacy not being that important. We already know from our ON YOUR SIDE advice service, and research undertaken by Just for Kids Law¹ and the Children's Commissioner for England², that older children are often dissuaded from being looked after by local authorities with the promise of freedom and independence. In a similar vein, we hear accounts from children and young people and advocates of professionals in a variety of settings communicating directly and indirectly that advocacy services are troublesome and children and young people are better off without them. This negative communication is, of course, part of a wider culture of resistance to children's rights and learning from children and young people's views and experiences. A system of named advocates would not only ensure children and young people access the independent help they need, when they need it; we believe it could also make significant in-roads in challenging negative cultures.

¹ <https://www.justforkidslaw.org/sites/default/files/fields/download/Just%20for%20Kids%20Law%20-%20Not%20in%20care%2C%20not%20counted%20-%20June%202020.pdf>

² <https://assets.childrenscommissioner.gov.uk/wpuploads/2023/11/cco-homeless-16-and-17-year-olds.pdf>

Proposal 2: Visiting advocacy

It is widely accepted and extensively documented that children and young people living in institutional settings are more vulnerable to rights violations – not being heard, understood and respected as individuals with their own personalities and views, wishes and feelings; having fewer avenues (especially when education and care are provided within the same institution) through which to communicate concerns and worries; and the pervasive risk of coercive and punitive cultures developing. Disabled children disproportionately live in institutional settings, and they are also disproportionately the victims of sexual abuse and other violent crimes.

Many individual establishments already commission visiting advocacy, however current arrangements are inadequate:

- The potential for visiting advocates to be a positive force for identifying and challenging abusive cultures and practices within the institution is not being realised. There is no consistency nationally in the role and function of visiting advocates. Moreover, while there may be pockets of very good practice, it is our experience that local safeguarding children partnerships do not have systems in place to routinely learn from and respond to the knowledge and insights which visiting advocates have about individual establishments.
- The potential for visiting advocates to identify individual children and young people who could benefit from non-instructed advocacy is not being realised. First, there is no requirement on institutions to have visiting advocates. Second, where visiting advocates are appointed, there is no requirement for them to liaise with local advocacy services. (Our own preference is for visiting advocacy to be part of local, one-stop advocacy services, so the two types of advocacy are integrated within the same service).
- Unless commissioned as part of a wider contract (where local authority specifications for advocacy services include visiting advocates), there is frequently a direct commercial arrangement between the establishment and the advocacy service, which impedes independence.
- The availability of visiting advocates is ad hoc and fragmented nationally. An establishment can pick and choose whether to arrange for visiting advocacy, and each institution can set its own terms for what the service entails. They also have complete autonomy over stopping visiting advocacy where advocates are raising uncomfortable truths and challenging the culture of the establishment.
- Unless commissioned as part of a local advocacy service, there is often a disjoint between visiting advocates and advocates who are assisting children and young people resolve particular areas of concern (issue-based advocacy). Valuable insight and knowledge about a specific institution, as experienced by children and young people, can be lost through this separation.

Proposal 3: Non-instructed advocacy

Despite its positive presumption that all children and young people are able to communicate their views, wishes and feelings, standard 3.1's reference to 'may be unable to instruct an advocate' could be misinterpreted as having wide application. Non-instructed advocacy is an extra protection for children and young people who do not, at the present time, have the capacity to instruct an advocate. We strongly recommend that this is made very clear throughout standard 3.

It should be extremely rare for non-instructed advocacy to be provided for a child or young person without the advocate meeting the child or young person. Critically, this would prevent non-instructed advocacy being provided when a child or young person is able to understand information and to instruct an advocate.

We strongly recommend that standard 3.6 is therefore amended to require that the advocate meets and spends time with a child or young person in order to determine whether non-instructed advocacy is appropriate, unless there are very exceptional circumstances justifying the start of non-instructed advocacy without this first direct contact.

Proposal 4: Introductory text to be moved into the standards

We strongly welcome the indicative list on pages 7-8 of when an offer of advocacy would be most helpful to children and young people (though we'd describe this as 'vital' rather than helpful). This is a great example of national policy being shaped by children and young people's experiences. Children and young people consistently report not finding out about advocacy until months or years after they were extremely vulnerable and needed expert help to protect their rights. To ensure this part of the revised standards is implemented, we strongly recommend the list is integrated into standard 1. It would naturally flow from the new standard we propose for certain groups of children and young people to be given a named advocate. Further, we would add the following to this list:

- When care experienced children and young people become parents themselves.
- When a care experienced person has asked about, or made a request to access, their children's social care records.

Presently, the expectation that commissioning organisations will have a strategy for children and young people's advocacy is referenced only in the introductory text. We strongly recommend that this is moved to standard 2, with new requirements for commissioning organisations to:

- Publish a strategy for children and young people's advocacy;
- Have developed this strategy in consultation with children and young people;
- Designate a senior manager as having lead responsibility for the development and implementation of this advocacy strategy (separate from individuals in charge of commissioning the service); and
- Periodically review the strategy in partnership with the local advocacy service and children and young people, so that children and young people's experiences and concerns lead to system-wide positive change.

The commissioning organisation's strategy for advocacy should be the 'go to' place for all relevant information and policies and procedures relating to children and young people's advocacy services locally. The senior manager within the local authority who holds lead responsibility for advocacy should be the designated person for dealing with any conflicts of interest and concerns about the fulfilment of the advocacy contract (including whistleblowing disclosures made by individual advocates).

14. To what extent do you agree that standards 4 to 6 ensure advocates are professionals who champion children and young people?

Neither agree/disagree.

15. Is there anything missing from standards 4 to 6?

Yes.

16. Please tell us the reasons for your answer:

The framing of standards 4 to 6 as 'championing children and young people' does not do justice to the role and function of advocacy services for children and young people, nor does it accurately reflect the scope of the advocate's role. We ask that this be amended to 'championing children and young people's rights'.

Children's rights and advocacy services exist because children and young people need skilled, knowledgeable adults who will stand by them, amplify their voices, acknowledge and give respect to their feelings, *and*, no less importantly, defend their rights.

Informing children and young people of their rights, and having the expertise and organisational support to safeguard these rights, are vital parts of the advocate's role. A focus simply on championing children and young people dilutes this rights focus and would mean that anyone who values and respects children and young people could be an advocate – irrespective of their knowledge and skills in bringing about change. Advocacy is a demanding role that combines giving strength to a child or young person's views, wishes and feelings and effectively protecting their rights.

Through our ON YOUR SIDE advice service and tailored training, events and materials, we empower advocates and young people to use the law and statutory guidance when seeking to stop, start or change an action or decision impacting negatively on a child or young person.

We hear regularly from advocates that the information we gave them made a tangible difference. A rights framework – whereby advocates point local authorities and other public authorities (including private companies carrying out public functions) to their statutory duties – is vital to empowering children and young people, and honouring their rights in domestic and international law. It puts the force of law behind them.

Below we provide some examples of how our work with advocates, where we expressly cited legislation and guidance, has helped bring about positive change for children and young people across the past 12 months. These are scenarios where advocates came back to us to share the outcome for that particular child or young person; we deal with many of the matters described time and time again. Moreover, we consistently encourage advocates to assist children and young people to obtain legal advice where the local authority is clearly not fulfilling its statutory obligations and the child or young person is in urgent, desperate need. We also regularly point to the statutory duties and powers of independent reviewing officers to refer significant breaches of looked after children's rights to Cafcass, which in turn is empowered to initiate proceedings including through use of the Human Rights Act 1998.

Making rights real for children and young people through advocacy

The following list shows tangible, positive changes for individual children and young people, where their advocates (having obtained legal information from Article 39) advocated their rights in law and statutory guidance:

- A child in care was given a laptop for his studies, after being refused initially.
- A young disabled person in care was provided transport to get to college.
- An instruction to a young person in care to register as homeless on their 18th birthday was rescinded, and they were given continued support and accommodation as required by law.
- A local authority refunded money to a young person who had been 'fined' by carers for causing damage to property when they were much younger.
- A local authority successfully applied for a court order to prevent a residential setting from 'evicting' a child in care.
- Siblings in care were no longer forced to follow religious practices that did not align with their own beliefs.
- A change of school was prevented for a child in care who moved to live with a new foster family.
- A young person leaving care was threatened with the loss of their accommodation, but was then allowed to remain living there until their planned education/training move.
- A local authority funded a lawyer for a child in care who was not entitled to legal aid, and committed to reviewing its policy generally.
- A local authority fulfilled its legal duty to look after a teenage child who was without any parental or family care.
- A personal adviser was appointed to a young person to help them prepare for leaving care.
- A child in care who entered custody was given continuing support from their local authority, having at first been told they would no longer have a social worker.

One of the provisions we most frequently cite in our work with advocates is the presumption of a decision or action being 'frozen' while a child or young person's complaint is being investigated. This is incredibly important, and is often the only means by which a forced move or change of school or college is prevented. The protection appears in the statutory guidance for the Children Act 1989 representation procedure.³ Moreover, the independent reviewing officers' handbook (statutory guidance) expects IROs to request a placement freeze when a planned move it is not likely to safeguard and promote the child's welfare. The statutory guidance states:

At the same time the IRO should initiate the local dispute resolution procedures to ensure that the move is reconsidered and alternative arrangements are made. The child should be advised about his/her entitlement to advocacy and representation and be informed about the right to complain about how his/her care is being planned.⁴

³ Section 6.5: https://assets.publishing.service.gov.uk/media/5a7ceaec40f0b6629523c98a/getting_the_best_from_complaints.pdf

⁴ Para 3.79:

https://assets.publishing.service.gov.uk/media/5a7e2b2740f0b623026899c6/iro_statutory_guidance_iros_and_las_march_2010_tagged.pdf

There is also provision in The Care Planning, Placement and Case Review (England) Regulations 2010 for children and young people to request a review themselves; again, this is another safeguard which we utilise frequently to try and prevent forced moves.⁵

We strongly request that this facility to freeze actions and decisions that disrupt the stability of children and young people's homes, relationships and education is written into the advocacy standards. This could naturally flow after standard 4.1, with new text requiring commissioning organisations / service providers to:

- Respond fully and promptly to children and young people's views, wishes and feelings.
- Have arrangements in place to freeze a proposed move (other than in an emergency) upon request from a child or young person's advocate.

We ask that standard 5.3, relating to the appointment and induction of advocates, includes specific references to safeguarding obligations and to professional responsibility to alert regulatory bodies such as Ofsted, the Care Quality Commission or Her Majesty's Inspectorate of Prisons to matters of serious concern relating to children's safety and possible human rights abuses.

Further, standard 5.5, relating to the training of advocates, should be strengthened to require an advocacy qualification or equivalent upon appointment, or within two years of an advocate taking up post. Further, we ask that the wording is changed in standard 5.5 to make it clear that the list of subjects to be covered in training is a minimum requirement (not an optional 'can include'). Current (2002) standards are clear about areas of mandatory training (see standard 3.8).

17. To what extent do you agree that standards 7 to 10 ensure advocacy services are independent, high quality and managed well?

Somewhat agree.

18. Is there anything missing from standards 7 to 10?

Yes.

19. Please tell us the reasons for your answer:

We would have answered 'strongly agree' to question 17 were it not for standard 7.23.

Standard 7.23 prevents advocacy services from seeking to influence legislation and government policy. This is incompatible with advocacy services' vital function in helping children and young people to influence wider policy and practice. Many local advocacy services directly support Children in Care Councils and Care Leaver Forums and other participatory bodies, and these typically campaign for changes in policy and practice locally which should (and often do) inform national legal and policy development.

⁵ Regulation 33(3)(ac) <https://www.legislation.gov.uk/uksi/2010/959/regulation/33>

Stopping children and young people from obtaining help from their advocacy service to communicate with parliamentarians and government on matters of concern to them is not only undermining the independence of the service; it is also denying children and young people a vital route to decision-makers.

Standard 7.23 would also inhibit local advocacy services from participating in inquiries and research undertaken by the Children's Commissioner for England, where matters of public policy are being considered. This would directly undermine one of the Commissioner's statutory functions.⁶

The reference to advocacy services not attempting to influence regulatory action is absurd. Is government seriously suggesting that an advocacy service that knows children are being mistreated in an institution, or has been told by children that they were stopped from meeting and speaking with inspectors, or is aware that a company is running an unregistered children's home (illegally) should not make contact with the designated regulator, and seek assurance that appropriate action has been taken, or will be taken?

This proposed ban on advocacy services seeking wider changes in law and policy, and action by regulators, directly contradicts strengthened provisions in the revised standards relating to documenting within annual reports recurring concerns raised by children and young people and systemic failures in rights protection, and any changes in policy and practice that have been secured across the preceding year.

Children's rights and advocacy services are a vital mechanism through which government itself can learn about the views and experiences of children and young people, and identify necessary action for the fulfilment of their rights. Government has a longstanding commitment (since 2010) to give due consideration to the United Nations Convention on the Rights of the child when making policy and legislation. It cannot do this if it closes its ears to children and young people's views and experiences.

New standard 9, relating to safeguarding and whistleblowing, significantly strengthens the current (2002) standards. The consistently strong message within the new standards that advocacy services have a positive, proactive safeguarding function is fatally undermined by standard 7.23.

In addition to the removal of standard 7.23, we propose the following:

- The websites of Safeguarding Children Partnerships and online information about the Virtual School Head, as well as foster carer support groups and staff induction to be added to the list of places *and mechanisms for* publicising the local advocacy service (standard 7.1).
- Standard 7.10 is extended so there is an explicit reference to the importance of designated officers / LADOs understanding the importance of advocacy and checking that children and young people at the centre of safeguarding concerns have been offered help from an advocate.

⁶ <https://www.legislation.gov.uk/ukpga/2004/31/section/3>

- The last sentence in standard 7.10 – “Contracts and specifications for advocacy services are consistent with the legal rights of children and young people to access such help” – is separated so that it becomes a standalone provision.
- Standard 7.14 to state that records are stored in a secure and safe space *separate from the commissioning organisation*.
- Standard 7.18 to explicitly refer to the independence statement being published (this is already implicit). In addition, we strongly recommend that the independence statement sets out how the advocacy service encourages and supports advocates to escalate concerns about children’s safety and potential human rights abuses, including by alerting regulatory bodies when this is necessary.
- Standard 7.19 is extended to introduce an independent mechanism before a contract may be terminated early. Article 39 is aware of commissioning organisations instructing advocacy services to remove an advocate from an individual child or young person, under duress of contract termination. It is our strong impression that these threats are associated with robust advocacy which commissioners find uncomfortable or difficult.
- A requirement that managers of advocacy services act with independence in their interactions with commissioning organisations to be added to standard 7.19. (Article 39 is aware of managers of advocacy services agreeing to restrictions on individual advocates because of fear of losing future contracts – for the advocacy service and/or other related services. We are also aware of in-house advocacy services being inappropriately positioned alongside independent reviewing officer (IRO) services, which have a completely different role and function).
- Standards 9.5 and 9.6 to explicitly state the responsibility of *individual advocates* to escalate safeguarding concerns within and outside their advocacy service, when matters remain unresolved.
- A requirement to notify the appropriate regulator to be added to standard 9.6 when the concern relates to abuse or neglect within a residential or secure setting.
- A requirement for advocacy services to request written acknowledgement of receipt of, and subsequent feedback on, safeguarding referrals to be added to standard 9.6.
- Standard 9.9 to highlight the particular risks of coercive cultures developing in institutional settings, in particular places of detention. The challenges of children and young people seeking external help when education and care are provided within the same institution should also be included here.
- Standard 9.10 is extended so that requirements around whistleblowing are clear, including that: the advocacy service has a published policy which is part of the induction process for all staff and volunteers; a reminder that an effective procedure for employee whistleblowing is a vital part of the advocacy organisation meeting its safeguarding and other obligations (including the fulfilment of these standards); the availability of independent support to advocates who are concerned about the conduct of colleagues or managers within the advocacy service, the wider host organisation and/or the commissioning organisation; and measures for protecting employees from victimisation arising from whistleblowing to be set out in the advocacy service’s published policy.
- An explicit reference to commissioning organisations ensuring their specifications and funding comply with the requirements of the revised standards (which we hope will also include a standalone standard on visiting advocacy) to be added to standard 10.2.

- Standard 10.6 to be slightly extended to require advocacy services to report on any difficulties they have encountered across the past year in children and young people being able to access advocacy, and to provide data on the number of children and young people who accessed their service after being told about advocacy, and receiving help to make contact with the service, by independent reviewing officers and those managing the Children Act 1989 representations procedure. We strongly recommend an explicit requirement for annual reports to be published.

20. Do you agree with the proposed additional groups of children and young people being brought in scope of the standards?

Strongly agree.

21. Do you have any other feedback about the proposed groups in scope of the standards?

We very much welcome the extended scope of the standards. However, for continuity and certainty for children and young people the standards should apply to all settings and circumstances where they are entitled to help from an advocate – including health, social care, education, criminal justice, housing and immigration. These new standards should be a powerful tool for increasing the availability, quality and impact of all children and young people’s advocacy services. We acknowledge that the different entitlements of children and young people to advocacy cut across several government departments. At a local level, however, the statutory duties to make arrangements for advocacy across health, special educational needs and children’s social care fall on local authorities.

Even within the narrower scope of children’s social care and residential and secure settings falling within the policy briefs of the Department for Education and Ministry of Justice, there are groups of children and young people who have an entitlement to advocacy that are not listed on page 5 of the revised standards. Article 39 maintains an online list of children and young people in England who are currently entitled – by law and/or statutory guidance – to independent advocacy. This is far more comprehensive than that provided in the list on page 5 or in Annex A. We ask that the Department for Education uses this Article 39 resource to update its summary of advocacy entitlements.

22. To what extent do you agree with the proposed updates to the guidance?

Strongly disagree.

23. Please tell us the reasons for your answer

The draft statutory guidance does not reflect all of the very positive developments within the national advocacy standards. This means there are significant differences between the two documents, including in respect of the:

- Rights-based definition of advocacy and the role of the advocate.
- Scope of the guidance and local authority’s legal obligations.
- Interplay between advocates and other independent roles such as the IRO, regulation 44 independent person⁷ (particularly relevant to visiting advocacy) and the designated officer / LADO.

⁷ <https://www.legislation.gov.uk/uksi/2015/541/regulation/44>

On page 25, the draft statutory guidance repeats the instruction that advocacy services cannot use public funds to seek to influence legislation, government policy or regulatory action. For the reasons we set out above, in respect of the standards, this prohibition is wholly inconsistent with the purpose, ethos and operation of independent advocacy services.

24. Is there anything missing from the updated guidance?

Yes.

25. Please tell us the reasons for your answer.

Since the current statutory guidance was first published, in 2004, local authorities have gained important new statutory duties to make arrangements for advocacy. The revised guidance for local authorities needs to reflect this expanded advocacy landscape. New duties on local authorities include:

- When children and young people are considering making a complaint, or make a complaint, about the NHS or an independent health provider.⁸
- The appointment of independent mental capacity advocates for 16 and 17 year-olds who lack capacity.⁹
- Children and young people who are detained under the Mental Health Act 1983.¹⁰

The Department for Education will be aware that the Children's Commissioner for England found that 29% of local authorities could not say how advocacy for health complaints was arranged in their area, despite having had this statutory responsibility since 2012. Nearly one in five (17%) of local authorities similarly did not know how mental health advocacy was arranged, despite legal duties introduced in 2007.¹¹

Further, even within its narrow framing of social care representations, the draft statutory guidance for local authorities very unhelpfully focuses on complaints. This does not correspond with the statutory guidance on the Children Act 1989 representations procedure, published in 2006, which confirms that the right to advocacy under section 26A Children Act 1989 relates to any help a child or young person may need to express their views:

2.1.4 Representations may not always be complaints; they might also be positive remarks or ideas that require a response from the local authority. Enquiries or comments about the availability, delivery or nature of a service which are not criticisms are likely to constitute representations, for example, children and young people should be able to put forward ideas or proposals about the service they receive, or the establishment they live in, without having this framed as a complaint.

2.1.5 Representations should, as far as possible, be sought out and welcomed as a measure of satisfaction. Representations that are not complaints should also be recorded and handled in the first instance locally (Stage 1). The local authority should ensure that it responds to the issues raised, setting out what action should be taken. Local authorities should make children and young

⁸ <https://www.legislation.gov.uk/ukpga/2007/28/section/223A>

⁹ <https://www.legislation.gov.uk/ukpga/2005/9/section/35>

¹⁰ <https://www.legislation.gov.uk/ukpga/1983/20/section/130A>

¹¹ <https://assets.childrenscommissioner.gov.uk/wpuploads/2019/06/CCO-Advocacy-for-children-June-2019.pdf>

*people aware of how they may make representations to the local authority and that they do not have to be complaints. The child or young person has the same right to advocacy whether the representation is a complaint or not.*¹²

As set out in our answer to question 23, there is significant new content in the draft revised national standards that has not been carried over to the guidance for local authorities. In addition to current text on the role and function of complaints managers and investigators, we strongly recommend new content on the role and function of complementary independent roles such as the IRO, regulation 44 independent person (particularly relevant to visiting advocacy) and the designated officer / LADO, and how they should support the unique advocacy role. We particularly urge inclusion of the IRO's duty to consider referring material breaches of children's rights to Cafcass,¹³ and Cafcass's corresponding power to initiate proceedings on behalf of looked after children and young people including under the Human Rights Act 1998.¹⁴

¹² https://assets.publishing.service.gov.uk/media/5a7ceaec40f0b6629523c98a/getting_the_best_from_complaints.pdf

¹³ Regulation 45(3) <https://www.legislation.gov.uk/uksi/2010/959/regulation/45>

¹⁴ Regulation 3 <https://www.legislation.gov.uk/uksi/2004/2187/regulation/3/made>