

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

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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

Issued under Section 145 of the Social Services and Well-being (Wales) Act 2014

(Short title: *Code of Practice on Advocacy*)

Preamble

1.1 This Code of Practice on Advocacy (Code) is issued under section 145 of the Social Services and Well-being (Wales) Act 2014.

1.2. The Social Services and Well-being (Wales) Act 2014 is available at: <http://www.legislation.gov.uk/anaw/2014/4/enacted>.

1.3. 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.

1.4. In this Code and statutory guidance, a **requirement** is expressed as “must” or “must not”. **Guidelines** are expressed as “may” or “should/should not”.

1.5. 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. With specific regard 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.

1.6. 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 code of practice which in turn will deliver the policy aspirations underpinning the Act. This Code is one of the outcomes of that exercise of co-production.

Purpose

2.1 This Code aims to set 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 advocate to facilitate the involvement of individuals in certain circumstances.

2.2 The over-arching duties under section 6 of the Act require that any person exercising functions under the Act must:

- a) in so far as reasonably practicable, ascertain and have regard to people's views, wishes and feelings.

2.3 In addition, any person exercising functions under the Act must:-

- b) have regard to the importance of providing support to enable the individual to participate in decisions that affect him or her, to the extent that it is appropriate in the circumstances, particularly where the individual's ability to communicate is limited for any reason.

2.4 These over-arching duties, together with the United Nation 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.

2.5 This Code aims to set out:

- 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;
- the circumstances that impact on peoples need for advocacy;
- when independent advocacy **must** be provided;
- the circumstances when it is inappropriate for certain people to advocate;
- the arrangements for publicising advocacy services; and
- charging.

3. Scope

3.1 The existing entitlements of looked after children and specified others to advocacy under the Children Act 1989 currently fall outside the scope of this Code of practice. Those entitlements are re-made under Chapter 1 Part 10 of the Act and are scheduled to come into force from April 2016.

3.2 A separate work-stream comprising Welsh Government, local government, advocacy providers and the Children's Commissioner's Office is working to develop and support a national approach to advocacy under that Part of the Act. The outcomes of that work are anticipated later this Summer and will further inform the final version of this Code that is scheduled to be considered by the National Assembly toward the end of 2015.

3.3 In the interim, the duties owed to those children remain extant and the separate work-streams will continue to inform each other to ensure consistency and coherence.

4. Context

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

4.2 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 staff and their partner organisations, the courts and the judiciary.

4.3 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.

4.4 Part 10, Chapter 1 of the Act, reinforces the existing rights and entitlements of looked after children and specified others to advocacy support in making complaints and representations as currently set out in the Children Act 1989. As explained in paragraph 3.1 to 3.3 above, these fall outside the scope of this Code for the purposes of this consultation.

4.5 Part 10, Chapter 3 of the Act, provides that, subject to a number of exemptions, the Welsh Ministers may make regulations to require local authorities to arrange for advocacy services to be made available to people with needs for care and support. The regulations may specify the persons or circumstances in which advocacy services are to be made available.

4.6 This Code sets out the principles that are able to inform regulations under Part 10, Chapter 3 based upon the responses to the consultation on this Code.

4.7 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, will require local authorities and local health boards to jointly assess the population's need for advocacy in their area and to put in place arrangements to respond to people's needs for advocacy wherever a local authority exercises a relevant function under the Act in relation to that person. Relevant functions are set out in paragraph 8.15.

4.8 Advocacy should be considered as an inherent element of the Social Services and Well-being (Wales) Act 2014 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. People should be 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.

4.9 The Act:-

- places the person and their well-being outcomes at the centre of this new 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; people, families, supporters, formal and informal services

4.10 Despite the barriers individuals may be experiencing, local authorities **must** involve people to help them express their 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 prisons.

4.11 Local authorities **must** arrange an independent advocate to facilitate the involvement of an individual where;

- that individual can only overcome the barrier(s) to participate fully in the process of determining, reviewing and meeting their care and support needs, if there is an appropriate individual available to support and represent that individual's view, wishes and feelings; and
- there is no such appropriate individual available.

4.12 It is open to any individual to exercise choice and to invite any advocate to support them in expressing their views, wishes and feelings. A key role of the Information Advice and Assistance Service 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.

5. What is Advocacy

5.1 Section 181(2) 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.

5.2 Advocacy is one of several forms of support available for people who need assistance in working through life issues. Other forms of support include information, advice, counselling, befriending, mentoring and mediation, each of which can be helpful in different circumstances.

“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)

5.3 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.

6. Why is advocacy important?

6.1 Advocacy:

- safeguards individuals who are vulnerable and discriminated against or whom services find difficult to serve;
- 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.

6.2 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
- safeguarding individuals who are at risk.

7. What are the different forms of advocacy?

7.1 Advocacy can take many forms, each with the common aim of supporting individuals to have their voices heard, clarifying options and express their 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.

7.2 Social care and other professionals play a key role in advocating 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 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 advocating 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 one-to-one partnership between an independent professional advocate who is trained and paid to undertake their professional role as an advocate. This might be for a single issue or multiple issues. Independent professional advocates must ensure individuals' views are accurately conveyed irrespective of the view of the advocate or others as to what is in the best

interests of the individuals.

Instructed and non instructed advocacy

7.3 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.

7.4 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))

7.5 Non-instructed advocates may adopt different approaches to representing the person, based upon human rights, being person centred, keeping a watching brief or acting as a witness and observer.

8. When must a local authority consider individuals’ needs for advocacy?

Strategically

8.1 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.

8.2 Advocacy services are fundamental to supporting people to engage actively and participate in the development of their own well-being outcomes.

8.3 **Preventing, delaying or reducing needs** - increasing preventative services within the community to support independence and reduce and delay the escalation of critical need.

8.4 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 on 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 and **must** form part of the local authority and local health board joint assessment by of their population's needs under section 14 of the range and level of preventative services under section 15 of the Act.

8.5 **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.

8.6 Individuals' needs for advocacy must 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.

8.7 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 formal or independent professional advocacy will be required.

8.8 Local authorities and local health boards **must** utilise the outcomes from their shared population needs assessment to inform partnership arrangements under Part 9 for the provision of advocacy services. 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.

8.9 Effective joint commissioning arrangements enable improved experiences for individuals through an holistic approach that mitigates duplication; improves communication between and across individuals and practitioners, delivering integrated services and shared outcomes.

Specifically

8.10 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.

8.11 The Code of Practice on Assessment requires that "*the process for identifying care and support needs and preparing a care and support plan must ensure that individuals are empowered to express their needs and are able to fully participate as equal partners.*"

8.12 Local authorities **must** arrange an independent advocate to facilitate the involvement of individuals where;

- individuals' can only overcome the barrier(s) to participate fully in the process of determining, meeting and reviewing their care and support needs if there is an appropriate individual available to support and represent the individual's views, wishes and feelings; and
- there is no such appropriate individual available.

8.13 Advocacy includes the full range of provision set out in Chapter 7 and should be commissioned based on the local authority and local health board population needs assessment.

8.14 Fully participating includes clarifying, expressing and having their wishes and feelings heard, acknowledged and acted upon; and feeling empowered and in control of the process.

8.15 The following table lists the functions where local authorities **must** consider individuals' needs for advocacy support.

	Sections
Part 2 – General functions	
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
Part 3 - Assessing the Needs of Individuals	
Assessing the needs of adults, children and carers	19; 21; and 24
Combining needs assessment	28 to 29
Part 4 - Meeting Needs	
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

Part 5 - Charging and Financial Assessment	
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
Part 7 - Safeguarding	
Adults at risk	126
Adult protection and support orders	127
Duty to report adults at risk	128
Duty to report children at risk	130
Part 9 – Co-operation and partnership	
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
Part 11 - Complaints and representations	
Complaints about social services. Complaints about social services: supplementary. Assistance for complaints	173
The existing rights and entitlements of looked after and specified others under sections 174 to 178 are subject to separate work-stream that will be brought together with this Code post-consultation.	

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

9.1 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 for example:-

- i. where they are going to live;
 - ii. changes to informal care and support arrangements; and
 - iii. 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, Adult Protection and Support Order action under section 127 or report under section 128;
 - when leaving hospital.

10. What constitutes the barriers which can impact on individuals' ability to engage and fully participate?

10.1 Local authorities must consider, for each person, whether they are likely to experience barriers to fully engaging and participating in determining their well-being outcomes. 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.

10.2 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 should be made. This may affect the type of advocacy which is appropriate to be provided for the person.

Understanding relevant information

10.3 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

10.4 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

10.5 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 engaging and participating in determining their well-being outcomes.

Communicating their views, wishes and feelings

10.6 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 process and to make priorities clear. If they are unable to do this they are likely to be experiencing barriers in engaging and participating in determining their well-being outcomes.

10.7 Local authorities must in partnership with the individual reach a judgement about whether:-

- that individual can only overcome the barrier(s) to participate fully in the process of determining, meeting and reviewing their care and support needs, if there is an appropriate individual available to support and represent that individual's views, wishes and feelings; and
- there is no such appropriate individual available.

11. When is an individual inappropriate to act as an advocate?

11.1 Local authorities **must** consider whether there is an appropriate individual who can facilitate an individual's involvement in the assessment, planning or review process, 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;
- someone implicated in an enquiry into abuse or neglect or whose actions have influenced a local authority decisions to consider Adult Protection and Support Order actions.

11.2 Social care and other professionals play a key role in advocating 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 seen to be undermined. In such circumstances, the roles of other forms of advocacy outlined in Chapter 7 to secure individuals' views, wishes and feelings and well-being outcomes must be considered.

11.3 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 lives at a distance and 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.

11.4 An individual's wishes not to be supported by friends or family should be respected and if the individual has capacity, or is competent to consent, the individual's 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.

11.5 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.

11.6 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 or whose actions have influenced a local authority's decision to seek an Adult Protection and Support Order.

12. Safeguarding

12.1 Local authorities **must** have regard to the need to help protect individuals from abuse and neglect. Local authorities are experienced in supporting individuals in deciding how much risk they are able to manage.

12.2 The local authority **must** arrange, where necessary, for an independent advocate to support and represent an individual who is the subject of a safeguarding enquiry under section 126 or subject to arrangements for an Adult Protection and Support Order under section 127 of the Act. Where an independent advocate has already been arranged under this Act or under the Mental Capacity Act 2005 then, unless inappropriate, the same advocate may be used.

12.3 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.

12.4 It is critical in this particularly sensitive area that the adult 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 help them to be involved will be crucial.

13. Publicising Advocacy Services

13.1 Local authorities must ensure that individuals who may require or benefit from advocacy services are aware of and able to access it. The table at paragraph 8.15 identifies the key areas where local authorities must consider individuals' needs for advocacy

13.2 Local authorities and local health boards **must** assess as part of their population needs assessment the range of advocacy services in their area and secure and promote their availability as part of their portfolio of preventative services.

13.3 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 will include signposting individuals to advocacy services.

13.4 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, care homes and other forms of residential accommodation, sheltered housing schemes and shared lives schemes.

13.5 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.

13.6 Section 183 of the Act amends the Care Standards Act 2000 to require persons who carry on or manage a care home in Wales to make arrangements to bring to the attention of persons accommodated in the home, advocacy services available by virtue of regulations made under section 181 of the Social Services and Well-being (Wales) Act 2014.

13.7 The Minister for Health and Social Services is considering bringing forward an amendment to section 183 to remove the limitation of this duty solely to advocacy services under section 181 in favour of advocacy services in the area.

14. Charging for Advocacy

14.1 Regulations under Part 5 will dis-apply local authorities to charge for advocacy in the following circumstances:

Local authorities must arrange an independent advocate to facilitate the involvement of an individual where;

- that individual can only overcome the barrier(s) to fully participate in the process of determining, meeting and reviewing their care and support needs, if there is an appropriate individual available to support and represent that individual's view, wishes and feelings; and
- there is no such person available.

15. Deprivation of Liberty Consideration

15.1 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 completed¹. 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.

15.2 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.

16 Existing Advocacy Services

16.1 Similarly, there will be occasions when the different entitlements to statutory advocacy may overlap, for example;

- section 130E of the Mental Health Act;
- section 332BB of the Education Act or paragraph 6D of Schedule 17 to the Equality Act 2010;
- section 35 of the Mental Capacity Act 2005; or
- section 187 of the National Health Services (Wales) Act 2006.

¹ 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>

16.2 In these circumstances, consideration should be given to maximise 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.

16.3 Similarly, during the 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, for example when a decision needs to be taken about the person's long-term accommodation.

16.4 The plans and strategies which are prepared in response to the population needs 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.

17 Regulation and Inspection of Social Care

17.1 The Regulation and Inspection of Social Care Bill was presented to the National Assembly on 23 February 2015. The Minister for Health and Social Services has given commitment to incorporate advocacy within the list of regulated services in the first tranche of regulations that will be laid in 2016. We anticipate the approach will need to encompass:-:

- requiring local authorities and other relevant individuals to use only registered advocacy providers to meet their statutory duties;
- establish a set of statutory standards which must be followed by registered providers. These could include background checks of staff, regular monitoring complaints procedures; confidentiality; accessibility and involvement of people in the development of services.

17.2 The regulation of advocacy will require significant discussions with the sector and considered development and co-production of the standards to be applied. It will be necessary to understand how inspection of the service can be achieved.

17.3 These are questions we will pursue in the development of the Bill and the supplementary provisions that flow from it to determine the most appropriate approach to securing effective commissioning and delivery and to ensure coherence across advocacy for adults and children under the Act.