



The Scottish Independent Advocacy Alliance

Working with Children and Young People: Guidelines for Advocates

A companion to the Code of Practice for Independent Advocacy



Scottish
**Independent
Advocacy**
Alliance



**The Scottish
Government**

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Foreword



The UN Convention on the Rights of the Child underpins Scottish Government Policy and Legislation in relation to children and young people. This outlines the rights of all children and the Convention defines a child as anyone under 18 years.

Article 12 (Respect for the views of the child) of the United Nations Convention on the Rights of the Child states that when adults are making decisions that affect children, children have the right to say what they think should happen and have their opinions taken into account. Independent advocacy for children will help ensure that this becomes a reality.

The Scottish Government is committed to the growth and development of independent advocacy for children and young people. We recognise the important role that independent advocacy plays in helping individual and groups of children and young people understand their rights, consider their choices and options and voice their opinions. It can help influence and improve services that touch all aspects of Scottish society.

With independent advocacy we can ensure that the children and young people of Scotland grow up fully aware of their rights, have a confident voice and are able to make an effective contribution to society.

Ms Aileen Campbell MSP
Minister for Children and Young People

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- The SIAA members who provided feedback, comments and case studies during the development of this document.
- Clan ChildLaw who helped clarify different aspects of legislation affecting children and young people.
- Scottish Government representatives who helped clarify Government policy and strategy.

Working with Children & Young People Guidelines for Advocates

Introduction

Getting It Right for Every Child (GIRFEC) is the national approach to improving the wellbeing of children and young people. It puts the child and their wellbeing at the heart of decisions affecting them and involves services working together, and with families, to support and improve wellbeing.

Key elements of GIRFEC are enshrined in statute through the Children and Young People (Scotland) Act 2014. Other Scottish Government initiatives underpinned by GIRFEC principles include the Children's Hearing system; the Early Years Collaborative; Early and Effective Intervention/Whole Systems; and the Family Nurse Partnership.

The Scottish Government has developed the Children's Rights and Wellbeing Impact Assessment (CRWIA). This was originally developed for use by officials as a policy improvement and development approach to support Ministers' duties under Part 1 of the Children and Young People (Scotland) Act. The CRWIA has been developed to encourage its wider use, for example, by local authorities, health boards, children's services planning partnerships and third sector organisations. It is a useful aid to ensuring that the rights and wellbeing of children and young people are championed at every opportunity, and that children and young people are at the centre of policy making and the planning of services.

The UN Convention on the Rights of the Child (UNCRC) underpins Scottish Government Policy and Legislation in relation to children and young people. This outlines the rights of all children and the Convention defines a child as anyone under 18 years.

Article 12 (Respect for the views of the child) of the United Nations Convention on the Rights of the Child states that when adults are making decisions that affect children, children have the right to say what they think should happen and have their opinions taken into account. Independent advocacy for children will help ensure that this becomes a reality.

Independent advocacy can help to ensure that children are at the heart of decisions affecting them.

What is the Scottish Independent Advocacy Alliance?

The Scottish Independent Advocacy Alliance (SIAA) is a membership organisation responsible for promoting, supporting and defending independent advocacy in Scotland. The SIAA is working towards ensuring that the best quality independent advocacy will become available to anyone who needs it in Scotland. The SIAA provides information and support to its members, gathers and distributes information about independent advocacy. It represents advocacy organisations at various levels and raises awareness and understanding of independent advocacy across Scotland. The SIAA works to influence legislation, policy and practice in relation to independent advocacy.

Purpose of this document

This document provides guidance to independent advocacy organisations and independent advocates that will assist when working with children and young people. These Guidelines are designed to be used alongside the *SIAA Principles and Standards* and the *Code of Practice for Independent Advocacy*. They have been written to apply to all models of advocacy. Throughout Scotland, advocacy organisations share the same core Principles, although they may meet the standards in slightly different ways. These Guidelines can also be used by non-independent advocacy organisations and advocates to ensure best practice when delivering advocacy for children and young people.

In addition to providing guidance on practice for advocates this document will provide information for professionals working with children and young people, children and young people themselves, and their families or carers on what to expect from an advocate or advocacy organisation.

The Scottish Government has published a guide to children's advocacy which can be used by family members, friends, teachers, support workers and others who may at times advocate for a child. The guide can be found on the Scottish Government website¹.

¹ Scottish Government *A guide to children's advocacy*, 2014

What is advocacy?

Advocacy is about ensuring that people are as fully involved as possible in decisions made about them and their lives. It is about making sure their voice is heard, it is about standing up to injustice.

Advocacy:

- safeguards people who are vulnerable and discriminated against or whom services find difficult to serve
- empowers people who need a stronger voice by enabling them to express their own needs and make their own decisions
- enables people to gain access to information, explore and understand their options, and to make their views and wishes known
- speaks up on behalf of people who are unable to do so for themselves.

Many of us find it difficult, at times, to get our voice heard about decisions or actions that affect our lives. Some people have family, friends or carers to help them to speak up. Some don't have anyone in their lives to help them. Sometimes a family member may have their own ideas about what would be best for the person, which might not be the same as what the person wants. Carers and professionals have a 'duty of care' for the person, which may conflict with their wishes.

Independent advocacy aims to help people by supporting them to express their own wishes and needs and make their own informed decisions. Individual advocacy supports people to gain access to information and explore and understand options. Individual advocates speak on behalf of people who are unable to speak for themselves, or who choose not to do so. They safeguard people who are vulnerable or discriminated against or whom services find difficult to support. Collective advocacy helps people with a shared agenda come together and lobby and campaign to influence services, policy and legislation. They work to challenge stigma, discrimination and inequalities.

Definition of independence

For independent advocacy to be fully effective and for the independent advocate to be wholly on the side of the person for whom they are advocating the advocacy role must not be compromised. An independent advocate will not provide any other type of support or service; they will not advise or suggest any choice or course of action. Rather the independent advocate will listen to the person, ensure that they have all the information they need, support them to consider options and likely outcomes, make informed choices and then ensure that those choices and the person's views and opinions are heard and taken fully into account.

The *Mental Health (Care & Treatment) (Scotland) Act 2003* gives the right of access to independent advocacy for anyone, of any age, with a mental disorder. The Code of Practice definition in relation to independence is as follows:

- 108 *Independence is key in the patient's right to advocacy, because it is vital that the role of independent advocacy is not compromised in any way. Independence ensures that the advocacy services provided are divorced from the interests of those persons concerned with the patient's care and welfare. Conflict might occur for example, if a person providing advocacy services was also a care provider and a patient wanted to raise issues about their care. It is clear that in those circumstances, the advocate's ability to support that patient would be severely compromised.*
- 109 *The Act, therefore, makes specific provision that to be 'independent', the advocacy services must be provided by persons other than a local authority or a Health Board responsible for providing services in the area where the patient is to receive care or treatment, or a member of those bodies or any other person involved in their care treatment or in providing services to them. Any independent advocacy organisation should have policies in place to identify and manage/minimise the risk of any conflict of interest.*

110 *Independent advocacy should be provided by an organisation whose sole role is independent advocacy or whose other tasks either complement, or do not conflict with, the provision of independent advocacy. If the independent advocacy service or advocate has a conflict of interest, they should inform all relevant parties of this, and should withdraw from acting for the patient².*

This means that advocacy delivered by any organisation providing other services, for example visiting or residential support services, in the same Local Authority or NHS Board area cannot be regarded as independent under the terms of the Act.

Conflict of interest

A conflict of interest is anything that could get in the way of an advocate being completely loyal to their advocacy partner. For example, it would not be appropriate for an advocate working for an advocacy organisation to also work for a local service provider, because in certain circumstances this could affect their ability to be fully on the side of the advocacy partner. It could also affect their relationship with colleagues and their employers. Other conflicts of interest could include advocates' personal relationships for example with staff from local Social Work Departments or from local third sector organisations providing social care.

It is important for organisations providing advocacy to put processes and procedures in place to ensure that any potential conflicts of interest are identified and managed if appropriate.

² *Mental Health (Care & Treatment) (Scotland) Act 2003 Code of Practice*
Chapter 6, Paragraphs 108–110

Accessing advocacy

Access to advocacy for children and young people is becoming increasingly available around Scotland. For children with mental disorders their right of access is enshrined in legislation, for others it is included in policy and regarded as good practice.

Scottish Government policy in relation to children and young people recognises the importance of access to independent advocacy. The Values and Principles of the Scottish Government approach for children and young people in Scotland, *Getting It Right For Every Child*, build from the Children's Charter and include:

Putting the child at the centre

Children and young people should have their views listened to and they should be involved in decisions that affect them

Supporting informed choice

Supporting children, young people and families in understanding what help is possible and what their choices may be

Standard 3 of the Children's Charter is:

Professionals ensure children are listened to and respected.

Both of these reflect Article 12 of the *UN Convention on the Rights of the Child*:

Article 12

- 1. Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.*
- 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.*

This means that 'when adults are making decisions that affect children, children have the right to say what they think should happen and have their opinions taken into account.'

Unicef factsheet on the Rights of the Child.

In different parts of Scotland looked after and accommodated children and young people have different levels of access to independent advocacy. This may vary from a few hours of paid advocacy provision per week in some areas to a small team providing advocacy.

Advocacy is also available in some areas for children and young people with mental disorders, although in some areas the advocacy provision cannot be defined as independent and therefore does not fully comply with the *Mental Health (Care & Treatment) (Scotland) Act 2003*.

There is limited access to advocacy for young people and parents regarding the *Education (Additional Support for Learning) (Scotland) Act 2004*.

Children and young people wishing to access independent advocacy in relation to other conditions or issues are unlikely to be able to do so.

Legal right to access independent advocacy

The *Mental Health (Care & Treatment) (Scotland) Act 2003* gives a statutory right of access to independent advocacy for adults and children and young people with a mental disorder.

Section 259 Advocacy

- (1) Every person with a mental disorder shall have a right of access to independent advocacy;

That right applies to anyone, of any age, with a mental health problem, a learning disability or dementia.

The Mental Health Act places a duty on

- (a) *each local authority, in collaboration with the (or each) relevant Health Board; and*
- (b) *each Health Board, in collaboration with the (or each) relevant local authority,*

to secure the availability, to persons in its area who have a mental disorder, of independent advocacy services and to take appropriate steps to ensure that those persons have the opportunity of making use of those services.

The *Mental Health (Scotland) Act 2015* amends the 2003 Act as follows:

Section 27 Information about advocacy services

(1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.

(2) After section 259 there is inserted —

'259A Information gathering

(1) Each of the bodies mentioned in subsection (2) below must give the Commission such information as the Commission may from time to time seek on how the body —

(a) has, during a period of at least 2 years specified by the Commission, been exercising the functions conferred on the body by section 259 of this Act, and

(b) intends, during a period of at least 2 years specified by the Commission, to exercise the functions conferred on the body by section 259 of this Act, and

(2) The bodies are:

(a) a local authority,

(b) a Health Board,

(c) the State Hospitals Board for Scotland.'

Access to advocacy

In relation to duties around the provision of advocacy the *Education (Additional Support for Learning) (Scotland) Act 2004*, following the 2009 update, states that:

(1) The Scottish Ministers must, in respect of Tribunal proceedings, secure the provision of an advocacy service to be available on request and free of charge to the persons mentioned in subsection (2).

(2) The persons are:

(a) in the case of a child, the child's parent,

(b) in the case of a young person —

(i) the young person, or

(ii) where the young person lacks capacity to participate in discussions or make representations of the type referred to in subsection (3), the young person's parent.

Other references to advocacy in legislation

Other pieces of legislation recognise the potential need for children and young people to access advocacy and make specific reference to it. These do not however give a legal right to access advocacy.

The Children's Hearing (Scotland) Act 2011 allows, in Section 122 subsection 4, for the provision of Children's advocacy services.

- (4) The Scottish Ministers may by regulations make provision for or in connection with:*
- (a) the provision of children's advocacy services,*
 - (b) qualifications to be held by persons providing children's advocacy services,*
 - (c) the training of persons providing children's advocacy services,*
 - (d) the payment of expenses, fees and allowances by the Scottish Ministers to persons providing children's advocacy services.*

Additionally it states that:

- (2) The chairing member of the children's hearing must inform the child of the availability of children's advocacy services*

However,

- (3) The chairing member need not comply with subsection (2) if, taking account of the age and maturity of the child, the chairing member considers that it would not be appropriate to do so.*

It should be noted that, at the time of publication this section of the Act has yet to come into force but the Scottish Government is, however actively exploring how to develop a sustainable national service.

The Patient Rights (Scotland) Act 2011 applies to all Scottish residents regardless of age and requires Ministers to publish a Patients' Charter setting out a summary of the rights and responsibilities of patients and other people.

The Act states that:

The Act establishes a Patient Advice and Support Service (PASS). Where necessary, PASS will direct people to other types of support, such as advocacy or communication support services.

The Patients' Charter states that:

*You have the right to request support when making decisions about your health care.
— If you want someone else to support you or help you give your views, for example an independent advocate, NHS staff can help you arrange this.*

So under legislation throughout Scotland only children and young people with a mental disorder have a legal right of access to independent advocacy. Advocacy is also available for young people and for parents in relation to those with a need for additional support for learning, in some areas. Further there is recognition of potential need for advocacy for those attending a Children's Hearing and for children in receipt of health care.

Some NHS Boards and Local Authorities have also ensured provision of advocacy for children and young people with physical disabilities. In some circumstances advocacy may be available for parents but with less provision for children.

To ensure that children and young people '*...have their views listened to and they should be involved in decisions that affect them*' and are supported to understand '*...what help is possible and what their choices may be*'³ independent advocacy should be available for all children across Scotland when they need it.

³ Scottish Government *Getting It Right For Every Child*

Other relevant legislation

Children and Young People (Scotland) Act 2014

The Act imposes some duties on Scottish Ministers in regard to children's rights whenever they take decisions. They are required to

- (a) keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements, and*
- (b) if they consider it appropriate to do so, take any of the steps identified by that consideration.*⁴

The GIRFEC provisions in the Act also contain duties on public bodies. For example, when preparing the Child's Plan, an authority

Is so far as reasonably practicable to ascertain and have regard to the views of (i) the child...

Further sections of the Act detail how public authorities must give regard to the rights, interests and views of children and young people in making decisions or taking actions that affect those children and young people.

Access to independent advocacy, both one to one and collective, will help ensure that children and young people are meaningfully involved in the decisions and planning that affect them.

Social Care (Self-directed Support) (Scotland) Act 2013

The Act provides a variety of options for the provision of support. It requires the Local Authority to ensure that, where possible, the child or young person in need of support has the opportunity to make informed choices about that support and the options available for the delivery of support.

Carers (Scotland) Act 2016

The Act will be enacted in 2017–18. It makes provision for each local authority to establish and maintain an information and advice service for relevant carers. The relevant carers will include young carers who reside in the area of a local authority (whether or not they provide or intend to provide care for cared-for persons in that area) and young carers who do not reside in the authority's area but who provide or intend to provide care to care to cared-for persons in that area.

³ Children & Young People (Scotland) Act 2014 Part 1 Section 1 (a)

The information and advice service for carers must provide information and advice in particular about advocacy for carers, which includes advocacy for young carers.

In addition to those Acts including the right of access to independent advocacy and those already detailed there are a number of other pieces of legislation relevant to children and young people including:

Children (Scotland) Act 1995

Human Rights Act 1998

Education (Scotland) Act 1980

Standards in Scotland's Schools etc. Act 2000

The Equality Act 2010

This is not an exhaustive list, depending on the situation or circumstances, other pieces of legislation may apply.

Ages at which legislation applies

- ***Mental Health (Care & Treatment) (Scotland) Act 2003*** — From birth throughout life
- ***Patient Rights (Scotland) Act 2011*** — From birth throughout life
- ***Children & Young People (Scotland) Act 2014*** — Generally from birth up to 18 years, for care leavers up to 25 years
- ***Education (Additional Support for Learning) (Scotland) Act 2004*** — For children up to 18 years
- ***Children's Hearings (Scotland) Act 2011*** — From birth up to 18 years
- ***Children (Scotland) Act 1995*** — From birth up to 16 years

The above is merely a brief guide. It is not intended to be an authoritative statement or interpretation of the legislation. When dealing with related legal issues we would advise seeking legal advice.

Policy

Independent Advocacy Guide for Commissioners

The Scottish Government updated the *Independent Advocacy Guide for Commissioners (2013)* which reflects Commissioners statutory responsibility under the *Mental Health (Care & Treatment) (Scotland) Act 2003*, provides Commissioners with an understanding of good advocacy practice and management to be considered when commissioning advocacy services.

<http://www.gov.scot/Publications/2013/12/7000>

Getting it Right for Every Child (GIRFEC)

Getting it Right for Every Child is the national approach to improving the wellbeing of children and young people. Through policy and the delivery of services at both national and local level, the GIRFEC approach:

- puts the best interests of the child at the heart of decision making;
- takes a holistic approach to the wellbeing of a child;
- works with children, young people and their families on ways to improve wellbeing;
- advocates preventative work and early intervention to support children, young people and their families; and
- believes professionals must work together in the best interests of the child.

The Children and Young People (Scotland) Act 2014 is rooted in the GIRFEC approach, and puts a number of key initiatives into statute, including the Named Person and the single Child's Plan. Other Scottish Government initiatives underpinned by GIRFEC principles include the Children's Hearing system; the Early Years Collaborative; Early and Effective Intervention/ Whole Systems; and the Family Nurse Partnership.

GIRFEC aims to ensure that children and young people will:

- understand what is happening and why;
- have been listened to carefully and their wishes have been heard and understood;
- ensure that they are appropriately involved in discussions and decisions that affect them.

Parental Rights and Responsibilities

Parents have the responsibility to look after their children, ensure that they are given healthcare when required, and encourage their growth, development and welfare. They have the responsibility to ensure their children are given suitable education.

Except in specific circumstances they have the right to have their children live with them or the right to decide where their children should live. They have the responsibility and the right to decide how their children should be brought up and to be in charge of actions and behaviour until the child is 16.

If they are not living with their children they have both the responsibility and the right to stay in touch with, and to be involved with the lives of their children unless otherwise directed by legal authorities in certain circumstances.

Finally, they have both the responsibility and the right to act as legal representative for their child up to the age of 16.

When decisions are being made that will affect children, parents should seek the child's views on these changes and ensure that they are involved in the decision making process. Section 6 of the *Children (Scotland) Act 1995* requires those reaching any major decision involving fulfilling any parental responsibility or exercising a parental right to—

have regard so far as practicable to the views (if he wishes to express them) of the child concerned, taking account of the child's age and maturity,

According to the *Children (Scotland) Act 1995*, a child over 12 is presumed to be old enough to form a view.

Case study

When her family moved from the Scottish Highlands to live in a large town, Kyra moved to a new school. Her old school was small, everyone knew her and she was happy there. At the new school she found it difficult to settle in, it was much bigger and shortly after she started the new term Kyra began to say she did not want to go to school.

She told her parents that she had not made any new friends and that she spent break times alone. She was also worried because she had seen one or two classmates being bullied and she was afraid that would happen to her. Her parents found out about Have Your Say, a collective advocacy group whose members were all pupils from Kyra's new school. They got in touch with Amanda, the worker who supported the group. Amanda came to meet Kyra and encouraged her to come along to a meeting. At that meeting one of the group members spoke about how he had felt isolated when he started at the school and how he had found it difficult to make friends at first. Kyra told everyone that she felt the same. The group thought about what they could do to help new pupils and make sure they felt comfortable. They spoke to the teachers and pupils and the school now has a buddy system in place for new pupils.

Kyra now has lots of friends and no longer feels isolated in school. She has also gained in confidence and feels proud to have been involved in setting up the new buddying initiative.

Children's Rights

Every child has rights that take account of the particular needs of children, recognising the special factors involved in the development, nurture and protection of children. Underlying children's rights is the principle that children are entitled to expect appropriate care, protection and consideration.

The *UN Convention on the Rights of the Child* underpins Government Policy and Legislation in relation to children and young people. This spells out the rights of all children defined by the Convention as anyone under 18 years.

Of the 54 articles there are 4 which are known as the Convention's general principles and these are:

Article 2: All rights guaranteed by the Convention must be available to all children without discrimination of any kind;

Article 3: The best interests of the child must be a primary consideration in all actions concerning children;

Article 6: Every child has the right to life, survival and development;

Article 12: The child's view must be considered and taken into account in all matters affecting him or her;

Access to independent advocacy can help ensure that Article 12 is a reality for every child.

Child Protection

As stated, when working with children and young people, advocates should follow the SIAA Principles and Standards and associated Code of Practice however it is also important to be aware of and adhere to Child Protection requirements.

Child Protection — The National Guidance for Child Protection in Scotland 2014 states that:

All agencies that work with children and their families have a shared responsibility for protecting children and promoting, supporting and safeguarding their wellbeing.

The Guidance details the shared responsibilities of such agencies as follows:

All staff at all levels in all services, including third and private sector services, should:

- have information, advice and training to make them aware of risks to children, what additional factors make children vulnerable, and an understanding of their particular responsibilities in keeping children safe including children with disability;
- have ready access to appropriate, relevant and up-to-date guidance that tells them what action to take if they are concerned about a child's safety or wellbeing;
- understand what, how and when to record and share information to keep children safe, and be able to do so;
- know what action to take if families with children whose names are on the Child Protection Register, or about whom there are significant concerns, fail to attend services or agreed appointments;
- be given information, advice and training to help them understand key child protection processes and the roles and responsibilities of staff in their own and other services who may play a significant role in protecting children;

-
- have appropriate supervision and support, and opportunities for reflective practice from managers when they are concerned about a child or when they are involved in child protection processes; and;
 - understand when a child may be in need of a Compulsory Measure of Supervision and when a referral should be made to the Reporter.

This will refer to advocacy organisations working with children and young people. Local Authorities will have their own specific procedures in relation to child protection and advocacy organisations should ensure that all advocates know and understand the National Guidance and the local procedures. Advocacy organisations must ensure that they access appropriate training for all advocates working with children and young people.

All advocacy organisations should have a Child Protection Policy, whether they work directly with children or not. All advocates should be able to identify potential child protection issues and know what to do about them. The *National Guidance for Child Protection in Scotland 2014* states that;

'All agencies, professional and public bodies and services that deliver adult and/or child services and work with children and their families have a responsibility to recognise and actively consider potential risks to a child, irrespective of whether the child is the main focus of their involvement. They are expected to identify and consider the child's needs, share information and concerns with other agencies and work collaboratively with other services (as well as the child and their family) to improve outcomes for the child.'

Advocates should receive training on child protection and have a clear understanding of their legal responsibilities to safeguard children. This responsibility is in respect of any children they may encounter through their work with adults who may be parents or carers as well as in respect of children they work with directly.

Case study

Lynn is 14 years old, the third of five sisters. Her mother died when she was 10. She and her younger sister lived at home with their father and his girlfriend. The girls were unhappy when the girlfriend started to stay permanently. Both their father and the girlfriend drank a lot especially at weekends and sometimes the Police were called to the house for noise complaints, sometimes for domestic abuse allegations.

Lynn and her sister were put on the At Risk Register and at the Children's Hearing they told Panel members that they no longer wanted to live with their father and his girlfriend. It was then decided that they would stay with their grandparents. Lynn really wanted to go to live with Angela, her older sister, but her father and her grandparents were not happy about this. Lynn heard about advocacy from a friend at school and contacted her local advocacy organisation.

Elaine, an advocacy worker, met Lynn who told her that she wanted to live with her older sister, Angela. Lynn told Elaine that her sister was happy for her to move in. Elaine supported Lynn to draw up her own statement before her next Review hearing. At that hearing the Panel agreed to Lynn moving in with her older sister. The panel also agreed for her younger sisters to live with their grandparents because that's where they wanted to live. Lynn continues to have a close relationship with her sisters and regularly sees the rest of her family.

Children's capacity to make decisions

Legal capacity is mainly governed by the *Age of Legal Capacity (Scotland) Act 1991*. At 16, a young person has full legal capacity. Under 16, capacity depends on the circumstances, and on the relative maturity of the child. In general, a child under 16 has legal capacity to enter into a transaction 'of a kind commonly entered into by persons of his age and circumstances', provided the terms of the transaction are 'not unreasonable'. The following special provisions apply:

- A child of 12 has capacity to make a will.
- A child of 12 has capacity to consent to his or her own adoption.
- A child under 16 has capacity to consent to "any surgical, medical or dental procedure or treatment where, in the opinion of a qualified medical practitioner attending him, he is capable of understanding the nature and possible consequences of the procedure or treatment". There is no presumption of maturity at age 12.
- A child under 16 has capacity to instruct a solicitor in a civil matter, where the child has 'a general understanding of what it means to do so'. There is a presumption of sufficient age and maturity at age 12.

Capacity to access records is set out in the *Data Protection Act 1998*. The 'data subject', i.e. the person about whom records (manual or electronic) are held, has the right to consent to, or refuse, access to his or her records. In Scotland, children under the age of 16 who are deemed to have the necessary capacity have that same right of consent or refusal. Children of 12 and over are presumed to be sufficiently old and mature to have a general understanding of what it means to exercise that right, therefore they have the required capacity.

If a child is deemed to have capacity, it is for them to make a request for access to records (or to consent to a parental request). The 'data controller' or person holding the record should reply to the child in that case.

In considering whether a child under 16 has capacity to instruct an advocate, it will be relevant to consider whether instructing an advocate would be something a child of that particular age and circumstances would commonly be expected to do. The capacity of the child will depend on an assessment by the advocate of factors such as age, developmental stage, maturity and understanding.

The existence of a duty of confidentiality, however, does not depend on a child's capacity. If a child has the necessary capacity, the duty is owed to the child. If a child does not have capacity, the duty still exists, and is owed to the child and to the child's legal representative; that is, someone with the parental right to act as the child's legal representative.

Incapacity by reason of mental disorder

The *Mental Health (Care & Treatment) (Scotland) Act 2003 Code of Practice* states:

*The right of access to independent advocacy is for each patient and is not limited only to those who are best able to articulate their needs*⁵

This is true for children and young people in the same way that it applies to adults. In such a situation the advocate could consider non-instructed advocacy and, in addition to children's advocacy guidelines, should also follow the *SIAA Non-instructed Advocacy Guidelines*.

⁵ *Mental Health (Care & Treatment) (Scotland) Act 2003 Code of Practice*
Chapter 6, Paragraph 40

Case study

Beth is 17 and has profound learning and physical disabilities with very limited communication. She was funded to attend and live at a specialist residential school in a local authority outwith her own area.

As Beth would soon be 18, she would then be moving on from her school and so her teacher referred her to the local advocacy organisation to ensure that Beth was kept at the centre of the planning and decisions about her future life. Anya, an advocacy worker from the local independent advocacy organisation, visited Beth and spent some time with her using pictures and signing to communicate with her.

As this was a residential school placement, Beth had a 'house parent' in school. The house parent lived with the young people as a family leader in a domestic setting within the school. She also had teaching and therapeutic roles within the school.

While getting to know her Anya spoke with Beth's teachers, Speech and Language therapist, the house parent, social workers, with her mother, and with Beth. It was important to use the experience of all of the professionals who knew Beth, and of her family, to allow Anya to develop a true picture and understanding of Beth's life and wishes for the future.

Having spoken to everyone concerned, Anya was able to advocate for Beth ensuring her rights were upheld and that preferences that Beth had displayed were fully considered when decisions were made. The result was that when she was 18, Beth moved to a suitable residential setting closer to the family home where she quickly settled in. She now seems very happy.

Who provides advocacy?

It is usual for children to have quite limited control over their lives and limited ability to influence their own situations. Decisions about children will largely be made by others in the child's best interests. However, these decisions may not always coincide with what the child wants, possibly for very good reasons, but a positive outcome is more likely if the child feels, and is, as fully involved in the decision making process as possible. This is most likely if the child has been properly supported to consider all the issues and available information, to think about different courses of action and the possible outcomes arising from those and if they believe that their views and wishes have been given proper consideration when decisions are made. Independent advocacy has an important role to play in supporting these aims.

There may be several people in a child's life who may advocate for them, such as family members, friends, teachers, support workers and others. The child may be happy for these individuals to advocate for them and they should have the opportunity to make that choice. However, these individuals often have a legal duty to act in the best interests of the child and this may create a conflict of interest between the decision maker and the child. In such circumstances the child's views and wishes may not be listened to or may be dismissed without full consideration. For example, when working with a child a professional may encounter a conflict of interest if asked by the child to advocate against the agency that employs them. The Scottish Government has published a guide to children's advocacy which can be used by family members, friends, teachers, support workers and others who may at times advocate for a child.

The guide can be found on the Scottish Government website
<http://www.scotland.gov.uk/Topics/People/Young-People/families/advocacy>

However there will be times and certain circumstances when a child will want someone who is there to be wholly on their side with no other agenda, who will help them to understand their rights, think through their options, be as fully involved as possible and speak up. This is when access to independent advocacy is of greatest importance.

There may be circumstances when both the child and their parent would benefit from advocacy support. In such a situation they should have separate advocates, ideally from separate organisations. Sometimes advocacy organisations will support a parent and a child by providing separate advocates but they will take steps to minimise any potential conflicts of interest.

Confidentiality and information sharing

To observe good practice in independent advocacy the advocate should not share any information given by the advocacy partners without their knowledge and consent. There are however explicit exceptions. The SIAA Code of Practice for Independent Advocacy states that:

Advocates must... Be aware that they might have to break their advocacy partner's confidentiality if the law or the organisation's policies say so, if their advocacy partner intends to harm themselves or others, or if the advocate has information that the person's health and safety is in danger from the actions of others.

It would be expected that the same good practice in maintaining confidentiality would apply when working with children and young people. In the case of advocacy for children and young people, while following this Guidance, the advocate must also follow the advice set out in the National Guidance for Child Protection in Scotland. Advocates should be thoroughly aware of potential areas of concern about children and the circumstances under which they may have to share information.

Where the advocate has a concern about wellbeing, they will wish to consider whether information should be shared with the child's Named Person (usually the child's health visitor for pre-school children) or head teacher (for school age children). The Information Commissioner has issued advice about this. See Appendix 5.

When informing the child about advocacy, prior to seeking the child's consent in developing an advocacy agreement, the advocate should inform the child that they may need to share information if they identify a cause for concern.

Good advocacy practice suggests that if an advocate identifies a need to break an advocacy partner's confidentiality they must inform the partner where possible and appropriate. The same guidance will apply to working with children and young people, that where possible and appropriate the child should be informed about the cause for concern, the nature of the information to be shared and with whom it will be shared. Further information on information sharing can be found on the Scottish Government website.⁶

⁶ www.gov.scot/Topics/People/Young-People/gettingitright/information-sharing

Consent to advocacy

As has been stated, children can have very different levels of maturity in relation to understanding of situations.

Before providing instructed advocacy the advocate should seek the child's consent to advocacy. To do this the advocate first needs to provide appropriate information about what advocacy is and about issues around confidentiality and information sharing. An example of a leaflet that can be used to help inform a child about advocacy can be found at Appendix 3

When the advocate is satisfied that the child understands what advocacy is and what information can be kept confidential and what must be shared they can then seek to obtain consent to advocacy.

The advocacy organisation should have a clear procedure on seeking consent for advocacy from the child. The SIAA leaflet giving information on advocacy for children and young people may be of use in this situation, commonly called the Advocacy Agreement. It is important to remember that these are not legal documents but are merely tools to help aid an understanding of independent advocacy.

If the advocate is satisfied that the child understands their role they can go on to agree an agenda with the child or young person.

Case study

Jenny has additional learning support needs and is now in P7 in her local primary school. In the past 3 years she has been taught in a small supported classroom in the school with Learning Support Assistants on a 1-2-1 basis. Jenny is keen to move on with her friends to her local High School after the summer however her grandmother, who is her legal guardian, wants Jenny to go to a school with specialist approaches to young people with Additional Support Needs. She finds it hard to disagree with her grandmother and to make her wishes clear.

She has a good relationship with her Learning Support Assistant and has told him that she does not want to go to the school that her grandmother wants her to move on to. The Learning Support Assistant referred her to the local independent advocacy organisation and Jenny met Anil, an advocacy worker.

Anil and Jenny talked about Jenny's wishes and how she found it difficult to openly disagree with her grandmother. Anil supported Jenny to attend a meeting that had been arranged between her School and her grandmother where Anil made sure that everyone understood what Jenny's views and wishes were. This meant that her grandmother was better able to understand why Jenny wanted to go to the local High School with her friends. It also allowed Jenny to have a better understanding of why her grandmother wanted her to go to the specialist school.

Advocacy practice

The SIAA *Principles and Standards for Independent Advocacy (2008)*, which were developed by the advocacy movement in consultation with other stakeholders over many years, represent the core beliefs about independent advocacy and are reflected in the *Scottish Government Guide for Commissioners (2013)*.

The Principles and Standards for Independent Advocacy are the same while working with children as with any other individual. The Indicators as detailed in the *Code of Practice for Independent Advocacy* apply in this area of work.

There are additional factors to take into consideration in relation to child protection issues. These are outlined in this document. It should be borne in mind that, as this is designed as a companion to the *Code of Practice*, the indicators included here are in addition to or expand upon those detailed in the Code.

Principle 1 Independent Advocacy puts the people who use it first

Advocacy workers must:

- a) Act on the issues agreed by their advocacy partner, with reference to the Service Level Agreement or Contract, and at the pace appropriate to the child or young person's needs.
- b) Follow the agenda agreed with the child or young person, where possible and while bearing in mind child protection issues, and not be influenced by others.
- c) Not let their personal opinions, choices and values interfere with the child or young person's choices. Independent advocacy workers should be aware of their own prejudices.
- d) Help the child or young person to access accurate information from appropriate sources.
- e) Be clear that any information is not shared with a third party unless by agreement with the child or young person, except in cases where the child or young person intends to harm themselves or others or where the advocacy worker has concerns relating to the child or young

person's wellbeing. The sharing of information should be clearly laid out in the Service Level Agreement to ensure the advocacy worker is fully aware of what information must be shared.

- f) Participate in training on the different laws that apply to what they do.
- g) Be aware of the rights of children and young people.
- h) Not do anything the child or young person does not want them to do, except in certain circumstances laid out in the law and the organisation's policies with specific reference to child protection.

Advocacy Organisations must:

- i) Have and implement policies, procedures and guidelines for working with children and young people.
- j) Ensure independent advocacy workers receive regular support and supervision or guidance to make sure they are clear about their role and about issues specific to child protection.
- k) Ensure advocacy workers receive training in their role, including issues specific to child protection, how to review the relationship with the child, young person or group and how to record information.
- l) Have agreed procedures for storage and security of advocacy records.
- m) Ensure that advocacy workers undertake training or preparation on laws and policies and procedures relevant to children and young people.
- n) Ensure that all advocacy workers are kept up to date with changes in legislation and policies and procedures relevant to children and young people.
- o) Ensure that advocacy workers undertake preparation and ongoing training as required by the advocacy organisation's policies and procedures and the Service Level Agreement.

Principle 2 Independent advocacy is accountable

Advocacy workers must:

- a) Act on the issues agreed by the child or young person, with reference to the Working Protocol, and at the pace appropriate to the child or young person's needs.
- b) Be aware of and act within the law at all times.
- c) Be aware that they might have to break the child or young person's confidentiality, if the law or the organisation's policies say so, if the child or young person intends to harm themselves or others, or if the advocate has information that raises concern about the child or young person's wellbeing.
- d) Know what the organisation's policies and procedures are if they are aware of a potential risk to the child or young person's wellbeing.

Advocacy Organisations must:

- e) Have a rigorous recruitment or selection policy which will include the need for references and membership of the PVG Scheme in order to protect the safety of the people who use advocacy.
- f) Have policies and procedures for the line management or support of advocacy workers, including support and supervision or guidance, training and personal development.
- g) Provide appropriate training on all relevant policies and procedures
- h) Have a policy and procedures for keeping files and records of the advocacy partnerships which comply with relevant legislation, including who the information belongs to and what happens to files and records when the advocacy partnerships end. This should include details of where and how records are stored. It should also include details of what and how much should be recorded in any notes.
- i) Ensure that any advocacy agreement complies with the law.

Principle 3 Independent advocacy is as free as it can be from conflicts of interest

Advocacy workers must:

- a) Be clear about their role as an advocate and where their responsibilities lie, including the boundaries of relationships with people other than the advocacy partner.
- b) Only act within the boundaries of their role descriptions and those of the organisation.

Advocacy Organisations must:

- c) Ensure that any Service Level Agreement is made in accordance with the Principles and Standards within the Guide for Commissioners and the Code of Practice.
- d) Have clear policies and procedures in place about the things that advocacy workers do and what to do in situations where service providers or other professionals may try to direct the work of the advocacy workers.
- e) Make sure that service providers are aware of what advocacy is and what the professional boundaries are.
- f) Ensure that all members of the organisation have clear job or role descriptions.
- g) Provide training, guidance and information to all its staff and volunteers about conflicts of interest, what they mean and what to do if such a conflict is identified.

Principle 4 Independent advocacy is accessible

Advocacy workers must:

- a) Promote the organisation and advocacy in the course of their work.

Advocacy Organisations must:

- b) Provide training for all relevant staff and agencies working with children and young people to promote referral to advocacy.
- c) Have joint working protocols or relationships with other organisations that work with children and young people and, where necessary, provide training and awareness raising for staff.
- d) Ensure that information about independent advocacy is made available to children and young people.

Appendix 1 – Advocacy is... Advocacy is not...

Advocacy is...

- about standing alongside people who are in danger of being pushed to the margins of society.
- about standing up for and sticking with a person or group and taking their side.
- a process of working towards natural justice.
- listening to someone and trying to understand their point of view.
- finding out what makes them feel good and valued.
- understanding their situation and what may be stopping them from getting what they want.
- offering the person support to tell other people what they want or introducing them to others who may be able to help.
- helping someone to know what choices they have and what the consequences of these choices might be.
- enabling a person to have control over their life but taking up issues on their behalf if they want you to.

Advocacy is not...

- making decisions for someone.
- mediation.
- counselling.
- befriending.
- care and support work.
- consultation.
- telling or advising someone what you think they should do.
- solving all someone's problems for them.
- speaking for people when they are able to express a view.
- filling all the gaps in someone's life.
- acting in a way which benefits other people more than the person you are advocating for.
- agreeing with everything a person says and doing anything a person asks you to do.

Appendix 2 – Glossary

Advocate

An advocate helps people express their views and make informed decisions. An advocate helps people to find out information, explore options and decide for themselves what they want. Advocates can be a voice for the person and encourage them to speak out for themselves. There are different kinds of advocacy, though they all share things in common. Advocates will never tell people what to do, or allow their own opinions to affect the support they provide. All advocacy tries to increase confidence and assertiveness so that people can start speaking out for themselves. Independent advocates are as free from conflicts of interest as possible.

Advocacy

The process of standing alongside another, speaking on behalf of another and encouraging the person to speak up for themselves. Advocacy can help address the imbalance of power in society and stand up to injustice.

Advocacy agreement

An Advocacy Agreement explains, for example, what the person can expect from their advocate, what issues they want the advocate to support them with, the contact details of the advocate, what happens at the end of the advocacy partnership and the advocacy organisation's complaints process.

Advocacy partner

The person who uses advocacy. Some advocacy organisations use the term 'client' or 'service user'.

Capacity

Ability to reason, make decisions and consider choices, express views and receive and understand information. The law assumes that people have capacity unless a doctor's assessment shows that a person lacks capacity.

Commissioner

Usually representatives from the Local Authority or Health Board who fund advocacy.

Community of interest

The group of people that the advocacy organisation has been set up to support, for example, people with learning difficulties or mental health issues.

Conflict of interest

Anything that could get in the way of an advocate being completely loyal to their advocacy partner. For example, it would not be appropriate for an advocate volunteering for a mental health advocacy organisation to also work in the local psychiatric hospital, because this would affect their ability to be on the side of the advocacy partner. It would also affect their relationships with hospital staff. Other conflicts of interest could include relationships as well as financial investments.

Discriminatory practices

Anything that an organisation or individual does that directly or indirectly shows prejudice or favouritism towards an individual or group of people.

Diversity

Differences, for example, in age, gender, sexuality, race, ethnicity, language, nationality or religion among various groups, at different levels such as within a community, organisation, or nation.

Equal opportunities

The prevention, elimination or regulation of discrimination between people on the grounds of, for example, gender, marital status, race, disability, age, sexual orientation, language, social origin or other personal attributes, including, but not limited to, religious beliefs or political opinions.

Funding contract

The agreement, usually between Local Authority or Health Boards and the advocacy organisation, which outlines how much funding the organisation receives, which geographical areas will be covered, who the advocacy is for and how long the funding is for. (Also see Service Level Agreement)

Independent advocacy organisation

Advocacy organisation that is structurally, financially and psychologically separate from service providers and other services.

Structurally — an independent advocacy organisation is a separate organisation in its own right. For example, they are registered as a charity or company and have their own Management Committee or Board of Directors. Everyone involved in the organisation recognises that they are separate and different from other organisations and services.

Financially — an independent advocacy organisation has its own source of funding that does not cause any conflicts of interest and that does not compromise the work it does. (See conflict of interest).

Psychologically — Everyone involved in the organisation knows that they are only limited in what they do by the principles of independent advocacy, resources and the law. It is important to recognise that although there may be conflicts of interest present, psychological independence is vital.

Jargon

Words that have special meanings that are only understood by certain people. For example: MHO (Mental Health Officer), CPN (Community Psychiatric Nurse), OT (Occupational Therapist), CTO (Compulsory Treatment Order).

Register of interests

A register lists any conflicts of interest that people who are involved in the organisation have. The level of information recorded in the register will be decided by the organisation. The organisation will decide who is able to access this information in accordance with relevant legislation, such as the Data Protection Act 1998.

Safeguard

Ensuring that people's rights are protected.

Service Level Agreement

The agreement, usually between the Local Authority or Health Boards and the advocacy organisation, which outlines how much funding they receive, which geographical areas will be covered, who the advocacy is for and how long the funding is for.

Service provider

A person or organisation involved in giving support or care services to an individual.

Service User

The person who uses advocacy. Some advocacy organisations use the term 'client' or 'advocacy partner'.

Support and supervision

Reflective practice, problem-solving, peer support, individual support and guidance for all members of staff and volunteers in an organisation. Supervision should be a positive experience for all and should take place regularly.

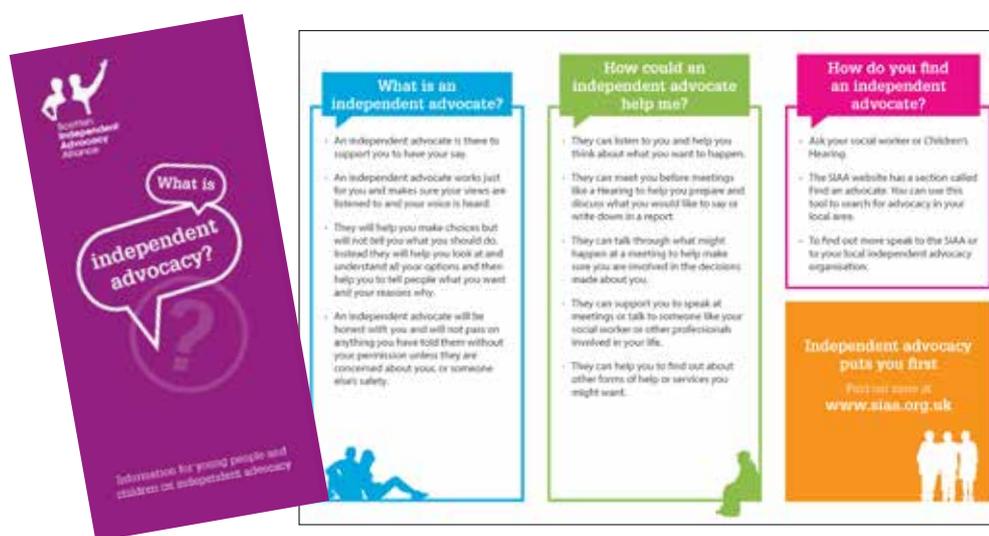
Third party

A person or organisation not directly connected with the advocacy partnership.

Appendix 3 – Resources

www.siaa.org.uk/Childrens-Advocacy-Leaflet.pdf

www.siaa.org.uk/Parents-Advocacy-Leaflet.pdf



What is independent advocacy?

- An independent advocate is there to support you to have your say.
- An independent advocate works just for you and makes sure your views are listened to and your voice is heard.
- They will help you make choices but will not tell you what you should do. Instead they will help you look at and understand all your options and then help you to tell people what you want and your reasons why.
- An independent advocate will be honest with you and will not pass on anything you have told them without your permission unless they are concerned about you, or someone else's safety.

How could an independent advocate help me?

- They can listen to you and help you think about what you want to happen.
- They can meet you before meetings like a hearing to help you prepare and discuss what you would like to say or write down in a report.
- They can talk through what might happen at a meeting to help make sure you are involved in the decisions made about you.
- They can support you to speak at meetings or talk to someone like your social worker or other professionals involved in your life.
- They can help you to find out about other forms of help or services you might want.

How do you find an independent advocate?

- Ask your social worker or Children's Hearing.
- The SIAA website has a section called Find an advocate. You can use this tool to search for advocacy in your local area.
- To find out more speak to the SIAA or to your local independent advocacy organisation.

Independent advocacy puts you first

Find out more at www.siaa.org.uk



What is independent advocacy?

Independent advocacy is a way to help people have a stronger voice and have as much control as possible over their own lives.

Independent advocacy organisations do not provide other types of services such as parenting support or child care. This helps to make sure that the independent advocacy organisation remains free of conflicts of interest.

The independent advocate helps the person or group to get the information they need to make real choices about their circumstances and supports the person or group to have their views and wishes heard.

An independent advocate may speak on behalf of people who are unable to do so for themselves.

An independent advocate is not a legal representative. They may help you find legal support but do not provide it themselves.

An independent advocate does not give advice, they are there just for you to help you have your say.

What can an independent advocate help me with?

- Supporting you to attend a children's hearing.
- Accessing information to explore and understand your options.
- Expressing your own needs and wishes.
- Accessing services to which you are entitled.
- Getting your rights upheld.
- Supporting you to attend a social work meeting such as a case conference or case group.
- Reading and understanding reports before and after meetings.
- Writing your own report towards a meeting. The worker will not write it themselves but will support you to write your own views.

What can an independent advocate not help me with?

- The advocate will not provide other support e.g. parenting or budgeting. The advocate can however signpost you on to support and help you access it.
- Solving all your problems.
- The advocate will not give you specific advice or tell you what you should do.

How do I access independent advocacy?

The SIAA website has a section called Find an advocate. You can use this tool to search for advocacy in your local area.

Access to independent advocacy varies across Scotland. Speak to your local independent advocacy organisation to find out what support they can provide.

Appendix 4 – A summary of the rights under the Convention on the Rights of the Child

http://www.unicef.org/crc/index_30228.html

Article 1 (Definition of the child)

The Convention defines a 'child' as a person below the age of 18, unless the laws of a particular country set the legal age for adulthood younger. The Committee on the Rights of the Child, the monitoring body for the Convention, has encouraged States to review the age of majority if it is set below 18 and to increase the level of protection for all children under 18.

Article 2 (Non-discrimination)

The Convention applies to all children, whatever their race, religion or abilities; whatever they think or say, whatever type of family they come from. It doesn't matter where children live, what language they speak, what their parents do, whether they are boys or girls, what their culture is, whether they have a disability or whether they are rich or poor. No child should be treated unfairly on any basis.

Article 3 (Best interests of the child)

The best interests of children must be the primary concern in making decisions that may affect them. All adults should do what is best for children. When adults make decisions, they should think about how their decisions will affect children. This particularly applies to budget, policy and law makers.

Article 4 (Protection of rights)

Governments have a responsibility to take all available measures to make sure children's rights are respected, protected and fulfilled. When countries ratify the Convention, they agree to review their laws relating to children. This involves assessing their social services, legal, health and educational systems, as well as levels of funding for these services. Governments are then obliged to take all necessary steps to ensure that the minimum standards set by the Convention in these areas are being met. They must help families protect children's rights and create an environment where they can grow and reach their potential. In some instances, this may involve changing existing laws or creating new ones. Such legislative changes are not imposed, but come about through the

same process by which any law is created or reformed within a country. Article 41 of the Convention points out that when a country already has higher legal standards than those seen in the Convention, the higher standards always prevail.

Article 5 (Parental guidance)

Governments should respect the rights and responsibilities of families to direct and guide their children so that, as they grow, they learn to use their rights properly. Helping children to understand their rights does not mean pushing them to make choices with consequences that they are too young to handle. Article 5 encourages parents to deal with rights issues 'in a manner consistent with the evolving capacities of the child'. The Convention does not take responsibility for children away from their parents and give more authority to governments. It does place on governments the responsibility to protect and assist families in fulfilling their essential role as nurturers of children.

Article 6 (Survival and development)

Children have the right to live. Governments should ensure that children survive and develop healthily.

Article 7 (Registration, name, nationality, care)

All children have the right to a legally registered name, officially recognised by the government. Children have the right to a nationality (to belong to a country). Children also have the right to know and, as far as possible, to be cared for by their parents.

Article 8 (Preservation of identity)

Children have the right to an identity — an official record of who they are. Governments should respect children's right to a name, a nationality and family ties.

Article 9 (Separation from parents)

Children have the right to live with their parent(s), unless it is bad for them. Children whose parents do not live together have the right to stay in contact with both parents, unless this might hurt the child.

Article 10 (Family reunification)

Families whose members live in different countries should be allowed to move between those countries so that parents and children can stay in contact, or get back together as a family.

Article 11 (Kidnapping)

Governments should take steps to stop children being taken out of their own country illegally. This article is particularly concerned with parental abductions. The Convention's Optional Protocol on the sale of children, child prostitution and child pornography has a provision that concerns abduction for financial gain.

Article 12 (Respect for the views of the child)

When adults are making decisions that affect children, children have the right to say what they think should happen and have their opinions taken into account. This does not mean that children can now tell their parents what to do. This Convention encourages adults to listen to the opinions of children and involve them in decision-making — not give children authority over adults. Article 12 does not interfere with parents' right and responsibility to express their views on matters affecting their children. Moreover, the Convention recognizes that the level of a child's participation in decisions must be appropriate to the child's level of maturity. Children's ability to form and express their opinions develops with age and most adults will naturally give the views of teenagers greater weight than those of a preschooler, whether in family, legal or administrative decisions.

Article 13 (Freedom of expression)

Children have the right to get and share information, as long as the information is not damaging to them or others. In exercising the right to freedom of expression, children have the responsibility to also respect the rights, freedoms and reputations of others. The freedom of expression includes the right to share information in any way they choose, including by talking, drawing or writing.

Article 14 (Freedom of thought, conscience and religion)

Children have the right to think and believe what they want and to practise their religion, as long as they are not stopping other people from enjoying their rights. Parents should help guide their children in these matters. The Convention respects the rights and duties of parents in providing religious and moral guidance to their children. Religious groups around the world have expressed support for the Convention, which indicates that it in no way prevents parents from bringing their children up within a religious tradition. At the same time, the Convention recognizes that as children mature and are able to form their own views, some may question certain religious practices or cultural traditions. The Convention supports children's right to examine their beliefs, but it also states that their right to express their beliefs implies respect for the rights and freedoms of others.

Article 15 (Freedom of association)

Children have the right to meet together and to join groups and organisations, as long as it does not stop other people from enjoying their rights. In exercising their rights, children have the responsibility to respect the rights, freedoms and reputations of others.

Article 16 (Right to privacy)

Children have a right to privacy. The law should protect them from attacks against their way of life, their good name, their families and their homes.

Article 17 (Access to information; mass media)

Children have the right to get information that is important to their health and wellbeing. Governments should encourage mass media — radio, television, newspapers and Internet content sources — to provide information that children can understand and to not promote materials that could harm children. Mass media should particularly be encouraged to supply information in languages that minority and indigenous children can understand. Children should also have access to children's books.

Article 18 (Parental responsibilities; state assistance)

Both parents share responsibility for bringing up their children, and should always consider what is best for each child. Governments must respect the responsibility of parents for providing appropriate guidance to their children — the Convention does not take responsibility for children away from their parents and give more authority to governments. It places a responsibility on governments to provide support services to parents, especially if both parents work outside the home.

Article 19 (Protection from all forms of violence)

Children have the right to be protected from being hurt and mistreated, physically or mentally. Governments should ensure that children are properly cared for and protect them from violence, abuse and neglect by their parents, or anyone else who looks after them. In terms of discipline, the Convention does not specify what forms of punishment parents should use. However any form of discipline involving violence is unacceptable. There are ways to discipline children that are effective in helping children learn about family and social expectations for their behaviour — ones that are non-violent, are appropriate to the child's level of development and take the best interests of the child into consideration. In most countries, laws already define what sorts of punishments are considered excessive or abusive. It is up to each government to review these laws in light of the Convention.

Article 20 (Children deprived of family environment)

Children who cannot be looked after by their own family have a right to special care and must be looked after properly, by people who respect their ethnic group, religion, culture and language.

Article 21 (Adoption)

Children have the right to care and protection if they are adopted or in foster care. The first concern must be what is best for them. The same rules should apply whether they are adopted in the country where they were born, or if they are taken to live in another country.

Article 22 (Refugee children)

Children have the right to special protection and help if they are refugees (if they have been forced to leave their home and live in another country), as well as all the rights in this Convention.

Article 23 (Children with disabilities)

Children who have any kind of disability have the right to special care and support, as well as all the rights in the Convention, so that they can live full and independent lives.

Article 24 (Health and health services)

Children have the right to good quality health care — the best health care possible — to safe drinking water, nutritious food, a clean and safe environment, and information to help them stay healthy. Rich countries should help poorer countries achieve this.

Article 25 (Review of treatment in care)

Children who are looked after by their local authorities, rather than their parents, have the right to have these living arrangements looked at regularly to see if they are the most appropriate. Their care and treatment should always be based on 'the best interests of the child'. (see Guiding Principles, Article 3)

Article 26 (Social security)

Children — either through their guardians or directly — have the right to help from the government if they are poor or in need.

Article 27 (Adequate standard of living)

Children have the right to a standard of living that is good enough to meet their physical and mental needs. Governments should help families and guardians who cannot afford to provide this, particularly with regard to food, clothing and housing.

Article 28: (Right to education)

All children have the right to a primary education, which should be free. Wealthy countries should help poorer countries achieve this right. Discipline in schools should respect children's dignity. For children to benefit from education, schools must be run in an orderly way — without the use of violence. Any form of school discipline should take into account the child's human dignity. Therefore, governments must ensure that school administrators review their discipline policies and eliminate any discipline practices involving physical or mental violence, abuse or neglect. The Convention places a high value on education. Young people should be encouraged to reach the highest level of education of which they are capable.

Article 29 (Goals of education)

Children's education should develop each child's personality, talents and abilities to the fullest. It should encourage children to respect others, human rights and their own and other cultures. It should also help them learn to live peacefully, protect the environment and respect other people. Children have a particular responsibility to respect the rights their parents, and education should aim to develop respect for the values and culture of their parents. The Convention does not address such issues as school uniforms, dress codes, the singing of the national anthem or prayer in schools. It is up to governments and school officials in each country to determine whether, in the context of their society and existing laws, such matters infringe upon other rights protected by the Convention.

Article 30 (Children of minorities/indigenous groups)

Minority or indigenous children have the right to learn about and practice their own culture, language and religion. The right to practice one's own culture, language and religion applies to everyone; the Convention here highlights this right in instances where the practices are not shared by the majority of people in the country.

Article 31 (Leisure, play and culture)

Children have the right to relax and play, and to join in a wide range of cultural, artistic and other recreational activities.

Article 32 (Child labour)

The government should protect children from work that is dangerous or might harm their health or their education. While the Convention protects children from harmful and exploitative work, there is nothing in it that prohibits parents from expecting their children to help out at home in ways that are safe and appropriate to their age. If children help out in a family farm or business, the tasks they do be safe and suited to their level of development and comply with national labour laws. Children's work should not jeopardize any of their other rights, including the right to education, or the right to relaxation and play.

Article 33 (Drug abuse)

Governments should use all means possible to protect children from the use of harmful drugs and from being used in the drug trade.

Article 34 (Sexual exploitation)

Governments should protect children from all forms of sexual exploitation and abuse. This provision in the Convention is augmented by the Optional Protocol on the sale of children, child prostitution and child pornography.

Article 35 (Abduction, sale and trafficking)

The government should take all measures possible to make sure that children are not abducted, sold or trafficked. This provision in the Convention is augmented by the Optional Protocol on the sale of children, child prostitution and child pornography.

Article 36 (Other forms of exploitation)

Children should be protected from any activity that takes advantage of them or could harm their welfare and development.

Article 37 (Detention and punishment)

No one is allowed to punish children in a cruel or harmful way. Children who break the law should not be treated cruelly. They should not be put in prison with adults, should be able to keep in contact with their families, and should not be sentenced to death or life imprisonment without possibility of release.

Article 38 (War and armed conflicts)

Governments must do everything they can to protect and care for children affected by war. Children under 15 should not be forced or recruited to take part in a war or join the armed forces. The Convention's Optional Protocol on the involvement of children in armed conflict further develops this right, raising the age for direct participation in armed conflict to 18 and establishing a ban on compulsory recruitment for children under 18.

Article 39 (Rehabilitation of child victims)

Children who have been neglected, abused or exploited should receive special help to physically and psychologically recover and reintegrate into society. Particular attention should be paid to restoring the health, self-respect and dignity of the child.

Article 40 (Juvenile justice)

Children who are accused of breaking the law have the right to legal help and fair treatment in a justice system that respects their rights. Governments are required to set a minimum age below which children cannot be held criminally responsible and to provide minimum guarantees for the fairness and quick resolution of judicial or alternative proceedings.

Article 41 (Respect for superior national standards)

If the laws of a country provide better protection of children's rights than the articles in this Convention, those laws should apply.

Article 42 (Knowledge of rights)

Governments should make the Convention known to adults and children. Adults should help children learn about their rights, too. (See also article 4.)

Articles 43–54 (implementation measures)

These articles discuss how governments and international organizations like UNICEF should work to ensure children are protected in their rights.

Appendix 5 – Information Sharing Between Services in Respect of Children and Young People

<http://www.gov.scot/Resource/0041/00418080.pdf>

Information Sharing Between Services in Respect of Children and Young People

The Information Commissioner's Office (ICO) is contacted regularly by practitioners seeking advice and guidance on whether they can share professional concerns about their clients/patients and, if so, what level of information may be shared. Often, the Data Protection Act 1998 (the Act) is viewed as preventing such sharing and it can be fear of non-compliance that becomes a barrier, even though there may be a concern about a child's or young person's wellbeing. While it is acknowledged that practitioners need to be sure their actions comply with all legal and professional obligations, fear that sharing genuine concerns about a child's or young person's wellbeing will breach the Act is misplaced. Rather, the Act promotes lawful and proportionate information sharing, while also protecting the right of the individual to have their personal information fairly processed.

Most practitioners are confident about appropriate and necessary sharing where there is a child protection risk. The problem can be where the circumstances do not yet reach the child protection trigger yet professional concerns exist, albeit at a lower level. Getting It Right For Every Child (GIRFEC) introduced eight indicators of wellbeing: safe, healthy, achieving, nurtured, active, respected, responsible and included (SHANARRI). In many cases, a risk to wellbeing can be a strong indication that the child or young person could be at risk of harm if the immediate matter is not addressed. As GIRFEC is about early intervention and prevention it is very likely that information may need to be shared before a situation reaches crisis. In the GIRFEC approach, a child's Named Person may have concerns about the child's wellbeing, or other individuals or agencies may have concerns that they wish to share with the Named Person. While it is important to protect the rights of individuals, it is equally important to ensure that children are protected from risk of harm.

Where a practitioner believes, in their professional opinion, that there is risk to a child or young person that may lead to harm, proportionate sharing of information is unlikely to constitute a breach of the Act in such circumstances.

The Act requires that an individual's data be processed fairly and lawfully and that specific conditions/justifications for processing are met. The Act provides several conditions/justifications for processing, only the first of which rely on consent and, where required, it should be fully informed and freely given. However, the issue of obtaining consent can be difficult and it should only be sought when the individual has real choice over the matter. Where circumstances exist such that consent may not be appropriate, for example where an assessment under the SHANARRI principles raises concerns, the Act provides conditions to allow sharing of this information, such as 'for the exercise of any other functions of a public nature exercised in the public interest by any person' or 'in the legitimate interests of the data controller or the third party to whom the data are disclosed so long as it is not prejudicial to the child', and procedures should be clear about those circumstances which may necessitate processing without consent.

It is vital that data controllers put appropriate and relevant protocols in place and that they are conveyed to practitioners to provide them with a support mechanism for the decision making process. It is also vital that a recording process is included in the protocol so that the decision — including the rationale behind making it — is formally recorded. Such protocols will assist in providing confidence to practitioners in the event the decision is challenged.

It is very important that the practitioner uses all available information before they decide whether or not to share. Experience, professional instinct and other available information will all help with the decision making process as will anonymised discussions with colleagues about the case. If there is any doubt about the wellbeing of the child and the decision is to share, the Data Protection Act should not be viewed as a barrier to proportionate sharing.

Dr Ken Macdonald

*Assistant Commissioner Scotland & Northern Ireland
Information Commissioner's Office*