

Improving Advocacy for Children and Young People: Principles and Minimum Standards Analysis of Consultation Responses

**IMPROVING ADVOCACY FOR
CHILDREN AND YOUNG PEOPLE:
PRINCIPLES AND MINIMUM STANDARDS**

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NOTE ABOUT TERMINOLOGY

Throughout this report, the term “stand-alone advocacy services” (or “stand-alone advocacy service providers”) will be used to refer to those third sector organisational respondents whose responses indicated that they:

(a) were solely providers of independent advocacy services **or** supported the use of the guidelines published by the Scottish Independent Advocacy Alliance (SIAA) in providing advocacy services to children and young people

and / or

(b) their response to this consultation indicated that they were **not** in favour of developing a separate set of principles and minimum standards focusing specifically on the provision of advocacy for children and young people.

This terminology is used to avoid any confusion with the term “independent advocacy services” which, according to the Mental Health (Care & Treatment) (Scotland) Act 2003 may include services provided by organisations other than stand-alone advocacy services.

EXECUTIVE SUMMARY

Introduction

1. In November 2011, the Scottish Government published a discussion paper to consult stakeholders about possible principles and minimum standards for advocacy services for children and young people. This consultation was one part of a raft of initiatives being undertaken by the Scottish Government to ensure that children and young people can have their voices heard in matters that affect them. The discussion paper was developed in consultation with a National Steering Group on Advocacy Support for Children and Young People, and followed on from research (previously commissioned by the group) which recommended the development of national standards for children's advocacy services in Scotland.
2. Five principles, each with a set of associated standards, were proposed. The purpose of the consultation exercise was to seek respondents' views on whether or not principles and minimum standards focussing solely on the provision of advocacy for children and young people were necessary and if so, whether what was being proposed was suitable. If respondents did not think the proposals were suitable, they were invited to suggest alternative measures or arrangements.
3. The main consultation document (for adults / organisational respondents) included 16 questions comprising both open and closed questions. Five questions focused specifically on the five proposed principles and asked respondents whether (a) they agreed with the principle and its associated standards and (b) whether there were any changes or additions they would like to make.
4. A separate, shorter written document was published and circulated among children's charities and a range of other agencies that work with children to gather the views of children and young people about the principles and minimum standards. The children and young people's consultation document (CYP consultation) comprised seven questions. One of the questions had five parts that focused specifically on the five proposed principles.
5. Analysis of the consultation responses was carried out by Griesbach & Associates.

About the respondents

6. The consultation attracted 84 responses from adults / organisations. Of these, 82 were available for analysis. These comprised responses from 70 organisations and 11 individuals. (There was no information about the status of one respondent.) Over half of the organisational respondents were from the third sector, and one-quarter were from local authorities. Other responses came from NHS, police, academic and non-governmental organisations. One-third of the third sector responses were from stand-alone advocacy services, and these comprised a fifth of responses overall.
7. There were 112 responses from children and young people who ranged in age from 6-25. Of these, 88 were from individuals and the remaining 24 were group responses. For various reasons, three of the individual responses were excluded from analysis. Group responses were used to highlight specific issues as appropriate, but the main analysis was restricted to the responses from 85 individual children and young people.

8. Of these 85 children, around two-thirds reported that they had help from someone to speak out — most often from a family member, advocate, or social worker. The qualities that were looked for most often by children and young people in this regard were for someone who would listen, who would help, and who was kind.

Summary of key findings

9. The responses to this consultation revealed very strong support for promoting, extending and improving advocacy services for children and young people. These services were thought to be vital, and to be currently under-resourced.
10. Two-thirds of respondents expressed support for the idea of a separate set of principles and minimum standards for children's advocacy services. There was also agreement in principle with the idea of involving a broader range of individuals and groups in providing advocacy, support and guidance to children and young people. However, significant concerns were raised with the proposals set out in the consultation document by a wide range of respondents.
11. In their responses to the closed questions, approximately half of all respondents expressed agreement with each of the five proposed principles and associated standards, whereas a third (mainly the stand-alone advocacy services) were less supportive – ticking boxes to indicate only partial agreement.
12. However, both groups expressed reservations about the principles and minimum standards as set out in the consultation document. These were highlighted in their responses to the open questions.
13. Therefore, in considering how to take this work forward, the main focus should be placed on the qualitative findings — which indicate a need for substantial clarification and revision of the suggested proposals.

Is a separate set of principles / minimum standards needed for advocacy services for children and young people?

14. The main difference between the responses from stand-alone advocacy services and other types of respondents concerned the question of whether a separate set of principles and minimum standards were needed.
15. Respondents from stand-alone advocacy services felt strongly that existing SIAA guidance and materials were sufficient to address the provision of advocacy for children and young people. Respondents pointed out that the SIAA standards had been developed through extensive consultation and in collaboration with the Scottish Government. They argued that developing a *separate* set of principles and minimum standards would cause confusion, result in a *lowering* of standards, and lead to a proliferation of standards for different groups.
16. Those who were in *favour* of a separate set of principles and minimum standards for children's advocacy services argued that children and young people have unique needs and the range of circumstances in which they may require advocacy support are very different to those for adults. In addition, these respondents felt that particular skills and specialised training should be expected of people who provide advocacy services to children and young people, and that the development

of a separate set of principles and minimum standards would provide an impetus for ensuring that children and young people's voices are heard.

17. Beyond these divergent views about the need for a separate set of standards, respondents often expressed similar reservations in relation to the proposed principles and minimum standards, and in relation to the consultation document itself.

Lack of clarity regarding the consultation document

18. Respondents felt that the document needed to be clearer about basic definitions and key concepts (including a definition of the advocacy role; a definition of who can be an advocate; definitions of key concepts such as 'independent advocacy' and 'conflicts of interest', etc.). Moreover, respondents wanted clarity about the relationship between the proposed principles / minimum standards and other extant guidance, legislation, codes of conduct and frameworks.
19. Respondents also frequently requested clarification about who the principles and minimum standards were aimed at. Despite statements in the document that the standards were intended for a broad target audience, respondents felt that they could only apply to individuals providing advocacy in a professional capacity. Consequently there was confusion about the relationship between the Scottish Government's proposals and the existing standards for independent advocacy.

Concerns about the proposed principles and minimum standards

20. In addition to the need for greater clarity expressed by respondents in relation to the consultation document itself, there were substantial reservations raised in relation to the principles and minimum standards as drafted. Even among those who generally supported the principles, there were concerns about how the principles / minimum standards would or could be applied in practice.
21. Two issues were raised repeatedly: the issue of conflict of interest and a related issue of who is an appropriate person to be an advocate for a child / young person.

Conflicts of interest

22. Respondents strongly agreed with Principle 4 that advocacy support should be free from conflicts of interest. They were also supportive of the idea expressed in Principle 3 that children and young people should be able to choose their own advocate. However, respondents' comments suggested that this right to choose could be incompatible with the principle of ensuring that advocacy is free from conflicts of interest. At the very least, this could result in children and young people's views not being expressed or heard. At the worst, and more importantly, the child could actually be put into a position of risk.
23. Some respondents proposed a compromise solution which provided the most vulnerable children and young people with independent advocacy but which also gave children and young people the option of choosing from a wider range of advocates for other less sensitive issues.

Who is an appropriate person to be an advocate for children and young people?

24. In relation to this latter point, respondents identified a hierarchy of advocacy provision involving three levels:

- Independent advocacy (the gold standard): This should be provided by trained, qualified professionals who should meet certain standards and work to agreed codes of conduct. A wide range of respondents, including those beyond the stand-alone advocacy service providers, felt the most vulnerable children and young people should have access to this form of advocacy.
- Advocacy provided by non-independent professionals (i.e. those who have an ongoing relationship with the child by virtue of a service they provide). This group of potential advocates should also be subject to agreed principles and standards, but not necessarily the same ones as independent advocates. Advocacy provision by this group might be appropriate in certain situations (and these should be clearly defined), but not in others (because of the potential for a conflict of interest).
- Informal advocacy (provided by friends, family members and carers): This form of advocacy may be used in certain (probably limited) circumstances where there is little or no concern about the implications of having a conflict of interest. This group of advocates should be provided with guidance, but could not be expected to comply with standards. Some respondents felt it was not appropriate to refer to this type of support as 'advocacy'.

Other issues

25. Other issues regularly raised by respondents included:

- Concerns about the lack of resources attached to the proposals
- Uncertainty about how the proposed principles and minimum standards could or should be monitored and evaluated
- Tensions regarding children's understanding of the purpose of advocacy
- The nature of advocacy provision for children with particular needs (i.e. those who have disabilities, complex communication needs, and those from black and minority ethnic or religious communities).

Conclusions

26. There was a great deal of support for the Scottish Government's efforts to improve advocacy provision for children and young people among the respondents to this consultation. However, respondents' comments often suggested that, in their current form, the proposed principles and minimum standards could only be understood as aspirational. Many struggled to see how the proposals could be implemented in practice.

1 INTRODUCTION

- 1.1 In 2008, the Scottish Government published *Getting it Right for Every Child (GIRFEC)*. GIRFEC set out a new approach to improving the well-being of children and young people in Scotland. It has led to significant changes in the way agencies work together to: (a) identify needs and risks, and (b) provide support to children and their families. GIRFEC puts the child / young person's interests at the heart of assessment, planning and decision-making processes. It incorporates principles set out in The Children's Charter and the UN Convention on the Rights of the Child, and includes a requirement that children are given a voice and are involved in decisions that affect their well-being.
- 1.2 In *Do the Right Thing* (2009), the Scottish Government's response to the 2008 recommendations of the UN Committee on the Rights of the Child, the Government re-affirmed the right of children and young people to have their voices heard in matters that affect them, and it committed to making improvements in advocacy support for children and young people. Part of these efforts involved the creation of a National Steering Group on Advocacy Support for Children and Young people.
- 1.3 Research carried out on behalf of the Steering Group¹ found that:
- Advocacy was seen to be crucial in ensuring that children and young people's rights are upheld.
 - There was a general commitment to independence (in terms of the advocate's objectivity) in the provision, commissioning and funding of advocacy. However, central to the discussion of 'independence' was children and young people's views about whether a service provided the impartiality and quality that they needed.
 - For children and young people, the quality of the advocacy relationship is important.
 - Children and young people do not usually refer themselves to advocacy services, and do not have a great deal of awareness of advocacy in advance of their first contact with a service.
 - Children and young people's access to advocacy support in Scotland depends on where they live rather than on what they need.
- 1.4 This research recommended, among other things, the development of national standards in this area.
- 1.5 However, shortly after this research was published, the Scottish Independent Advocacy Alliance (SIAA) issued updated guidance for services providing advocacy support to people (both adults, and children and young people) using health services.²

¹ S Elsley (2010) *'Advocacy makes you feel brave': Advocacy support for children and young people in Scotland*. Scottish Government. January 2010. Available at: <http://www.scotland.gov.uk/Publications/2010/01/07144331/0>.

² See Scottish Independent Advocacy Alliance (SIAA) website: <http://www.siaa.org.uk/content/view/187>. Guidance reissued in February 2010.

- 1.6 It should also be noted that, for people with a mental disorder (both children and adults), there is a legal right of 'independent advocacy', set out in the Mental Health (Care & Treatment) (Scotland) Act 2003. This Act also places a duty on local authorities and NHS Boards to ensure that such services are available. For the purposes of the Act, 'independent advocacy' is defined as advocacy which is provided by persons / agencies other than the Local Authority or Health Board that is providing care or treatment for the mental health problem. In other words, the provision of advocacy must be separate from the interests of those persons who are concerned with an individual's care and treatment. Under the Mental Health (Care & Treatment) (Scotland) Act 2003, some children will have a right to access independent advocacy. However, the Act will not apply for the majority of children who may require advocacy support at some point in their lives for a variety of reasons.
- 1.7 In November 2011, the Scottish Government published a discussion paper to consult stakeholders about possible principles and minimum standards for advocacy services for children and young people. Five principles, each with a set of associated standards, were proposed.
- 1.8 The purpose of the consultation was to seek respondents' views on whether or not principles and minimum standards focusing solely on the provision of advocacy for children and young people were necessary and if so, whether what was being proposed was suitable. If respondents did not think the proposals were suitable they were asked what alternative measures or arrangements should be considered.
- 1.9 The Scottish Government indicated that the principles and standards set out in the consultation paper would provide a baseline for practice in the wide range of situations where advocacy support for young people should be provided (for example, for looked after children, where children are in secure care, and for children with disabilities, trafficked children and unaccompanied asylum-seeking children, etc.). In addition, as there is a new requirement in legislation³ to provide advocacy support to children and young people involved in the Children's Hearings System, the consultation findings would also inform the development of services provided in this context.

About the consultation process

- 1.10 The consultation proposals were published on 14 November on the Scottish Government's website and a notification was subsequently issued to over 10,000 stakeholders with an interest in children's rights and children's services. The notification list included:
- Local authorities
 - Police
 - Health boards
 - Third sector organisations.

³ Children's Hearings (Scotland) Act 2011.

- 1.11 Separately, a substantial number of statutory and third sector organisations were approached to support the Government in obtaining the views of children and young people on the proposals.
- 1.12 During the consultation period, the Scottish Government also hosted three half-day information events focusing on the consultation. These were attended by around 80 organisations.

Main consultation

- 1.13 The main consultation (for adults / organisational respondents) comprised a written document which set out the context for the proposed principles and minimum standards.⁴ The document contained 16 questions. Most of these sought a 'Yes' / 'No' / 'No opinion' response to an initial closed question, and then provided space for additional comments. Five of the questions focused on the five proposed principles, and asked respondents whether (a) they agreed with the principle and its associated standards and (b) whether there were any changes or additions they would like to make. The questions are shown in Appendix 1.

Consulting children and young people

- 1.14 A separate, shorter written document was published and circulated among children's charities and a range of other agencies that work with children to gather the views of children and young people about the principles and minimum standards.⁵ The children and young people's consultation document (CYP consultation) comprised seven questions. One of the questions had five parts that focused specifically on the five proposed principles. Children and young people were asked whether (a) they agreed with the principle and (b) whether they thought anything else should be included. The questions from the CYP consultation are shown in Appendix 2.

About the analysis

- 1.15 Frequency analysis was carried out on responses to closed questions from both consultations. However, analysis was mainly qualitative in nature and sought to identify the main themes arising from the responses to the open questions. Comparative analysis was carried out to ascertain differences in views between different types of respondents (i.e. local authority, NHS Board, third sector, etc.)
- 1.16 In reporting, we have integrated the findings from the CYP consultation with that of the main consultation. The format of the report largely follows the structure of the main consultation questionnaire, with some grouping of questions.

Structure of the report

- 1.17 The structure of this report is as follows:

- Chapter 2 provides a description of the respondents.

⁴ *Improving advocacy for children and young people: Principles and minimum standards*. November 2011. Available at: <http://www.scotland.gov.uk/Publications/2011/11/10141739/10>.

⁵ *Advocacy: Supporting children and young people to speak out. Consultation with children and young people on advocacy by the Scottish Government*. November 2011. Available at: <http://www.scotland.gov.uk/Resource/Doc/1141/0124701.pdf>.

- Chapter 3 addresses the first question from the main consultation document: (Are the aims and objectives of the discussion paper clear?) This section also includes information from the CYP consultation about children and young people's experiences and understanding of advocacy.
- Chapter 4 considers the views of respondents in relation to the second question in the main consultation document about whether a separate suite of principles and minimum standards are needed for advocacy for children and young people.
- Chapter 5 reports on respondents' views (from both consultations) about the five proposed principles and their associated standards.
- Chapter 6 focuses on respondents' views (from the main consultation) about the **application** of the principles and minimum standards. This section covers questions 3 (target audiences), 4 (range of circumstances), 5 (conflicts of interest) and 13 (how the principles and minimum standards would apply to individuals / organisations). This section also includes the responses from the CYP consultation to question 6 (Who should know about the advocacy principles and standards?)
- Chapter 7 includes findings from questions 11 and 12 from the main consultation document (Do the principles and minimum standards reflect your understanding of what advocacy support for children and young people should look like? and What is your view on whether *all* advocacy support for children and young people should only be provided by independent advocacy services as defined under the Mental Health (Care & Treatment) (Scotland) Act 2003?)
- Chapter 8 focuses on respondents' views on how the proposed principles and minimum standards link with and complement other resources, guidance, principles and standards (Questions 14 and 15 from the main consultation document).
- Chapter 9 sets out the conclusions of the analysis.

2 DESCRIPTION OF THE RESPONDENTS

- 2.1 This section provides a description of the respondents to the consultation.
- 2.2 The consultation attracted 84 responses from adults / organisations and 112 responses from children and young people.

Adult / organisational respondents

- 2.3 Of the 84 responses from adults / organisations, two were withheld from the analysis at the respondents' request. Therefore, the analysis presented in this report is based on 82 adult / organisational responses. These came from 70 organisations and 11 individuals. There was no information about the status of one respondent.
- 2.4 The 11 individual respondents included one MSP, one NHS professional and one individual from a third sector organisation. Respondent Information Forms were not available for the other eight individual respondents. However, it was possible to infer that at least four of these were individuals working in stand-alone advocacy agencies because of the nature of their response.
- 2.5 Eight responses (including the ones from the four individuals just mentioned) were 'campaign' (i.e. duplicate) responses which appeared to have been submitted by different agencies or individuals involved in the provision of independent advocacy services. A further five responses contained modified versions of the campaign response.
- 2.6 Over half of the 70 organisational respondents were from the third sector and nearly a quarter were local authority respondents. More than one-third of the third sector respondents (17 out of 45) were stand-alone advocacy services. (See Table 2.1.)
- 2.7 In addition, other types of respondents (including local authority, NHS, partnership and police respondents) also reported that they had a remit for either delivering and / or commissioning advocacy services for children and young people. Altogether, just under a half of the organisational respondents (32 out of 70, or 46%) had some involvement in the delivery and / or commissioning of advocacy. (See Table 2.2.) A list of the adult / organisational respondents is provided in Appendix 3.

Table 2.1: Breakdown of adult / organisational respondents, by respondent type

	Individual	Organisation	Not known	Total	%
Third sector, of which...					
<i>Stand-alone advocacy services</i>	4	12	1	17	21%
<i>Umbrella / membership orgs</i>		6		6	7%
<i>Other third sector org</i>	1	21		22	27%
Total third sector respondents	5	39	1	45	55%
Local authority		18		18	22%
NHS	1	3		4	5%
Non-governmental organisation (NGO)		4		4	5%
Professional body		3		3	4%
Other (police, partnership body, academic, MSP)	1	3		4	5%
Respondent type not known	4			4	5%
Total	11	70	1	82	100%

Percentages total 101% due to rounding.

Table 2.2: Number of organisational respondents involved in the delivery or commissioning of advocacy services for CYP, by respondent type (base = 70)

	Deliver	Commission	Deliver and commission
Third sector			
Stand-alone advocacy services	7		
Umbrella / membership orgs	1		
Other third sector org	8	2	
Local authority	2	3	6
NHS	1		
Other (police, partnership body)		2	
Total	19	7	6
Percent (of 70 org respondents)	27%	10%	9%

The children and young people respondents

- 2.8 There were 112 responses from children and young people. Of these, 88 were from individuals, and the remaining 24 were group responses. The Scottish Government had encouraged children and young people to offer their views in a format that they considered most suitable, and therefore there is some variation in the nature of responses received.
- 2.9 Of the 88 individual responses two were drawings only. A further response was almost blank, and came with a note from a care worker to indicate that the individual respondent had special needs and was unable to complete much of the

form. Thus the analysis of individual responses is effectively based on 85 responses. This is the denominator used in later sections of this document.

2.10 The (24) group responses included responses from 11 facilitated events held by a number of different services to gather the views of groups of children and young people regarding the consultation questions. These events were very varied in nature, ranging from detailed facilitated sessions with materials especially designed for the purpose and large amounts of feedback, to events which generated a short feedback summary on just one or two of the questions.

2.11 The size of the groups ranged from two to 11. In total, 127 individuals were involved in the group discussions. The (24) group responses were made up as follows:

- 2 were drawings, done as a group, and linked to individual responses.
- 4 were non-standard responses which did not follow the consultation questionnaire. These included (among other things) findings from a questionnaire reporting on service user feedback on advocacy service provision from one children's support service, and a second response containing narrative material and photographs from another.
- 5 responses focused almost exclusively on Question 3 in the CYP consultation document (the qualities of an advocate).
- The remaining 13 group responses were reasonably complete. They were collated onto a copy of the consultation questionnaire to varying degrees.

2.12 In this report, the group responses have been used to highlight specific issues as appropriate, but the main analysis has been restricted to the responses from individual children and young people.

Age distribution

2.13 Children and young people who took part in the consultation ranged in age from 6-25.

- Individual respondents ranged in age from 6-20. The average age of individual respondents was 12. There were 22 individual respondents (one-quarter of all individual respondents) aged 10 or younger: 3 six year olds, 3 seven year olds, 4 eight year olds, 6 nine year olds and 6 ten year olds.
- Group respondents ranged in age from 10-25. One group included individuals aged 10-15, while the participants in all other groups had a minimum age of 12. The oldest group was 17-25.

3 VIEWS ON THE AIMS AND OBJECTIVES OF THE DISCUSSION PAPER

- 3.1 The first question in the main consultation document sought respondents' views on whether the aims and objectives of the discussion paper were clear.
- 3.2 Over half of respondents (46 out of 82) felt they were. However, a substantial proportion of respondents (22 out of 82), including all but two of the stand-alone advocacy service providers, felt they were not. Four of the local authority respondents also felt that the aims and objectives of the discussion paper were not clear. (See Table 3.1.)⁶

Table 3.1: Are the aims and objectives of this discussion paper clear?

	Yes	No	Other*	No response	Total
Third sector, of which...					
Stand-alone advocacy services	1	15		1	17
Umbrella / membership orgs	4			2	
Other third sector org	14	1	1	6	22
Local authority	14	4			18
NHS	3	1			4
NGO	2			2	4
Professional body		1		2	3
Other (police, partnership body, academic, MSP)	4				4
Respondent type not known	4				4
Total	46	22	1	13	82
Percentage	56%	27%	1%	16%	100%

* Other = one third sector respondent ticked both 'Yes' and 'No.'

- 3.3 Those who felt the aims and objectives *were clear* generally welcomed the Scottish Government's commitment and efforts to improve the quality, consistency and availability of advocacy for children and young people in Scotland. However, even among respondents who felt the aims and objectives of the discussion paper *were clear*, there were differing views, and indeed some confusion about what the aims and objectives were:

The paper updates existing guidance and brings it into line with an evolving policy context... (Local authority respondent, #2)

The discussion paper sets out a clear aim and objective towards a minimum standard. (Local authority respondent, #34)

They [the aims and objectives] are clear and helpful in relation to the provision of formal advocacy services.... On the other hand, the discussion paper's actual recommendations largely overlook informal advocacy and

⁶ In some of the tables in this report where 100% is shown in the total column, adding the figures across rows or down columns may actually produce a total of 99% or 101% due to rounding.

proposes minimum standards primarily / exclusively for 'services'. (Third sector respondent, #57)

The paper is clear in that it aims to discuss the principles and minimum standards for advocacy for children and young people. What is less clear is who the principles and standards apply to. Is it all independent and non-independent advocates? (Third sector respondent, #64)

3.4 Those who felt the aims and objectives of the discussion paper were *not* clear argued that the document:

- Lacked precision and was too 'generic' in its use of language — this includes a lack of clarity about the role of the advocate, as opposed to other types of supports available to the child, including that of Children's Rights Workers.
- Failed to clearly define key concepts such as 'independent advocacy' and 'free from conflicts of interest'
- Lacked clarity about the intended target audience for the proposed principles and minimum standards (i.e. whether they are intended for individuals working in independent advocacy services, or for a wider range of individuals such as family members and friends, who could provide advocacy support to children and young people)
- Failed to define the context(s) in which the proposed principles and minimum standards would be applied, and to provide sufficient guidance about how they would be applied in those contexts.

3.5 Respondents also commented that the relationship between the principles and the minimum standards themselves was not always clear. Some of the principles were considered to be aspirational (and difficult to implement in practice).

3.6 Respondents from stand-alone advocacy services felt that any attempt to adopt the proposed principles and minimum standards would lead to wide-spread confusion. The question posed by these respondents was: Why would independent advocates shift to these standards which are of a lower standard to the ones they are already working to?

Children's experience and understanding of advocacy

3.7 The first question in the CYP consultation document asked children and young people if they had ever had help from an advocate to speak out. Approximately two-thirds of individual respondents (58/85) said they had. Approximately one-fifth (18/85) said they had *not* had help, with the remainder (9/85) responding 'Don't know'.

3.8 In terms of the group responses, just under half (10/24) answered 'Yes' to this question, whilst in a third of groups (7/24) some individuals had had help from an advocate to speak out whilst others had not. In one group there were no individuals with this experience, and for the remaining cases, information was not available about the children and young people's previous experience of advocacy.

3.9 When asked who had helped them to speak out, children and young people often said that they had had help from more than one person. Frequency counts of the answers from individual respondents are shown in Table 3.2 below. Those mentioned most often were: family members, advocates, social workers, and *'myself'*.

Table 3.2: Who has helped you to speak out?

	Number of children and young people
Family Member	47
Advocate	36
Social Worker	36
Myself	36
Teacher	29
Friend	14
Youth Worker	9
Children's Rights Officer	9
No-one	9
Play Worker	2
Someone else	29

3.10 Those listed under 'someone else' included family support workers; bullying helpline; lawyer; foster carer; school counsellor; befriender; key worker; mother; independent advocacy workers; house managers; unit staff.

3.11 The group responses to this question were not always easy to interpret. Whilst there was strong support for the idea of involving children and young people in the consultation, many of the children were unsure what advocacy was, and it was not always easy for them to respond to the questionnaire as presented.

3.12 This was brought out most clearly through the feedback generated from some of the facilitated group sessions, but was also clear from individual responses which highlight some of the confusion experienced by children and young people. For example:

- The facilitators of two groups commented specifically that the children and young people did not know what advocacy was and had to have this explained before the discussion could begin.
- The facilitator from a third group commented that the questionnaire was not well designed and not suitable for children and young people with special needs; a lot of work had to be done to (re)design suitable materials to support the consultation exercise.
- The facilitator of a fourth group commented that Question 3 (about the characteristics of a good advocate) was really the only part of the questionnaire that the children and young people found meaningful. This is confirmed by the predominance of responses to this question overall.
- The fact that so many of the answers given by individual respondents to the 'someone else' option on Question 2 (Who has helped you speak out?) could

have been selected under one of the tick box options indicates that children and young people may have been unsure how to respond.

3.13 Children and young people were asked about the characteristics of a good advocate and what things they are good at. This was the part of the consultation which was most successful in engaging with children and young people, and in eliciting their views. Five of the individual respondents included drawings with their responses, all of which were labeled with text to explain what they had drawn. Overall, there was a clustering of responses around a few key characteristics as follows:

- The most often used descriptor was that advocates should '*listen*'. Forty-seven of the individual responses talked of the importance of listening. This is reinforced further by the responses to Question 4 (What might get in the way of advocates helping you?) in which 52 children and young people said that if advocates don't listen, that gets in the way.
- The next most popular characteristic was that advocates should '*help*' or '*be helpful*' (29 mentions).
- Other characteristics mentioned regularly were *kindness* (16), being *nice* (10), *understanding* (8), being *trustworthy* (7), and being *friendly* (6). Other adjectives used in a positive light were *honest, generous, cheerful, smiling, good at making you feel comfortable, polite, respectful, thoughtful, approachable, clever* and *funny*.

3.14 By contrast, when asked what a good advocate would NOT do, children and young people raised the following:

- They do not lie
- They don't say things you don't want them to say
- They don't ignore you
- They don't hit you
- They are not selfish
- They don't moan and criticise
- They don't tell you what to do.

4 ARE THE PROPOSED PRINCIPLES AND MINIMUM STANDARDS NEEDED?

4.1 The main question this consultation sought to answer was: Is there a need for Principles and Minimum Standards in relation to advocacy for children and young people? To gather respondents' views on this question, the main consultation document asked two questions:

- Do you believe that it is necessary to develop a suite of principles and minimum standards focusing specifically on the provision of advocacy support for children and young people? [Yes / No / No opinion] and
- If no, do you feel that existing principles, standards and guidance, including the Scottish Independent Advocacy Alliance (SIAA) materials, are sufficient to cover practice in this area? [Yes / No / No opinion]

4.2 Two-thirds of adult / organisational respondents (55 out of 82) said 'Yes' to the first question while just over a fifth (17 out of 82) said 'No'. (See Table 4.1.)

Table 4.1: Do you believe that it is necessary to develop a suite of principles and minimum standards focusing specifically on the provision of advocacy support for CYP?

	Yes	No	No Response	Total
Third sector				
Stand-alone advocacy services		16	1	17
Umbrella / membership orgs	5		1	6
Other third sector org	18		4	22
Local authority	17	1		18
NHS	4			4
NGO	2		2	4
Professional body	1		2	3
Other (police, partnership body, academic, MSP)	4			4
Respondent type not known	4			4
Total	55	17	10	82
Percentage	67%	21%	12%	100%

4.3 Among the 17 respondents who said 'No' to the first question, all but one said 'Yes' to the second question. Nearly all of these were agencies or individuals involved in the delivery of stand-alone advocacy services.

4.4 *None* of the stand-alone advocacy services felt that it was necessary to develop a separate suite of principles and minimum standards for advocacy services for children and young people. One individual who replied 'No' to the first question also replied 'No' to the second question. This respondent distinguished between 'independent advocacy' and 'assistance', 'support' and 'guidance':

There needs to be a clear description and definition of when children might need independent advocacy and when they might simply need assistance

and support and guidance from others. (Stand-alone advocacy service, #67)

- 4.5 As will be seen in the next few sections, this distinction will be made repeatedly by stand-alone advocacy service providers (and others) in response to other questions in the consultation document.
- 4.6 Before considering respondents' comments in detail, it is worth noting that a quarter of respondents who replied 'Yes' to the first question (13/55) also went on to answer the second question. Half of these (6/13) either said they felt the existing principles, standards and guidance were sufficient, or they had no opinion about the matter. (See Table 4.2.) This may suggest that these six respondents had misunderstood the questions. Only one of the six provided any further comment to explain their response. This individual was not familiar with the SIAA materials but felt there should be *only one set* of principles and standards that applies to advocacy support for children in all circumstances.

Table 4.2: Combination of responses to Question 2 from the main consultation document

Do you believe it is necessary to develop a suite of principles, etc. for CYP?			If no, do you feel that existing principles, etc. are sufficient?	
Yes	55	→	Yes	3
		→	No	7
		→	No opinion	3
No	17	→	Yes	16
		→	No	1
No opinion	0			
No response	10			
Total	82			30

Arguments in favour of separate principles and standards

- 4.7 The following reasons were given by respondents who felt a separate suite of principles and standards were needed for children and young people:
- Children and young people have unique needs. In addition, children and young people have distinctive perspectives from adults, and the circumstances in which they may have a need for advocacy support is unique (Children's Hearings, child protection meetings, etc.) Current SIAA guidance materials do not make any reference to children's rights or the UNCRC.
 - Additional training / skills are required to be advocates for children. Additional skills, knowledge and experience are needed to engage appropriately and effectively with children and young people, including disabled children and young people. The SIAA materials do not adequately acknowledge this.

- There are particular sensitivities in relation to providing advocacy support to children and young people.
 - Separate principles and minimum standards will raise the profile of advocacy for children and young people. This is necessary to ensure that children’s voices are heard and are given due weight in decision-making processes.
 - The existing guidance is concerned with the provision of a certain type of advocacy — namely, independent advocacy. Further principles, guidance and standards are required for other professional advocates or for informal advocates.
- 4.8 However, there was also a view that any principles and minimum standards developed specifically for children and young people should be *complementary and compatible* with the SIAA materials. One respondent asked for clarity about the relationship between the proposed principles and minimum standards and the SIAA materials: ‘*Are they complementary; do they have any greater weight; are the SIAA standards of equal relevance?*’
- 4.9 One respondent felt that the SIAA materials were insufficient, but could be built upon to better address the specific issues of providing advocacy to children and young people. However, another felt it would be inappropriate to simply supplement the existing advocacy guidance. This latter individual argued that there is an *additional* requirement for advocates to be able to engage properly with children and young people to enable them to exercise their right of being heard. The implication is that there is a qualitative difference in what should be expected from advocates working with children as compared with those working with adults.
- 4.10 Some respondents felt that *enhanced* standards for advocacy were required for *some* groups of children and young people — for example, those who are looked-after and accommodated — and that these should be the same standards as defined under the Mental Health (Care & Treatment) (Scotland) Act 2003. In contrast, others suggested that *all* advocacy services for children and young people should be of this standard. (This latter point will be addressed in greater detail in Section 7.)

Arguments against separate principles and standards

- 4.11 Those who felt the SIAA materials were sufficient to cover practice in this area argued that the SIAA materials were designed to be used by independent advocates working with *any* group regardless of age, disability, ethnicity or diagnosis. Concerns were voiced that a separate set of principles and standards for children and young people would cause confusion and undermine the positive work that had been done in establishing widely-agreed standards for the provision of independent advocacy. The creation of a separate set of standards for children and young people would also give the impression that there should be different standards associated with advocacy provision for all other groups as well.

- 4.12 The further point was made that the SIAA materials had been developed after extensive consultation with a wide range of stakeholders including children and young people, and the Scottish Government:

By suggesting that organisations that want to provide advocacy to children and young people need different principles and standards to work with, this consultation document does a huge disservice to the advocacy movement in Scotland (including the children and young people's advocacy organisations and projects that were involved in the consultation process), SIAA, the departments of the Scottish Government that have worked with and supported the movement and funding organisations (including local authorities and health boards). (Stand-alone advocacy service, #24).

- 4.13 Finally, one respondent also argued that there was no need for a separate set of principles and standards. However, there *may* be a need to train staff to ensure that they inform children and young people of their right to advocacy.

5 VIEWS ON THE PROPOSED PRINCIPLES AND MINIMUM STANDARDS

- 5.1 The heart of the both the main and CYP consultation documents was a presentation of the five proposed principles for children and young people's advocacy and (in the main consultation document) the associated minimum standards.
- 5.2 This section presents an analysis of respondents' views on the principles and standards, taking each in turn. In the main document, respondents were asked: 'Do you agree with the principle and the associated standards?' [Yes / Partly / No / No opinion]. In the CYP consultation, respondents were asked: 'Do you agree with the principle?' [Yes / No / Don't know]. In both consultation documents, respondents had the opportunity to provide further comment on each principle.

Principle 1: Children and young people's rights protected

- 5.3 Principle 1 states that:

Children and young people's rights protected. Advocacy promotes and protects the rights of children and young people including their right to be heard.

- 5.4 In the CYP consultation document, this principle was stated as: 'Children and young people's rights are protected including their right to be heard.'
- 5.5 In the main consultation, over half of respondents (45 out of 82) agreed with the principle and nearly a third (26 out of 82) partly agreed. (See Table 5.1.)

Table 5.1: Do you agree with principle 1 and the associated standards?

	Yes	No	Partly	No opinion	No response	Total
Third sector						
Stand-alone advocacy services	1		14		2	17
Umbrella / membership orgs	5		1			6
Other third sector org	13		5		4	22
Local authority	14		3		1	18
NHS	4					4
NGO	2				2	4
Professional body	1				2	3
Other (police, partnership body, academic, MSP)	3		1			4
Respondent type not known	2		2			4
Total	45	0	26	0	11	82
Percentage	55%	0%	32%	0%	13%	100%

- 5.6 Responses from individual children and young people indicated that they were very much in favour of this principle with 69 out of 85 responding 'Yes'. Of the remainder, five said 'No' and seven said 'Don't know'.

- 5.7 The responses from the adult / organisational respondents suggest that there was reasonably strong support for this principle. However, there were a wide range of qualifying statements associated with a 'Yes' response, many of which related to the implementation of this principle in practice.
- 5.8 In particular, respondents raised questions about whether it was realistic to believe that a wide range of individuals including family members and friends could be sufficiently well-versed in detailed legal argument and the legal underpinning of issues relating to children's rights to be able to represent children and young people effectively. One respondent said:

While we agree in principle with the standards we anticipate that implementation will be a challenge given the very large number and range of people (including parents and teachers etc) who could be advocates – this is of particular significance given principle 3 which states that the young person can choose who they want to be their advocate. (Local authority respondent, #39).

- 5.9 A subset of adult / organisational respondents highlighted the focus on children and young people's 'right to be heard' within the principle. This group, many of them organisations delivering advocacy services, emphasised that advocacy is about much more than the right to be heard; it is also about empowerment and decision-making, ensuring that children and young people are fully involved in decisions that affect them.
- 5.10 Many of these advocacy organisations also reiterated within the comments on this principle that the development of a separate set of standards is inappropriate. This has already been discussed in Section 4.
- 5.11 Some respondents were very much in favour of 'locating' the issue of children and young people's advocacy within a framework of rights, and specifically within Children's Rights. These responses emphasised that everyone working in childcare, child health, child protection and child welfare should be familiar with and knowledgeable about the UNCRC framework but also with other legal provision within the Education Act, Equality Act, EACH Charter etc. These respondents believed this understanding needed to be rolled out more broadly and they were looking for a major focus on the training of professionals including those providing advocacy services. For example:

All who work within the child care field should adhere to these standards, and further training and information about the UNCRC and the Human Rights Act should be rolled out across all agencies and organisations that provide services and support to young people, not just those concerned with advocacy (Local authority respondent, #49)

We would also suggest that advocates should be fully informed about the Human Rights Act in addition to the UN Convention on the Rights of the Child. The Human Rights Act is under-utilised for children and young people. (Local authority respondent, #87)

- 5.12 However, one respondent believed that protecting children and young people's rights was the role of a Children's Rights Worker, not the role of an advocacy worker.
- 5.13 Another organisation emphasised the importance of ensuring that children and young people are aware of what advocacy is and how to access advocacy support and suggested that *'this should be built into a children's rights educational programme and delivered in schools, perhaps as part of Personal and Social Development classes'*. This chimes with a comment on this principle made by one of the young people that *'every young person should know they have access to an advocate'*.
- 5.14 The free text comments from children and young people on this principle were extremely wide ranging, and many were not specifically focused on the question. The comments ranged from the general *'Advocates should help you more'* or *'If adults don't listen that's bad'*, and *'Rights should be promoted'* to the very personal *'Some children aren't loved. We all have a right to be loved.'* and *'Children should get what they want'*.

Principle 2: Children and young people's voices heard

- 5.15 Principle 2 states that:

Children and young people's voices heard. *Advocacy supports children and young people's voices, views and perspectives to be listened to, respected and presented in order for them to be given due weight by those involved in decision making and service provision.*

- 5.16 In the CYP consultation, this principle was stated as: *'Children and young people's voices are listened to and respected. Adults take children's views into account when they make decisions.'*
- 5.17 In the main consultation, once again, over half of respondents (45 out of 82) agreed with the principle, and nearly one-third (25 out of 82) said they partly agreed. (See Table 5.2.) As far as the individual children and young people were concerned, 59 out of 85 said 'Yes', nine said 'No' and 12 said 'Don't know'.

Table 5.2: Do you agree with principle 2 and the associated standards?

	Yes	No	Partly	No opinion	Other*	No response	Total
Third sector							
Stand-alone advocacy services	1		14			2	17
Umbrella / membership orgs	4		2				6
Other third sector org	14		3	1	1	3	22
Local authority	15		2			1	18
NHS	2		2				4
NGO	2					2	4
Professional body	1					2	3
Other (police, partnership body, academic, MSP)	3		1				4
Respondent type not known	3		1				4
Total	45	0	25	1	1	10	82
Percentage	55%	0%	30%	1%	1%	12%	100%

* Other = one respondent ticked 'Yes' and 'Partly'.

5.18 Stand-alone advocacy services generally said that they 'partly' agreed with this principle. Comments from this group particularly focused on the fact that Principle 2 does not take into consideration those children and young people who might not be able to give instruction, or express an opinion due to age, disability or capacity. This would require non-instructed advocacy, which is not covered in the proposed principles and standards, but which is covered by the SIAA materials. Once again, stand-alone advocacy organisations also re-iterated in relation to this question that a separate set of principles and minimum standards was not appropriate.

5.19 There were 10 standards attached to this principle. The wording of many of the standards was commented upon or queried by individuals. For example, 'How is 2.6 defined?' 'Is 2.7 providing a 'get out clause' by emphasising the phrase 'where possible'?' and 'Is the 'determined' in 2.1 a get out clause?' '2.3 and 2.8 may be seen as indicators rather than standards'.

5.20 Given the length and complexity of this principle, there are many comments which seek clarification of some kind. For example:

- What is 'due weight' and how is this evidenced?

We feel that the term 'due weight' needs to be clearly defined to avoid any misinterpretation of being tokenistic. We feel that this is a critical point and is in fact at the heart of all we do. We feel there is a requirement to ensure that due weight has been given. We feel this should need to be demonstrated. (Local authority respondent, #35)

- What are the 'variety of approaches' mentioned?

With respect to standard 2.10 it may be worthwhile identifying and highlighting some examples of the 'variety of approaches' with suggestions how these could be further developed. (Local authority respondent, #38)

- How are the issues of child protection handled?

Perhaps requires to be some further work with regards to children who are involved in child protection or who disclose information with regards to their safety. (Local authority respondent, #79)

Particular guidance and support may be required to assist individuals and organisations to address issues relating to gaining parental consent for children to access advocacy especially within complex situations e.g. child protection processes. (Third sector respondent, #70)

- There is a danger that this document will be seen as aspirational only.

[Standard 2.7] Where a child or young person has difficulty in appointing an advocate, we would like clarification on who will provide the additional support for the child and young person to make an informed choice. This needs to be clarified otherwise the document runs the risk of remaining aspirational. (Third sector respondent, #48)

- There is a need for guidance on how to handle conflicts of interest, especially where friends and family are involved.

In the event of conflict between the opinions of child / advocate and adult / parent, what are the legalities and balance of rights? (NHS respondent, #75)

5.21 This latter point will be discussed at greater length in Section 6 and in relation to Principle 4 below.

5.22 Respondents identified a need for substantial resources (including resources for training) to deliver this principle in practice.

Implications on the amount of people who may require training. (NHS respondent, #28)

5.23 Moreover, respondents felt there was a need to recognise the resource-intensive nature of providing advocacy for particular groups such as children with complex communication disorders which can require time, specialist equipment and specialist inputs.

Standards 2.5 & 2.6 – There may be real difficulty in training advocates to represent the views of some children with complex communication disorders; significant knowledge of the child would be essential. (Third sector umbrella organisation, #175)

5.24 Other comments on this principle also focused on the importance of preserving children and young people's confidentiality and on the provisions that would need to be made for sharing information about children and young people between organisations.

It would be useful to provide organisations with guidance on how to provide feedback to both services and children and young people, in ways that do not breach confidentiality. (Third sector respondent, #71)

The child's rights to medical confidentiality must be confirmed. (NHS respondent, #29)

2.10: I understand that exceptions to confidentiality are explicit in terms of risky information, but what is the confidentiality policy in terms of sharing information with parents in general? (NHS respondent, #75)

- 5.25 Respondents also wanted reassurance about procedures for obtaining consent and wished to ensure that proper feedback was given to children and young people to show how their input had affected decision-making.

While this point refers to providing feedback to services, there appear to be no standards which refer to how feedback is provided to children and young people about the impact of their views on the decision making process. (Third sector respondent, #71)

- 5.26 The comments from children and young people themselves on this principle were again varied with some being rather general: 'Adults shouldn't think they know best' or 'It will be hard to achieve' or 'Young people should be involved in decision making' to a very personal view that, 'I don't feel I get heard'.

Principle 3: Children and young people's access to advocacy

- 5.27 Principle 3 states:

Children and young people's access to advocacy. *Advocacy is available where and when children need it. It is provided to children from the age of 0 to 18 years in line with the United Nations Convention on the Rights of the Child (UNCRC) and up to the age of 25 years where this is appropriate. Children and young people have the right to choose their own advocate.*

- 5.28 In the CYP consultation, this principle was stated as: 'Advocacy is available where and when children and young people need it. Children and young people have the right to choose their own advocate.'
- 5.29 In the main consultation, just over half of respondents (43 out of 82) agreed with this principle, one-third (26 out of 82) partly agreed and one person disagreed. (See Table 5.3.) Sixty-six children and young people said 'Yes' to this principle, five said 'No' and nine said 'Don't know'.

Table 5.3: Do you agree with principle 3 and the associated standards?

	Yes	No	Partly	No opinion	Other*	No response	Total
Third sector							
Stand-alone advocacy services		1	14			2	17
Umbrella / membership orgs	5		1				6
Other third sector org	16		1	1	1	3	22
Local authority	12		5			1	18
NHS	2		2				4
NGO	2					2	4
Professional body			1			2	3
Other (police, partnership body, academic, MSP)	3		1				4
Respondent type not known	3		1				4
Total	43	1	26	1	1	10	82
Percentage	52%	1%	32%	1%	1%	12%	100%

* Other = one respondent ticked 'Yes' and 'Partly'.

- 5.30 Among the respondents to the main consultation, there was strong support for the idea that children and young people should have access to advocacy where and when they need it, and that they should have the right to choose their own advocate.
- 5.31 There was also some support for making advocacy available to young people up to the age of 25. However, it was more common for respondents to query this point, or to seek clarification about when it would be 'appropriate' for advocacy to be provided to young people up to age 25. Respondents stressed that 'where it is appropriate' needed to be explained, as the ambiguity of the statement would make decisions difficult for service commissioners, and could lead to some young people missing out.
- 5.32 One local authority respondent made the point that the Scottish Government has been inconsistent in defining the age of a 'young person' — that a recent consultation on the Rights of Children and Young People Bill defined children and young people to be aged 0-21. This individual also highlighted that Scotland's Commissioner for Children and Young People works with looked-after and accommodated children up to age 21. At the same time, most adult advocacy services would be available to anyone aged 21 and over, so this respondent felt that those services should be supported to meet the needs of young adults.
- 5.33 Other respondents inferred that the group of young people it would be 'appropriate' to provide advocacy for up to age 25 would include looked-after children, young carers and young people with disabilities.
- 5.34 It was common for those who said they agreed with Principle 3, to express similar concerns and reservations in relation to the principle and minimum standards as those who only 'partly' agreed.

- 5.35 For example, the issue of resourcing was often raised by both groups. Respondents referred to the principle as ‘*aspirational*’, but commented that financial constraints do not allow advocacy to be available ‘where and when children need it’. The point was repeatedly made that the availability of advocacy services are limited, and in some areas are not available at all. Therefore, the reality is that it will not be possible to honour children and young people’s right to choose their own advocate.

More generally, we strongly support the proposed Principle that ‘Advocacy is available where and when children need it’. However, this is not even close to being the case today across Scotland. The discussion paper downplays the crucial issue of effective access for children and young people to the best possible advocate / advocacy across Scotland.... Even widespread agreement about the principles and minimum standards in the discussion paper will not solve the fundamental problem of too few advocates for children and young people available in too few places. (Third sector respondent, #57)

- 5.36 The issue of conflict of interest was also frequently raised by respondents in relation to the child or young person having the right to choose their own advocate. In principle, respondents supported this idea. However, at the same time, they expressed significant concerns about how it would sit alongside child protection requirements:

Consideration should be given to the potential for any child protection issues raised by the child where the advocate is a parent or carer that this information could potentially not be passed on to relevant agencies. (Local authority respondent, #59)

How do we guard against individuals who have influence over a child but who may be pursuing their own agenda? Should we be developing approved lists to provide a range of choice? Again this highlights the need to clarify the notion of conflict of interest and the distinction between independent advocacy and advocacy based on an existing personal or professional relationship. (Local authority respondent, #58)

- 5.37 At least one respondent felt that parents should be entirely excluded from taking on an advocacy role on behalf of their children — because of the inherent conflict of interest. Another emphasised the need to have transparent safeguards in place, and yet another (an academic respondent) suggested that the standards should recognise the safeguarding function of independent advocacy.
- 5.38 Those respondents who represented stand-alone advocacy services also agreed that children should be able to choose their own advocate, but they emphasised that this should be an *informed* choice, based on a clear understanding of the concepts of ‘independence’ and ‘free from conflicts of interest’.
- 5.39 A point was made among some respondents that children’s right to advocacy should be based within legislation. For example, one individual felt that Additional Support for Learning (ASL) legislation should be amended to provide children (particularly those who do not have parental support) with a legal right to

appeal to the Additional Support Needs Tribunals for Scotland. The respondents from stand-alone advocacy services pointed out that the Mental Health (Care & Treatment) (Scotland) Act 2003 set down the minimum standard for advocacy for children and young people with a mental health problem as 'independent advocacy'. These agencies believed that any attempt to propose minimum standards which do not recognise this legal right would threaten to undermine that right, and potentially violate the UN Convention on the Rights of the Child. Another respondent suggested that children and young people should be given the option to appoint a solicitor (with funding from legal aid); this individual wanted to know how this would complement or conflict with the provision of advocacy.

5.40 There were a substantial number of comments and queries in relation to the proposed standards associated with Principle 3. Some of the queries included:

- What are the circumstances that require advocacy input? (in relation to 3.1)
- What does 'wherever possible' mean in practice? (3.2)
- Whose responsibility is it to let children and young people know they have a right to choose their advocate? Who provides them with this choice, and when? (3.4)
- Would like more information about the type of support advocates would provide to children and young people 'in transition' (3.5).

5.41 Other comments focused on:

- The lack of reference to ethnic, cultural, religious and gender issues in providing advocacy
- A requirement to specifically address the needs of young people with disabilities, including those with complex communication needs. One individual commented in relation to standard 3.3 that it is not enough to simply provide information 'in a variety of accessible formats' for many children and young people with learning disabilities. These individuals may require support to understand the information and make sense of it.
- Making more explicit mention in standard 3.4 of the option to choose informal (including peer) advocates.

5.42 In general, respondents expressed concern or outright disagreement with the proposal in standard 3.6 that advocacy should have a formal start and end date, as this ran counter to the nature of the advocacy relationship:

Standard 3.6 suggests confirming a start and an end date for advocacy. This appears to be at odds with a child-centred approach to advocacy. An 'end date' almost presumes advocacy is an intervention. One of the principles of advocacy should be an 'open door' to an advocacy service in facilitating access to a child or young person when they need it. (Academic respondent, #60)

If the start and end of the advocacy task are defined then children and young people with a long term condition may suffer repeated change of advocate and lack of confidentiality or may lose trust if a commitment to

follow through as the Key Worker link role is reversed. (NHS respondent, #29)

Standard point 3.6 — The term ‘task’ maybe misleading. In a long term advocacy relationship it is not one of a task but a relationship within which there may also be a number of possible tasks. The two sentences may also be contradictory and should be reviewed to clarify the wording. (NHS respondent, #26)

- 5.43 Finally, in relation to standard 3.7, some concerns were raised by respondents regarding the statements made about the nature of privacy and confidentiality in the context of child protection procedures. In particular, one third sector respondent believed that, as worded, the standard contradicted national child protection guidance. This was a lengthy and detailed comment, only part of which is quoted here:

We would welcome a clear statement that the best interests of the child must always take precedence when making decisions to lawfully share information with or about them, and that children and young people have a right to not only express their views, but also to have them taken into account when decisions are made about sharing information. The national guidance also makes clear that, in general, information should only be shared with consent of the child unless there are circumstances where this would increase the risk to the child, and that at all times information shared should be relevant, necessary and proportionate to the circumstances of the child and limited to those who have a need to know. We are aware that all professionals working with children would be bound to follow national guidance, however we are concerned that confusion would be caused by standard 3.7 appearing to contradict the national child protection guidance. (Third sector respondent, #91)

- 5.44 There was little by way of additional comment from the children and young people in relation to this principle. Two young people commented that they ‘*didn’t have one*’, another that they ‘*should have one*’ and another that ‘*children should choose their own*’.

Principle 4: Advocacy support is free from conflicts of interest

- 5.45 Principle 4 states that:

Advocacy support is free from conflicts of interest. Advocates are completely loyal to their advocacy partner. They are clear about their role and functions.

- 5.46 In the CYP consultation, this principle was stated as: ‘Advocates are completely loyal to children and young people. They only speak out or help children and young people.’
- 5.47 In the main consultation, exactly half of respondents (41 out of 82) agreed with this principle, one-third (26 out of 82) partly agreed and 2 respondents disagreed.

(See Table 5.4.) Fifty-eight children and young people said ‘Yes’ in relation to this principle, eight said ‘No’, and 13 said ‘Don’t know’.

Table 5.4: Do you agree with principle 4 and the associated standards?

	Yes	No	Partly	No opinion	No response	Total
Third sector						
Stand-alone advocacy services			15		2	17
Umbrella / membership orgs	4	1	1			6
Other third sector org	12	1	4	1	4	22
Local authority	14		2		2	18
NHS	4					4
NGO	2				2	4
Professional body	1				2	3
Other (police, partnership body, academic, MSP)	2		2			4
Respondent type not known	2		2			4
Total	41	2	26	1	12	82
Percentage	50%	2%	32%	1%	15%	100%

5.48 The two third sector respondents who did not agree with the principle submitted identical responses to this question. Both expressed concern about the possibility that this principle would weaken the overall aim of improving advocacy provision, and felt that the principle should be stated as: *‘Advocacy support is independent and free from conflicts of interest’*:

This principle weakens the overall aim of improving the current provision of advocacy. It puts at risk the limited amount of independent advocacy available at present to Looked After Young People, and therefore their ability to be heard under article 12 of the UNCRC. Principle 4 should state that Advocacy support is independent and free from conflicts of interest. (Third sector respondent, #68 and Third sector umbrella organisation, #52)

5.49 Once again, in the main, there was little distinction between the comments of those who ticked ‘Yes’ to agree with the principle and associated standards, and those who ‘partly’ agreed. Strong concerns and / or reservations were expressed by both groups regarding what was being proposed.

5.50 One local authority respondent expressed ‘concern’ that *‘the expression “completely loyal” — in the principle descriptor — is inappropriate and misleading for children & young people and for inexperienced advocates’*.

5.51 The issue of conflict of interest has been touched upon already in this report, and it will be discussed in greater detail again in Section 6. However, as the focus of Principle 4 is specifically on the subject of preventing / avoiding conflicts of interest, it is appropriate to discuss this important topic here.

5.52 Respondents across all sectors agreed that advocacy should be free from conflicts of interest. However, they asked for clarification, clearer definition and

specific examples to illustrate precisely what is meant by this term. One respondent offered a lengthy response with several possible definitions of the term taken from a legal context.

- 5.53 Doubt was expressed (including by those who agreed with the principle) about whether it would be possible to achieve freedom from conflicts of interest, given the range of advocacy providers proposed — apart from through the provision of independent advocacy. In particular, respondents felt it was unlikely that advocacy provided by parents, carers, friends, or health and social care professionals responsible for delivering a service to the child could be free from conflicts of interest. One individual commented that Principle 4 was likely to be in direct conflict with the principle that children and young people should be able to choose their own advocate. Another pointed out that it can often be very difficult, in a situation where the child has communication difficulties and cannot ‘instruct’ their own advocate, to separate out the wishes of the child / young person from that of their parents / carers. Some voiced serious concerns that, in choosing their own advocate, children could be putting themselves in a position of risk.

It is important that child protection and confidentiality be considered when discussing advocacy support. It is important that in allowing children and young people the right to identify their advocate they do not put themselves into a position of risk — this may be the case for example in situations of children living in situations of domestic violence. (Local authority respondent, #34)

A clear definition of the term “conflicts of interests” should be included here as well as illustrative examples. If the purpose of this guidance is to “skill up” a wider range of professionals to deliver advocacy support, there is a very real danger that conflicts of interests will occur frequently. As stated previously, social workers, health professionals, parents, etc. act primarily in the best interests of the child, which may conflict with what the child wants or believes. Therefore the guidance needs to not only recognise this reality but set out how advocates (formal or informal) can tackle this challenge. (Third sector umbrella organisation, #175)

- 5.54 Some respondents suggested that the focus should be on identifying, acknowledging and managing conflicts of interest, rather than attempting to achieve complete freedom from conflicts of interest. Others felt that *only independent advocacy* could be expected to be governed by Principle 4, and there was a suggestion that Principle 4 should specifically refer to independent advocacy throughout.
- 5.55 The nature of different types of advocacy was also a significant theme in the comments on this principle, and there was a request for clarification about the roles of independent advocates, independent advocacy organisations, commissioners and others who may provide advocacy. At the same time, some third sector organisations suggested that agencies with specialist knowledge, experience and skills in engaging effectively with children and young people were in a good position to provide independent advocacy — even if they were not *solely* providers of independent advocacy services — and that this was consistent

with guidance issued in relation to the Mental Health (Care & Treatment) (Scotland) Act 2003. (This issue will be discussed at greater length in Section 7.)

Section 110 of the Mental Health (Care & Treatment) (Scotland) Act 2003 Code of Practice (statutory guidance) section 110 states, "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." The Scottish Independent Advocacy Alliance holds a more restrictive view, stating that independent advocacy should only be delivered by organisations that solely provide advocacy services. We believe it is possible for organisations with specialist knowledge, experience and skills in engaging effectively with children and young people [to] provide independent advocacy services. (Third sector organisation, #25)

5.56 In relation to the proposed standards, a substantial number of queries, and the greatest concerns, were voiced in relation to standard 4.2. Respondents felt that:

- It needed to be clearer which organisations would be responsible for providing support, supervision, guidance and training for all advocates
- Information was needed about who could be responsible for preparing and disseminating suitable materials describing advocacy and conflict of interest
- It was unrealistic to expect training in advocacy to be provided to parents or other informal advocates
- The resources required in providing such training would be considerable.

5.57 Comments made in relation to standards 4.1 and 4.4 indicated that respondents generally believed that freedom from conflicts of interest would be very difficult if parents, friends and people providing a service to the child acted as the child or young person's advocate.

Standard 4.1 states that advocacy does not represent the views [and] interests of others such as parents or carers. In this case, it is difficult to see why a broader concept of advocacy is used (involving friends and family) that cannot meet this standard. (Academic respondent, #60)

Principle 4, section 4.4: If advocacy support is to be free from conflicts of interest, then parents / carers and adults providing the service should not act as the child's advocate. (Individual respondent, #174)

5.58 There were also some questions about how adherence to the standards would be monitored and measured.

5.59 The comments made by children and young people in relation to this question (12 comments in total) confirmed that an advocate should help whoever needs help (by implication not just the child / young person themselves but also any adults involved). A second theme from the comments was that advocates sometimes have divided loyalties and some are not genuine; one young person said [advocates] should not have 'dangerous secrets'.

5.60 Finally, one young person who did not provide a response to the tick box element of this question explained that he / she agreed with the first sentence of the principle, but not with the second sentence.

Principle 5: Provision of high quality advocacy support

5.61 Principle 5 states that:

Provision of high quality advocacy support. *Advocacy for children and young people is of the highest quality.*

5.62 In the CYP consultation, this principle was stated as: ‘Advocacy for children and young people is the best it can be.’

5.63 In the main consultation, just over half of respondents (45 out of 82) agreed with the principle and over a quarter (24 out of 82) partly agreed. (See Table 5.5.)

Table 5.5: Do you agree with principle 5 and the associated standards?

	Yes	No	Partly	No opinion	Other*	No response	Total
Third sector							
Stand-alone advocacy services			15			2	17
Umbrella / membership orgs	4		2				6
Other third sector org	14		2	1	1	4	22
Local authority	15		2			1	18
NHS	3		1				4
NGO	2					2	4
Professional body			1			2	3
Other (police, partnership body, academic, MSP)	3		1				4
Respondent type not known	4						4
Total	45	0	24	1	1	11	82
Percentage	55%	0%	29%	1%	1%	13%	100%

* Other = One third sector respondent ticked ‘Yes’ and ‘Partly’.

5.64 Just 41 children and young people responded ‘Yes’ to indicate agreement with this principle, a substantially lower level of endorsement than for the other principles. Of the remaining respondents, nine said ‘No’ and 30 said ‘Don’t know’. The very high level of ‘Don’t know’ responses to this question may indicate that children and young people may have been confused by the wording of this principle.

5.65 Indeed, there was a hint that some of the adult respondents also found the wording of this principle somewhat confusing. One individual said:

[T]he wording of this principle is potentially confusing. It could refer to the quality of the service experience between children and young people and their individual advocate (which seems to be covered more in principle 2 (‘Children and young people’s voices are heard’), however most of the

standards under this principle relate more to organisational systems, policies and procedures. (Third sector organisation, #71)

5.66 Fifty-six out of the 82 respondents to the main consultation provided comments in relation to this principle. Once again, although there appeared to be a clear distinction between stand-alone advocacy service providers and other types of respondents in terms of their responses to the closed questions, there was in fact no distinction between the *comments* of these two groups. The same issues, questions and concerns were generally raised by both.

5.67 In the case of Principle 5 and its standards, respondents generally felt:

- The standards were only appropriate to and relevant for professional independent advocacy providers. One individual said the principles and standards should refer to ‘independent advocacy’ throughout. Some framed their comments by requesting clarification: *‘There needs to be clarity about who this principle is aimed at.’* Others suggested that advocacy should be considered in terms of different tiers (i.e. a kind of hierarchy) of support — with more specialised support requiring more extensive training. It was suggested that some groups of children and young people (e.g. looked-after children, asylum-seeking children, trafficked children and gypsy / traveler children, disabled children / those with long-term conditions) should be given the same level of service as that provided to children with mental health problems under the Mental Health (Care & Treatment) (Scotland) Act 2003, and that this level of support for these groups should be enshrined in law.
- Once again, respondents referred to the principle as *‘aspirational’*, but suggested that it may need to be modified to reality. One NHS respondent felt it would be *‘challenging’* to implement the principle and minimum standards in acute care settings. This individual was also concerned about giving *‘unrealistic expectations’* to children and young people. One of the advocacy respondents echoed this comment by pointing out that advocacy provision is not adequately resourced at present, and it was *‘simply not credible’* to suggest that a massive expansion in advocacy provision could take place.

There is a clear presumption in Principle 5 and the standards that the advocacy comes from an advocacy organisation. As stated above, we think this can only be achieved if there is a clear description of the circumstances where this kind of advocacy will be resourced. We do not believe that Government will be able to allocate the resources so that all children will have a right to independent advocacy. The current legal entitlements to advocacy (from the Mental Health Act) are not at all met and committing to a massive additional constituency is simply not credible. (Stand-alone advocacy service, #67)

- The issue of monitoring and evaluating quality was also frequently raised by respondents — with requests for *‘clarity’* and *‘guidance’* about how the principle and its standards would be measured and monitored, who would be accountable for ensuring they were met, and what the implications of non-compliance would be. One respondent suggested that the Care Inspectorate should have a role in monitoring the quality of advocacy provision — although,

presumably this comment would only be relevant to professional advocacy providers.

- In relation to the training / qualifications required by advocates, one respondent suggested that advocates working with children and young people should be required to have PVG certification.⁷ Another felt that they should have the skills and personal qualities of being able to engage with children and young people.
- Other comments on the principle and associated standards suggested it should be set within a wider legal and policy context, with links to the values of GIRFEC and child protection, and to the Equality Act 2010. As mentioned above, one respondent argued that the right to advocacy for some groups of young people should be set out in legislation.

5.68 Comments on the individual standards touched on some of these same issues, and respondents frequently queried particular statements:

- *“Advocacy support is well publicised and easily accessible to children and young people.” How will this be achieved?* (standard 5.4)
- *‘What is the policy for sharing information with other organisations and professionals?’* (standard 5.5)
- *“Advocacy services are accountable to children and young people whose views inform the provision, management and governance of the advocacy service.” How will the views of children and young people be acquired?* (standard 5.6)
- *‘In what way are advocates accountable?’* (standard 5.6)

5.69 The main theme of the comments on this principle from the children and young people’s consultation (13 comments in all) was that everything can always be better, and improvements are possible. A range of more specific comments were also offered ranging from *‘Social services should listen to advocates’*, *‘Every child and young person is different’*, and *‘If it is not the best it can be, it can be very bad’*.

⁷ PVG = Protecting Vulnerable Groups scheme, administered by Disclosure Scotland.

6 APPLICATION OF THE PRINCIPLES AND MINIMUM STANDARDS

6.1 This section considers respondents' views on the application of the principles and minimum standards in practice.

6.2 The main consultation paper included several questions which focused specifically on how the proposed principles and minimum standards would be applied. The questions were:

- Question 3: The principles and minimum standards have been developed to apply to the broad range of individuals and organisations who can give advocacy support to children and young people. Is this target audience appropriate? [Yes / No / No opinion]
- Question 4: Do you feel the proposed principles and minimum standards could be applied in the broad range of circumstances in which advocacy support can be required by children and young people? [Yes / No / No opinion]
- Question 5: Do the principles and minimum standards make it clear that advocacy support needs to be free from conflicts of interest? [Yes / No / No opinion]
- Question 13: Does the discussion paper give you enough information about how the principles and minimum standards will apply to you as an individual / organisation? [Yes / No / No opinion]

6.3 In the CYP consultation, children and young people were asked three questions which are related to the issue of applying the principles and standards in practice. The first was: 'Who should know about the advocacy principles and standards?' This question is approximately equivalent to question 3 in the main consultation document. The second was: 'Do you agree that advocates should help you speak out and not let anything get in the way?' and the third was: 'What might get in the way of advocates helping you?' The latter two questions are related to question 5 and the issue of conflict of interest in the main consultation document.

The appropriateness of the proposed target audiences

6.4 In relation to proposed target audience for the principles and minimum standards, over half of the respondents to the main consultation (46 out of 82) thought the target audience was appropriate, whilst about a third (25 out of 82) thought it was not. Within the third sector, there was a particularly clear divergence of opinion between stand-alone advocacy services who were overwhelmingly of the view that the target audience was *not* appropriate and other third sector organisations who were strongly of the view that the target audience was appropriate. In addition, local authority respondents were generally in favour of the approach suggested. (See Table 6.1.)

Table 6.1: The principles and minimum standards have been developed to apply to the broad range of individuals / organisations who can given advocacy support to CYP. Is this target audience appropriate?

	Yes	No	Partly	No opinion	Other*	No response	Total
Third sector							
Stand-alone advocacy services	1	15				1	17
Umbrella / membership orgs	4	2					6
Other third sector org	14	3			1	4	22
Local authority	16	2					18
NHS	3	1					4
NGO	2					2	4
Professional body	1					2	3
Other (police, partnership body, academic, MSP)	2	1	1				4
Respondent type not known	3	1					4
Total	46	25	1	0	1	9	82
Percentage	56%	30%	1%	0%	1%	11%	100%

* Other = one respondent ticked 'Yes' and 'No'.

- 6.5 At the same time, there was comment from respondents across all these categories that the target audience being suggested was very broad indeed. Even those answering 'Yes' to this question confirmed that this breadth raised major challenges as well as providing opportunities in relation to the greater recognition in legislation and policy of the role of advocacy.

*It would be difficult to apply any standard to this informal relationship.
(Local authority respondent, #49)*

It is however difficult to know [how] such principles and standards can be enforced [if] using friends / relatives as advocates. (Third sector organisation, #64)

*However, more clarity is needed about how to maintain standards when the advocacy does not conform to SIAA Independent Advocacy definitions.
(Local authority respondent, #38)*

- 6.6 The stand-alone advocacy service providers who were not in favour of broadening the target audience in this way presented their argument in terms of the issues relating to implementation in practice viz:

There needs to be clarity about who this document is aimed at, who will be responsible for implementing it, how it is going to be used, what quality control measures will be put in place and what will happen if these standards are not met. Ideally these standards should only apply to advocates solely providing advocacy. The responsibilities of Independent Advocates, Independent Advocacy organisations, commissioners, and others who may provide advocacy need to be clearly defined. (Stand-alone advocacy service, #35)

- 6.7 Moreover, there was a concern about whether broadening the target audience may result in a reduction in existing provision of independent advocacy to certain groups, and this would not be acceptable.

We would be concerned if these standards were used to justify any reduction in the provision of specialised advocacy services. (Academic respondent, #60)

- 6.8 Respondents were unclear that informal advocacy could improve the quality and / or consistency of advocacy services overall.

The aim to improve the quality and consistency of advocacy support is unlikely to be achieved through the use of family members and friends in more complex cases.... We feel there is a need for Principles and Minimum Standards, but these must be specific to [discreet] environments, circumstances, processes and / or systems if they are to be realistic and meaningful. (Academic respondent, #60)

Difficulties arise due to the target audience being so wide ranging. The principles and minimum standards have therefore had to be set at a very low level to make them applicable to, for example, family members who are advocating for a child. This means that when these same principles and minimum standards are applied to independent advocates, the result is unlikely to achieve the stated aim of improving the quality, consistency of advocacy support. Our view is that this is an insurmountable difficulty. (Third sector organisation, #40)

- 6.9 There was also a view that the broadening of the target audience would require the development of supporting materials, and a comprehensive training approach which would involve substantial additional resources.

On the assumption that anyone could be an advocate, then guidance will be vital if they are not operating within a dedicated service or [do not] have access to specific advice. we note that there is little commentary on the preparation and training required for those who would be advocates. (Third sector organisation, #48)

For this to be realistic, the principles and standards would need to be backed up by a rigorous dissemination and implementation strategy, that includes training, particularly for those whose main job is not providing advocacy support, but who may be required to do so from time to time. (Third sector organisation, #71)

- 6.10 As has been described in paragraphs 3.7 to 3.10 above and in Table 3.2, children and young people reported that they had had help to speak out from a wide range of individuals, including family members (47 mentions), social workers (36), advocates (36), teachers (29) and friends (14).

- 6.11 When children and young people were asked, 'Who should know about the advocacy principles and standards?' and were presented with a list of possible

individuals, the majority said that they wanted all of those listed to be informed (See Table 6.2.)

Table 6.2 Who should know about the advocacy principles and standards?

	Number of children and young people
Social Workers	54
Children's Rights Officers	53
Advocates	52
Children and young people	52
Teachers	51
Families	50
Youth Workers	48
Panel Members	48
Health Workers	43
Play Workers	31
All of these people	53
Someone else	12

6.12 The individuals cited under 'someone else' included residential care workers; the person you live with; mum; families; school counsellor; befriender; and the police.

Application in a broad range of circumstances

6.13 Respondents in the main consultation were asked additional questions covering different aspects of how the principles and minimum standards could be applied. Question 4 in the consultation document asked: 'Can the principles and minimum standards be applied in the broad range of circumstances in which advocacy support can be required by children and young people?' Slightly more than half of respondents (45 out of 82) said 'Yes' while over a quarter (24 out of 82) said 'No'. (See Table 6.3.)

Table 6.3: Do you feel the proposed principles and minimum standards could be applied in the broad range of circumstances in which advocacy support can be required by CYP?

	Yes	No	Partly	No opinion	Other*	No response	Total
Third sector							
Stand-alone advocacy services	1	15				1	17
Umbrella / membership orgs	4	1				1	6
Other third sector org	13	4			1	4	22
Local authority	17	1					18
NHS	1	2				1	4
NGO	2					2	4
Professional body	1					2	3
Other (police, partnership body, academic, MSP)	3		1				4
Respondent type not known	3	1					4
Total	45	24	1	0	1	11	82
Percentage	55%	29%	1%	0%	1%	13%	100%

* Other = one third sector respondent ticked 'Yes' and 'No'.

- 6.14 Some who replied 'Yes' felt that the principles and minimum standards could apply to a broad range of circumstances. However, respondents were not always certain about how the principles and minimum standards could be monitored and non-compliance dealt with.
- 6.15 Other respondents asked for details about what was included in the 'broad range of circumstances' referred to in the question. Local authority respondents, in particular, requested further guidance and case studies to illustrate how the principles and minimum standards would be applied in some of the more complex situations, such as where there were conflicting views about a child's maturity and ability to instruct an advocate. There was a suggestion from one local authority respondent that the principles and minimum standards were too generic to apply in these complex cases.
- 6.16 Respondents generally felt that *independent* advocacy would be necessary in *some* situations, i.e. for looked after children, in child protection situations, and for children with mental health problems.
- 6.17 It was also suggested that the principles and standards would need to be adapted, depending on the circumstances in which they were applied:

[A]dvocacy in a forensic system might have to manage conflicts of interest in a very different way than [the] health care system. (NHS respondent, #75)

Advocating for a 7-year-old is very different to advocating for a 16-year-old and the application of the standards needs to acknowledge this. (Partnership organisation, #86)

6.18 Those who disagreed with the premise of the question and felt that the principles and minimum standards could *not* be applied in a broad range of circumstances, cited the following situations as examples:

- For looked after children and young people. In particular, respondents felt it was not appropriate for a carer, social worker or any other professional to provide advocacy support to a young person who may, in fact, wish to make a complaint about quality of care / support provided by a carer or other authority.
- In the context of Children's Hearings
- For young people aged 16-18 in adult departments of hospitals
- For children with complex disabilities and communication difficulties
- Where young people may wish advocacy support as a group (e.g. a sibling group).

6.19 One respondent voiced the strong opinion that the proposed principles and minimum standards could *not* be applied in *most* circumstances where advocacy support might be needed by children and young people.

These principles and minimum standards could not be applied in most circumstances where advocacy support can be required by children and young people. At least three other sets of principles and standards for advocacy for children and young people apply or are in development in Scotland, and are supported by the Scottish Government. However, there is no mechanism proposed for regulating which sets should be used in which circumstance, which makes the proposed principles and minimum standards unworkable. (Stand-alone advocacy service, #42)

6.20 Another expressed 'regret' that the minimum standards did not include the existing right to independent advocacy for children with a mental health problem:

[We] regret that [the] 'minimum standards' do not include the existing right in the Mental Health Act that provides for access to Independent Advocacy for all children with mental disorder. We think that this risks breaching the UN Convention on the Rights of the Child — the UNCRC is cited as a driver for this process, but the UNCRC forbids the use of the Convention to drive down standards. We would also like to see statutory EQIAs carried out regarding all changes before they are proposed or implemented. (Third sector umbrella organisation, #76)

6.21 Stand-alone advocacy service providers felt that the proposed principles and minimum standards — which were intended for use across 'a broad range of circumstances' — would only cause confusion among advocates about which principles and standards should be used in any given situation, and would weaken the provision of independent professional advocacy to particularly vulnerable groups (such as looked-after children and young people).

6.22 Others felt the principles and minimum standards could *only* be applied in limited situations, i.e. where there truly were no issues of conflict of interest — and only if the individual had adequate training to be able to express the child's views effectively while at the same time understanding that the child's choice may not

coincide with his / her best interests. One other individual made the point that the principles and minimum standards could not be applied in *all situations* until advocacy support was available to *all children*.

- 6.23 Respondents' comments in relation to this question often strayed into a further discussion about who would be an appropriate advocate in a given situation. There was a view that there would be limits to the extent to which individuals who are relatives of the child could provide advocacy in certain situations in line with the principles and standards. Indeed, some respondents expressed uncertainty about whether the minimum standards were intended to be applied to friends or family members at all.

The paper suggests that the principles and standards should be applied in any situation where advocacy support is being provided to a child. It is unclear whether this is restricted to professional advocates or is intended to cover others providing support to a child. It is important that the child's right to choose who supports them in any given situation is not fettered but it may not be helpful to describe the provision of such support by a friend or a family member as "advocacy" for the purposes of this paper. While we recognise that there could be some value in making the principles available to those individuals to help encourage good practice, we seriously doubt whether standards can be realistically applied to friends or family members who are fulfilling a more informal support role for the child. (Non-governmental organisation respondent, #54)

- 6.24 The comment was also made that the principles and minimum standards did not sufficiently address ethnic, cultural, religious and gender identity roles in relation to the provision of advocacy services.

Comments in relation to conflicts of interest

- 6.25 Question 5 of the main consultation paper asked, 'Do the principles and minimum standards make it clear that advocacy support needs to be free from conflicts of interest?'
- 6.26 This aspect of the implementation of principles and minimum standards was clearly a major issue and was discussed at length by respondents across all questions in the consultation document. As can be seen from Table 6.4, the responses followed an established pattern, with stand-alone advocacy services and a few others responding 'No' whilst most of the remaining respondents said 'Yes'.

Table 6.4: Do the principles and minimum standards make it clear that advocacy support needs to be free from conflicts of interest?

	Yes	No	Partly	No opinion	No response	Total
Third sector						
Stand-alone advocacy services		15		1	1	17
Umbrella / membership orgs	4	1			1	6
Other third sector org	17	1			4	22
Local authority	16	2				18
NHS	4					4
NGO	2				2	4
Professional body		1			2	3
Other (police, partnership body, academic, MSP)	2	2				4
Respondent type not known	4					4
Total	49	22	0	1	10	82
Percentage	60%	27%	0%	1%	12%	100%

6.27 The 'No' responses focused on the fact that what constitutes a 'conflict of interest' was not defined in the discussion paper, nor was there any mechanism proposed for how these should be managed.

No, free from conflicts of interest is not clearly defined. There should be a clear, transparent method to identify a conflict of interest and how to best manage it. (Stand-alone advocacy service, #20)

6.28 In addition, some of those responding 'No' went on to emphasise the importance of explaining the potential impact of conflicts of interest to the children and young people.

.. conflict of interest as a concept must be clearly explained to the child or young person, including an explanation of how a conflict of interest could limit what an advocate does. (Stand-alone advocacy service, #24)

6.29 Moreover, some 'No' respondents also highlighted the potential difficulties of advocates being employed by agencies with whom the child / young person may be in dispute. For example:

It is our view that there are fundamental difficulties with advocates being linked to organisations with whom they are in dispute as their role as advocate. (Third sector organisation, #40)

6.30 As far as the 'Yes' responses are concerned, on further examination, these divide into those which are accompanied by a caveat or qualification of some kind and those which are more straightforward endorsements. Examples of the latter include:

Yes, it is very clear that advocacy support is free from conflicts of interest and that advocacy only represents the views and perspectives of children and young people. (Local authority respondent, #2)

It is helpful for this pre-requisite to be made explicit in order to validate advocacy which is not provided by an independent service. (Local authority respondent, #38)

This is clear within the principles and minimum standards. (Third sector respondent, #25)

- 6.31 The caveats raised by those responding 'Yes' relate to three main issues. First, there is the question of how those providing 'informal advocacy' (parents, friends, family members, teachers, carers, etc.) can in reality be free from conflicts of interest.

Most people known to a child or young person will have some degree of conflict, i.e. a school teacher may be best placed to be the advocate however may also have a role and assessment / opinion based on their professional role. (Local authority respondent, #66)

This can create a conflict of interest, because the parent acts principally in the best interests of the child, rather than primarily representing the child's views. (Third sector umbrella organisation, #175)

- 6.32 Second, there is the issue of providing advocacy within a multi-agency context, which can lead to complex situations where conflicts of interest may be unavoidable.

We have some anxiety that professionals will feel compromised in multi-agency settings if they act as advocates which may contra[vene] their professional value base — and the perception of their colleagues. (Local authority respondent, #34)

- 6.33 Third, the respondents raised the question of whether the child or young person's right to choose their own advocate would be in conflict with a principle that advocacy support should be free from conflicts of interest. What if the child chooses an individual who is not able to represent them effectively and who will not deliver a good outcome for the child? Respondents felt this situation would bring about conflicts of interest for any professional or advocate involved in the case. There were also questions about whose job it would be to assess the safety / validity of a child's choice.

[H]ow would the safety or validity of a child's choice of an adult friend for example be assessed? We are concerned about circumstances where a child might not make a good choice and the potential for them to be influenced by someone with their own agenda to pursue. (Local authority respondent, #58)

- 6.34 In some cases — both among those who answered 'Yes' with some kind of caveat and those who answered 'No' — respondents focused on the importance

not of *removing* conflicts of interest (which was thought to be unrealistic) but of having a system to identify, acknowledge, and manage those risks. This was described as a highly complex task, requiring detailed knowledge and understanding of legal argument and legislation, which could not realistically be done by non-professionals.

- 6.35 Finally, there were strongly divergent views about who could provide independent advocacy services. A specific issue was raised about recent SIAA guidance which stated that only organisations focusing *solely* on advocacy services could provide independent advocacy. This statement was contested by local authorities and, as already discussed in Section 5, by some third sector organisations also. This point will be discussed in further detail in the next section.

Children's views on the issue of conflict of interest

- 6.36 The children and young people were asked, 'Do you agree that advocates should help you speak out and not let anything get in the way?' Sixty-eight of the individual respondents replied 'Yes', whilst three said 'No' and nine said 'Don't know'.
- 6.37 When children and young people were asked about the 'things which might get in the way' of an advocate helping them to speak out, the main issues raised were '*they don't listen*' (52), '*they don't have enough time*' (47), '*they listen to other people instead of you*' (44), '*they think adults know best*' (42), '*don't agree with what you say*' (38) and other things like their job or who they work for (31). Several of these points directly relate to, or touch upon, the issue of conflict of interest.

Applying the principles and minimum standards to individual organisations

- 6.38 In the main consultation document, respondents were asked: 'Does the discussion paper give you enough information about how the principles and minimum standards would apply to you as an individual / organisation?' A third of respondents (29 out of 82) answered 'Yes', while two-fifths (34 out of 82) said 'No'. (See Table 6.5.)

Table 6.5: Does the discussion paper give you enough information about how the principles and minimum standards will apply to you as an individual / organisation?

	Yes	No	No opinion	No response	Total
Third sector					
Stand-alone advocacy services		15	1	1	17
Umbrella / membership orgs	1	2	2	1	6
Other third sector org	13	5		4	22
Local authority	11	5	1	1	18
NHS		4			4
NGO			2	2	4
Professional body		1		2	3
Other (police, partnership body, academic, MSP)	2	1	1		4
Respondent type not known	2	1		1	4
Total	29	34	7	12	82
Percentage	35%	41%	9%	15%	100%

6.39 The responses to this question broke the standard pattern of responses whereby stand-alone advocacy services had differing views to other respondents. In this case, the largest proportion of respondents, including a third of the local authority respondents and all of the NHS respondents said there was not enough information in the discussion paper about how the principles and minimum standards would apply to their organisation.

6.40 Those responding ‘No’ gave a variety of reasons as to why the information provided was not sufficient. These echoed issues which have already been covered earlier in this report including:

- The standards are very generic and there is insufficient information to enable and assist implementation in specific (particularly complex) circumstances or with specific subgroups — the deaf, those with complex communication difficulties, disabled, etc
- Some of the basic definitional issues are unresolved. Who is an advocate? How is advocacy defined? When should there be a recommendation for advocacy? How will this be managed?
- If the principles and minimum standards are to be adopted they would need to be accompanied by a raft of other materials which set out how they will be monitored, scrutinised and inspected. What local accountability would be appropriate and what sanctions would be applied?
- The standards seemed to apply to independent advocacy services only; how could they apply to the broader range of contexts identified? Were they actually intended to apply to this broader range of ‘advocates’? How would the principles and minimum standards fit with other frameworks including early

intervention, Children's Rights Bill, Children's Hearing system, and the SIAA guidance. (This issue is dealt with in greater detail in Section 8.)

- There are insufficient resources available for implementation and for training and supervision.

7 THE NATURE OF ADVOCACY SERVICES FOR CHILDREN AND YOUNG PEOPLE

7.1 This section sets out respondents' comments on whether the proposed principles and minimum standards corresponded to their own understanding of what advocacy provision for children and young people should look like.

7.2 Respondents in the main consultation were asked two questions regarding their views on the nature of advocacy services for children and young people:

- Do the principles and minimum standards as currently drafted reflect your / your organisation's understanding of what advocacy support for children and young people should look like?
- What is your view on whether *all* advocacy support for children and young people should only be provided by independent advocacy services as defined under the Mental Health (Care & Treatment) (Scotland) Act 2003?

Respondents' understanding of advocacy support for children / young people

7.3 Respondents were asked whether the principles and minimum standards as drafted matched their own understanding of what advocacy support for children and young people should look like. Just over half (43 out of 82) said 'Yes', while one third (26 out of 82) said 'No'. (See Table 7.1.)

Table 7.1: Do the principles and minimum standards as currently drafted reflect your / your organisation's understanding of what advocacy support for children and young people should look like?

	Yes	No	No opinion	No response	Total
Third sector					
Stand-alone advocacy services		16		1	17
Umbrella / membership orgs	4	1		1	6
Other third sector org	14	5		3	22
Local authority	17			1	18
NHS	2	2			4
NGO	1		1	2	4
Professional body	1			2	3
Other (police, partnership body, academic, MSP)	1	2	1		4
Respondent type not known	3		1		
Total	43	26	3	10	82
Percentage	52%	32%	4%	12%	100%

7.4 As can be seen from Table 7.1, local authority respondents were positive about the principles and minimum standards as drafted, whilst stand-alone advocacy service providers were not. Other types of respondents had less uniform views.

7.5 Many of those responding 'Yes' to this question offered no further elaboration of their views; they offered a straightforward endorsement of the principles and

minimum standards as currently drafted. However, almost all of the ‘Yes’ responses which *did* offer additional comment, made a qualifying statement to suggest that particular issues would have to be addressed before proceeding to implementation. Indeed many of the points raised by those responding ‘Yes’ were similar to the points raised by those responding ‘No’. These qualifying comments are discussed in more detail below.

Arguments against the principles and minimum standards as currently drafted

7.6 The main thrust of the comments from the stand-alone advocacy services was that the existing SIAA guidance should be used.

The SIAA has developed a set of documents that cover all aspects of independent advocacy in consultation with advocacy organisations, people who use advocacy, funders and commissioners. The SIAA documents should be used here. (Third sector advocacy organisation, #20)

7.7 However, this was not the only argument invoked to illustrate that the principles and minimum standards as currently drafted did not reflect the present understanding of what support for children and young people should look like. Other points raised included:

- They needed to be more specific and more detailed. The current version doesn’t articulate the importance of independent advocacy or the importance of freedom from conflicts of interest sufficiently; there is insufficient focus on specific groups (e.g. deaf, looked after young people, young people from different equalities groups, those with communication difficulties, those not able to instruct, etc.)
- The context was felt not to be appropriate. Respondents suggested that there were many more professional groups involved than the document gives the impression of covering. Moreover, the principles and minimum standards were felt not to be sufficiently located within a children’s rights context or sufficiently aligned with GIRFEC. Finally there is a need to also adapt adult focused systems (e.g. divorce proceedings) which impact on children and young people).
- The current draft of the principles and minimum standards was felt not to be meaningful because it did not show how they would be applied to non-independent services. Independence and freedom from conflicts of interest were seen to be core to the advocacy role and neither were felt to be possible if the individuals delivering advocacy are parents, carers, friends or professionals responsible for the delivery of other services to the child or young person.

Qualifying arguments raised by those in favour of standards as currently drafted

7.8 As explained above, many of those responding ‘Yes’ to this question, elaborated their answers by raising issues that needed to be taken into consideration before the principles and minimum standards could be implemented.

7.9 The qualifying arguments included that:

- There was insufficient detail / information in the document for implementation especially in relation to how this would apply to family, friends etc. The principles and standards were welcomed in theory, but they needed clarification for practical application. (Note that this same point was raised by those who answered 'No' to question 11.)

... additional guidance, support and direction would be welcomed regarding how to generate informal advocacy, peer support, self advocacy and group advocacy (Local authority respondent, #38)

- The development of principles and minimum standards is important, but current capacity for the provision of advocacy is limited.

The principles and minimum standards as currently drafted are reflected in the Council's understanding of what advocacy support should look like. However, additional funding would allow for the expansion of advocacy support to make it more accessible and available to all of the young people who would benefit from this support.... Access to the service for children in other circumstances is currently likely to be limited by the capacity of the service. (Local authority respondent, #87)

- The principles and minimum standards are suitable as long as independent advocacy can be provided by agencies that also provide services other than advocacy.

Providing that the government continues to accept that independent advocacy, as suggested by the Mental Health Act, can be provided by organisations who provide services other than advocacy so long as any conflict of interest can be prevented, and affects changes to existing SIAA guidance to this end, then the principles and guidance defined in the discussion paper reflect our understanding of what advocacy should and does look like. (Third sector organisation, #63)

Should all advocacy be 'independent advocacy'?

7.10 Question 12 in the consultation document was an open-ended question. Unlike the other open-ended questions in the document, it was not preceded by a closed question. In Question 12, respondents were asked for their views on whether *all* advocacy support for children and young people should only be provided by independent advocacy services as defined in the Mental Health (Care & Treatment) (Scotland) Act 2003.

7.11 This Act gives every person with a mental disorder the right to access independent advocacy. The definition of 'independent advocacy' as set out in Section 259 of the Act is shown in Appendix 4 of this report. The code of practice to the Act⁸ states that:

The Act, therefore, makes specific provision that to be "independent", the advocacy services must be provided by persons other than a local authority

⁸ Mental Health (care and treatment) (Scotland) Act 2003: Code of Practice Volume 1, Chapter 6, paragraphs 109-110.

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.

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 patient.

7.12 Comments on this question were received from 76 out of the 82 adult / organisational respondents. This is a higher response rate than for any other question in the consultation document. However, in considering the comments made on this question, it should be noted that there were a substantial minority of respondents who did not address the question itself. Rather, it was common for third sector organisations, in particular, to give their views about which organisations should be able to provide advocacy. Many of these respondents mistakenly equated ‘independent advocacy’ (as defined under the Mental Health Act 2003) with those organisations that *solely* provide advocacy services, and so they *disagreed* with the proposition in Question 12 that all advocacy support for children and young people should only be provided by independent advocacy services.

7.13 The main argument from these respondents was that the Mental Health Act 2003 makes provision for a *range* of agencies to provide advocacy to people with mental health problems — not only those who *solely* provide independent advocacy. The agencies which are *excluded* from providing advocacy are the local authorities or Health Boards which are providing services to the individual. Therefore, third sector agencies, whose roles complement or do not conflict with the provision of advocacy, are in a good position to also provide advocacy to children and young people. The following comment illustrates this argument.

[We] do not believe that all advocacy support for children and young people should only be provided by independent advocacy services, [we] believe that a number of professional organisations, including voluntary sector organisations, have the skills and needs to provide advocacy to children and young people. The existence of a set of standards will help to support consistency and quality throughout the system, regardless of the provider. (Third sector organisation,#41)

7.14 It should be noted that there were also a small number of respondents who appeared not to understand the question. These individuals argued against the proposition in the question because ‘*many young people will not fall under the remit of the Mental Health Act*’.

7.15 Other views expressed in relation to this question largely fell into four main categories:

- Those who agreed the proposition that *all* advocacy services for children and young people should be independent, as defined by the Mental Health Act. This group argued that children and young people are a marginalised group in society and they routinely face discrimination and infringement of their rights by adults. Therefore, it is important that they have access to *independent* advocacy. This group also believed that anything *less* than independent advocacy was a poorer quality service for children and young people. All stand-alone advocacy service providers plus a range of other respondents (including some NHS respondents, NGOs and other third sector agencies, as well as some individual respondents) were in this group.
- Those who argued that the need for independent advocacy was context-specific, i.e. young people in certain circumstances (looked after children, children involved in Children’s Hearings or child protection cases, children with mental health problems, asylum seeking children, trafficked children, gypsy / travelling children and those with disabilities) should have access to independent advocacy, but this is unnecessary for children and young people in other contexts. Some local authority, third sector and NHS respondents were in this group.
- Those who agreed with the proposition that advocacy services should be independent, but who pointed out that the definition of independent advocacy in the Mental Health Act made provision for a wide range of agencies to provide advocacy to young people — not only those that *solely* provide advocacy. This group mainly comprised third sector organisations that were *not* stand-alone advocacy services.
- Those who disagreed with the proposition because they saw value in providing different types of advocacy support (both independent, and less formal). This group tended to believe that a requirement for independent advocacy *only* would restrict options for children and young people.

7.16 There were also respondents whose comments suggested that they would *prefer* independent advocacy because of the issue of conflict of interest. However, this group tended to express concerns that an independent advocacy-only option would be unaffordable. Others felt that non-independent advocacy should not be referred to as advocacy at all, but rather ‘*support*’, ‘*guidance*’ and ‘*advice*’. One respondent felt that children and young people should always have the *option* of independent advocacy, but pointed out that this wasn’t always available, even for those who had a legal right to it.

7.17 In commenting on the broader issue of *which agencies* could (or should) provide independent advocacy, respondents also raised some salient points, including that:

- Specialist children’s services had an important role to play in meeting the need / demand for good-quality advocacy services for children and young people:

There is a severe shortage of advocacy services specifically tailored for the needs of children and young people. Those specialising in advocacy for adults may not have the requisite expertise, skills or knowledge to [provide]

advocacy services for children or young people effectively. This could mean that children and young people are denied the best possible advocacy service, and genuine choice. (Third sector organisation, #25)

- But at the same time, there was a question about whether third sector service providers could be considered as ‘independent’ as defined by the Mental Health Act, if they were already providing services to the child / young person:

Point 17 highlights that under the Mental Health (Care and Treatment) Act 2003 ‘Independent Advocacy must be divorced from the interests of those persons concerned with a patient’s care and welfare’. [We are] unclear whether this definition of Independent Advocacy applies to only NHS and local authority patient care, or whether this would also apply to voluntary service organisations providing advocacy support. For example, would it mean that support workers at [Agency Name Removed] would be unable to act as advocates for children and young people using those services to receive emotional support around their experiences of domestic abuse? (Third sector organisation, #71)

- On the other hand, the point was also made that, even stand-alone advocacy services are not truly independent as they are generally funded by and accountable to local authorities or Health Boards:

It is not sufficient to say the advocacy organisation is stand alone – if it is funded by statutory bodies and tightly confined by contract it may be less “independent” than some in-house services with good firewalls between functions. (Local authority respondent, #23)

- 7.18 In their responses to Question 12, respondents also continued to raise questions about how standards could be applied to advocacy provided by family members and friends. One of these brought the question back to the purpose of the consultation document:

While we recognise that other advocates can and do provide advocacy we believe this question to be a red herring or distraction from the real issue which for us remains that Principles and Standards already exist. And those can be applied to any organisation wishing to provide advocacy for children and young people. A difficulty arises in relation to ‘supporters’ who support children and young people and how any Principles or Standards can be applied. (Stand-alone advocacy service, #33)

- 7.19 A second respondent called for *separate* principles and standards to be developed for (i) independent advocates and (ii) for non-independent, professional advocates. This same individual also felt there should be ‘*guidance*’ for informal advocates such as family members.

8 LINKS TO OTHER RESOURCES, STANDARDS AND INITIATIVES

8.1 The final two questions in the consultation document asked for respondents' views about the relationship between the principles and minimum standards and other extant resources (the general issue) and also about whether the proposed standards would complement the range of other guidance already in use by particular organisations (the specific issue):

- Question 14: The proposed principles and minimum standards will have to be considered alongside the range of existing resources focusing on advocacy provision. Is the relationship between the principles and minimum standards and those other resources sufficiently clear? [Yes / No / No opinion]
- Question 15: Do you feel that the principles and minimum standards as currently drafted will complement the range of other guidance that is relevant to you / your organisation? [Yes / No / No opinion]

8.2 These questions are dealt with in turn below.

Relationship between principles and minimum standards and other resources

8.3 On the general issue, the balance of opinion was that the relationship between the principles and minimum standards and other resources was not sufficiently clear. One half of respondents (41 out of 82) answered 'No' to this question, with just under one quarter (19 out of 82) saying 'Yes' and the remaining respondents either offering no opinion or no response. (See Table 8.1 below.)

Table 8.1: Is the relationship between the principles and minimum standards and other resources sufficiently clear?

	Yes	No	No opinion	No response	Total
Third sector					
Stand-alone advocacy services		16		1	17
Umbrella / membership orgs		2	2	2	6
Other third sector org	8	8	2	4	22
Local authority	8	8		2	18
NHS	1	1	2		4
NGO	1		1	2	4
Professional body		1		2	3
Other (police, partnership body, academic, MSP)		4			4
Respondent type not known	1	1	2		4
Total	19	41	9	13	82
Percentage	23%	50%	11%	16%	100%

8.4 The additional comments made in relation to this question touched on issues not directly related to the question, which have been covered elsewhere in this report. In particular, there were concerns about how the implementation of the principles and minimum standards would be resourced; and whether the standards as drafted would set the bar at too low a level. There was also a lack of clarity about

the relationship between formal and informal advocacy services; and about the distinction between the principles and standards. Since these issues are addressed elsewhere in this report, the material is not repeated here.

8.5 Most of the 'Yes' responses (13 out of 19), were not supplemented with any additional comment. Of the remaining six responses, five were qualified in some way as follows:

- One respondent raised the possibility that further issues may arise following implementation. (Local authority respondent, #38)
- One respondent felt a mapping of existing standards would be useful as would a sharing of materials. (Local authority respondent, #83)
- One additional comment said, '*we are not clear from the discussion paper about the relationship between the principles and minimum standards and other resources*' (Third sector organisation, #45)
- One made the comment that, '*It would be helpful to include a page in the guidance on how the principles and standards fit with and relate to current resources / statutory legislation / policy.*' (Third sector organisation, #64)
- One other said they '*would welcome further information about how advocacy support services for children and young people will be resourced.*' (Third sector organisation, #88).

8.6 The main themes and points made against the proposition laid out in this consultation question focused both on the relationship with existing SIAA materials, and on the fit with wider legislative mechanisms and codes of practice.

8.7 There was a widespread concern within the third sector about the lack of an explicit interface with the existing SIAA standards. For example

The document does not complement the existing documents produced by the SIAA, which are endorsed by the Scottish Government and used by [the] advocacy movement in Scotland. (Stand-alone advocacy service, #30)

Surely the existing Advocacy providers will use the principles and standards which they already have in place. (Third sector organisation, #48)

8.8 In addition, respondents sought clarification on a broader basis about the relationship between these principles and minimum standards and other relevant legislation, frameworks, codes of conduct or other initiatives. For example:

We are aware that in terms of the Care Inspectorate's Child Protection Inspections since 2006, they have been examining Advocacy as part of the Reference Indicators 2.1 to 2.4. (Local authority respondent, #35)

The document requires further signposting and links to the range of existing resources so it is clear that this does not replace the existing plethora of guidance but that it complements it. (Local authority respondent, #66)

The Support for Learning Code of Practice associated with the Education (Additional Support for Learning) (Scotland) Act 2004 – as amended – provides helpful guidance to supporters and advocates of children and young people with complex support needs. Health has a duty to education under the ASL Act and in relation to children and young people with ASN. The consultation document should make clear that advocacy relating to school education would come under that act. (Third sector organisation, #56).

Whether the principles / minimum standards will complement existing guidance

8.9 The responses to the specific question are given in Table 8.2 below. The distribution of responses for this question was closer to that for earlier questions, where the main divide is between stand-alone advocacy service providers who said ‘No’ to this question and other third sector organisations and local authorities who mainly said ‘Yes’. The pattern of responses among other types of respondents was less clear cut.

Table 8.2: Do you feel that the principles and minimum standards as currently drafted will complement the range of other guidance that is relevant to you / your organisation?

	Yes	No	No opinion	No response	Total
Third sector					
Advocacy providers		16		1	17
Umbrella / membership orgs	2	1	2	1	6
Other third sector org	15	2	1	4	22
Local authority	16	1		1	18
NHS	1	1	2		4
NGO			2	2	4
Professional body	1			2	3
Other (police, partnership body, academic, MSP)	1	1	2		4
Respondent type not known	2		2		4
Total	38	22	11	11	82
Percentage	46%	27%	13%	13%	100%

8.10 The majority of respondents (55 out of 82) did not provide any additional comment to elaborate their response to this question. The comments which were provided mostly echoed themes and points made in relation to earlier questions.

8.11 Substantive points which were distinctive, and not addressed elsewhere in this report covered:

- A question about whether the principles and standards *‘will actually change anything’*.
- The principles and minimum standards *‘fall short on the demand for independent status of advocacy providers’*.

- *‘Too many potential different interpretations of the rights, the needs, the resources, the priorities, the responsibilities and the need for ongoing involvement of advocates and others in confidential areas of the child’s life.’*
- There needs to be clarity about the circumstances in which children and young people have a statutory right to advocacy services.

9 CONCLUSIONS

- 9.1 This section summarises the key findings from the consultation analysis. We understand that the Scottish Government intends to respond to the findings separately.
- 9.2 The responses to this consultation revealed very strong support for promoting, extending, and improving advocacy services for children and young people. These services were thought to be vital, and to be currently under-resourced. The opportunity to focus on these services was welcomed by all respondents.
- 9.3 Two-thirds of respondents expressed support for the idea of a separate set of principles and minimum standards for children’s advocacy services. There was also agreement in principle with the idea of involving a broader range of individuals and groups in providing advocacy, support and guidance to children and young people. However, significant concerns were raised with the proposals set out in the consultation document by a wide range of respondents.
- 9.4 In their responses to the closed question, approximately half of all respondents expressed agreement with each of the five proposed principles and associated standards, whereas a third (mainly the stand-alone advocacy service providers) were less supportive – ticking boxes to indicate only partial agreement. However, both groups expressed reservations about the principles and minimum standards as set out in the consultation document. These were highlighted in their responses to the open questions.
- 9.5 Therefore, in considering how to take this work forward, the main focus should be placed on the qualitative findings — which indicate a need for substantial clarification and revision of the suggested proposals.

Is a separate set of principles / minimum standards needed?

- 9.6 The main difference between stand-alone advocacy service providers and other types of respondents concerned the question of whether a separate set of principles and minimum standards were needed.
- 9.7 Stand-alone advocacy services felt strongly that existing SIAA guidance and materials were sufficient to address the provision of advocacy for children and young people. Respondents pointed out that the SIAA standards had been developed through extensive consultation, and in collaboration with the Scottish Government. These respondents argued that the exercise of developing a *separate* set of principles and minimum standards would cause confusion. They also believed this would result in a *lowering* of standards as the standards proposed in the consultation document were lower than those already adhered to by this group. Furthermore, the exercise could also result in a *proliferation* of standards for different groups, when only one set of standards for advocacy was needed.
- 9.8 In contrast, those who were in *favour* of a separate set of principles and minimum standards for children’s advocacy services argued that children and young people have unique needs and the range of circumstances in which they are likely to

require advocacy support are very different to those for adults. Respondents in this group felt that particular skills and specialised training should be expected of people who provide advocacy services to children and young people — that it was not necessarily the case that an individual who adheres to the SIAA standards would be equally able to provide advocacy for adults and for children and young people. This group also felt that a separate set of principles and minimum standards would help raise the profile of advocacy for children and young people and that this would provide an impetus for ensuring that their voices are heard.

- 9.9 Beyond these divergent views about the need for a separate set of standards, respondents often expressed similar reservations in relation to the principles and minimum standards as drafted, and in relation to the consultation document itself. The main issues are summarised below.

Lack of clarity regarding the consultation document

- 9.10 Respondents felt that basic definitions which should underpin the principles and minimum standards were missing (for example, a definition of the advocacy role; a definition of who can be an advocate; a definition of the situations / circumstances in which advocacy should be available to children and young people; and definition of conflicts of interest). It was clear that different respondents had interpreted key concepts in the consultation document (such as ‘independent advocacy’) in very different ways.
- 9.11 Moreover there was a lack of clarity about the relationship between the principles and minimum standards and other extant guidance, legislation, codes of conduct and frameworks. In particular, respondents wanted far more detail about how the proposals fit with other ongoing initiatives (such as the development of advocacy provision in the Children’s Hearings system), legislation (such as the Rights of Children and Young People Bill) and guidance (including national child protection guidance).
- 9.12 Finally, respondents frequently requested clarification about who the principles and minimum standards were aimed at. Do they cover independent advocacy services, non-independent advocacy services, informal advocacy, or all of these? The point was made repeatedly that it would not be possible to expect informal advocates (such as parents, relatives, carers, friends) to adhere to any set of standards. Despite statements in the document that the standards were intended for a broad target audience, respondents felt that they could only apply to individuals providing advocacy in a professional capacity. Consequently, there was confusion about the relationship between the Scottish Government’s proposals and the existing SIAA standards for independent advocacy.
- 9.13 In relation to the principles and minimum standards themselves, there were queries or requests for clarification about nearly every one. Such queries were often comments about the lack of specificity in the language used. For example. *‘What does ‘where appropriate’ mean?’ ‘What does ‘wherever possible’ mean?’ ‘It needs to be clearer which organisations will be responsible...’ ‘What exactly are the circumstances in which this would apply?’* etc.

Concerns about the proposed principles and minimum standards

9.14 In addition to the need for greater clarity expressed by respondents in relation to the consultation document itself, there were substantial reservations raised in relation to the principles and minimum standards as drafted. Even among those who generally supported the principles, there were concerns about how the principles / minimum standards would or could be applied in practice. A wide range of issues were raised by respondents. However, two that were repeatedly raised were about the issue of **conflict of interest** and a related issue of **who is an appropriate person** to be an advocate for a child or young person.

Conflicts of interest

9.15 Respondents strongly agreed with Principle 4 that advocacy support should be free from conflicts of interest, although some (including all the stand-alone advocacy service providers) pointed out that the document did not specifically define what is meant by 'conflict of interest'. It was common for respondents to ask for further information, including examples or case studies, about where conflicts of interest could occur when providing advocacy to children and young people, and how they might be managed.

9.16 Furthermore, although respondents were supportive in principle of the idea that children and young people should be able to choose their own advocate, they believed that this would inevitably result in conflicts of interest in situations where the child or young person's chosen advocate was a carer, parent, other family member or an individual who was involved in providing a service to the young person. At the very least, this could result in their views not being expressed or heard. At the worst, and more importantly, the child could actually be put into a position of risk.

9.17 Although adult respondents generally agreed with Principle 3 that children and young people should be able to choose their own advocate, respondents' comments suggested that this right to choose could be incompatible with the principle of ensuring that advocacy is free from conflicts of interest.

9.18 The children and young people who took part in the consultation clearly agreed with the proposition that they should be able to choose their own advocate. At the same time, many reported that they had had help from a wide range of individuals (both professional and non-professional) to help them speak out in the past.

9.19 Some respondents proposed a compromise solution which provided the most vulnerable children and young people with independent advocacy but which also gave children and young people the option of choosing from a wider range of advocates for other less sensitive issues.

Who is an appropriate person to be an advocate for children and young people?

9.20 Related to the issue of conflict of interest is the question of who is an appropriate person to be an advocate for a child or young person. The answer to this question partly relates to skills, knowledge and expertise. (This will be discussed below.) However, it also relates to the circumstances in which advocacy support is needed.

- 9.21 Following on from the point made above in paragraph 9.19, respondents identified a **hierarchy of advocacy provision** where ‘independent advocacy’ — as defined in the Mental Health (Care & Treatment) (Scotland) Act 2003 — was the gold standard. A wide range of respondents, including those beyond the stand-alone advocacy sector, felt that the most vulnerable children and young people (i.e. those involved in the Children’s Hearings system, looked-after children, those with disabilities, asylum-seeking young people, etc.) should have access to independent advocacy. In addition, independent advocacy should be provided by trained and qualified professionals who should be expected to meet certain standards and work to agreed codes of conduct.
- 9.22 The second level of advocacy might be provided by non-independent professionals — i.e. those who have an ongoing relationship with the child by virtue of a service they provide. These might include a youth worker, teacher, social worker or a health professional. Advocacy provision by this group might be appropriate in certain circumstances (and these should be clearly defined), but not in others (because of the potential for a conflict of interest). This group of potential advocates should also be subject to agreed principles and standards, but not necessarily the same standards as independent advocates.
- 9.23 Finally, the third level of advocacy might be provided informally by friends, family members and carers. This form of advocacy may be used in certain (probably limited) circumstances where there is little or no concern about the implications of having a conflict of interest. This group of advocates should be provided with guidance, but could not be expected to comply with standards. The extent to which respondents wished to apply the term ‘advocacy’ to this kind of support varied considerably; some respondents felt it was not appropriate to refer to informal support as ‘advocacy’.
- 9.24 There was considerable discussion among third sector respondents and some local authority respondents about what should constitute ‘independent advocacy’ for children and young people. Respondents from children’s charities pointed out that staff from their agencies potentially have an important role to play in providing independent advocacy support because of their specialised skills, knowledge and experience of working with often very vulnerable children and young people. These respondents generally felt there was a need for separate principles and minimum standards for children and young people because of the *additional* expertise, skills and training required to work effectively with this group. This group stated that the SIAA standards defined independent advocacy too narrowly as advocacy which is provided by organisations whose *sole remit* is to provide advocacy.

Other issues

- 9.25 Other issues regularly highlighted in respondents’ comments included:
- **The lack of information about additional resources to support the proposed approach.** The consultation document did not raise the issue of resources directly. However, respondents raised this issue in response to almost all questions. There was a widely shared view that the current provision of advocacy services for children and young people is inadequate,

even in situations where children have a statutory right to advocacy. Thus, there were serious underlying questions about where resources to support any new developments and approaches would come from. Respondents also identified a substantial requirement for training and support to accompany the introduction of the proposed principles and minimum standards, especially within an informal advocacy context.

- **Monitoring and scrutiny.** Respondents were unclear how the principles and standards would be monitored and evaluated in general. Respondents asked: How will individuals and organisations be measured and scrutinised? Who will guarantee accountability? Who will monitor implementation? What sanctions will apply? These questions were often raised in the context of discussions about how informal advocacy provision or advocacy provided by other individuals not employed by a formal advocacy organisation could be meaningfully scrutinised. Respondents noted that the SIAA standards have a framework of scrutiny and monitoring. But there is no sense of how this can be rolled out to cover non-independent services and more specifically informal advocacy. It was not thought to be realistic that the broader non-professional group could understand and apply complex legal definitions and principles.
- **Children's understanding of advocacy.** Many of the responses from children and young people (including those from facilitated group events) highlighted the complexity of this issue. Preparatory work was often required by organisations to introduce the concept of advocacy and its meaning within the lives of children and young people, as this was not a standard part of the vocabulary of children and young people. Respondents to the main consultation made the point that many children and young people struggle to understand that having their views heard and taken into account does not necessarily mean that their views will prevail in situations where their best interests are being considered. This tension was evident in some of the responses from children and young people which stated, *'Adults shouldn't think they know best'* and *'Social workers should listen to advocates'*. This goes to the heart of the issue about the complexity of allowing children to choose their own advocate whilst at the same time ensuring they are protected.
- **Children with particular needs.** Respondents used the opportunity of responding to the consultation to raise issues about the provision of services for specific groups of children and young people, including those who are deaf, disabled, those with complex communication needs, and those with black and minority ethnic or religious identities, including asylum-seeking children. The point was often made was that the standard set for independent advocacy within the Mental Health (Care & Treatment) (Scotland) Act 2003 should probably also apply to these groups also. However, it was emphasised that provision for these groups is likely to be highly resource intensive.

Concluding remarks

9.26 There was a great deal of support for the Scottish Government's efforts to improve advocacy provision for children and young people among the respondents to this consultation. However, respondents' comments often suggested that, in their current form, the proposed principles and minimum

standards could only be understood as aspirational. Many struggled to see how the proposals could be implemented in practice.

- 9.27 The responses have raised questions about whether it is possible to provide a single set of principles and minimum standards as set out in the consultation document. The extremely diverse range of circumstances and settings within which children may need advocacy support coupled with the broad range of types of individual (ranging from informal supporters to the professionally qualified) who are to be covered, risks reducing this exercise to a 'lowest common denominator' which will not achieve the document's stated ambition of extending high quality advocacy to children and young people.

APPENDIX 1: CONSULTATION QUESTIONS (ADULTS)

1. Are the aims and objectives of this discussion paper clear?

Yes

No

No opinion

Comments

2. a) Do you believe that it is necessary to develop a suite of principles and minimum standards focusing specifically on the provision of advocacy support for children and young people?

Yes

No

No opinion

b) If no, do you feel that existing principles, standards and guidance, including the Scottish Independent Advocacy Alliance (SIAA) materials, are sufficient to cover practice in this area?

Yes

No

No opinion

Comments

3. a) The principles and minimum standards have been developed to apply to the broad range of individuals and organisations who can give advocacy support to children and young people. Is this target audience appropriate?

Yes

No

No opinion

b) If no, who should the principles and minimum standards apply to?

Comments

4. a) Do you feel the proposed principles and minimum standards could be applied in the broad range of circumstances in which advocacy support can be required by children and young people?

Yes

No

No opinion

b) If no, can you give examples of circumstances to which you do not think they would apply?

Comments

5. Do the principles and minimum standards make it clear that advocacy support needs to be free from conflicts of interest?

Yes

No

No opinion

Comments

6. a) Do you agree with principle 1 and the associated standards?

Yes

No

No opinion

b) Are there any changes or additions to this principle or standards that you would like to see?

Comments

7. a) Do you agree with principle 2 and the associated standards?

Yes

No

No opinion

b) Are there any changes or additions to this principle or standards that you would like to see?

Comments

8. a) Do you agree with principle 3 and the associated standards?

Yes

No

No opinion

b) Are there any changes or additions to this principle or standards that you would like to see?

Comments

9. a) Do you agree with principle 4 and the associated standards?

Yes

No

No opinion

b) Are there any changes or additions to this principle or standards that you would like to see?

Comments

10. a) Do you agree with principle 5 and the associated standards?

Yes

No

No opinion

b) Are there any changes or additions to this principle or standards that you would like to see?

Comments

11. a) Do the principles and minimum standards as currently drafted reflect your / your organisation's understanding of what advocacy support for children and young people should look like?

Yes No No opinion

b) Are there other principles or minimum standards that should be included?

Comments

12. What is your view on whether all advocacy support for children and young people should only be provided by independent advocacy services as defined under the Mental Health (Care & Treatment) (Scotland) Act 2003?

Comments

13. a) Does the discussion paper give you enough information about how the principles and minimum standards will apply to you as an individual / organisation?

Yes No No opinion

b) If no, what other information would you need?

Comments

14. The proposed principles and minimum standards will have to be considered alongside the range of existing resources focusing on advocacy provision. Is the relationship between the principles and minimum standards and those other resources sufficiently clear?

Yes No No opinion

Comments

15. Do you feel that the principles and minimum standards as currently drafted will complement the range of other guidance that is relevant to you / your organisation?

Yes No No opinion

Comments

16. Any other comments:

Comments

All responses should be submitted to: childrens.rights@scotland.gsi.gov.uk

Alternatively, hard copy responses can be submitted to:

Children's Rights Team
Children's Rights & Wellbeing Division
Scottish Government
Area 2-B Dockside
Victoria Quay
Edinburgh
EH6 6QQ

The deadline for responding to the discussion paper is 29 February 2012.

APPENDIX 2: CONSULTATION QUESTIONS (CHILDREN AND YOUNG PEOPLE)

Can you help us?

Here are some things the Scottish Government would like to know from children and young people.

1. Have you had help from an advocate to speak out?

Yes

No

Don't know

2. Who has helped you speak out?

Tick the ones who have helped you.

- Spoke out myself
- A family member
- An advocate (like a worker from Who Cares? Scotland, another project or an independent advocacy organisation).
- A friend
- Teacher
- Social worker
- Youth worker
- Play worker
- Children's Rights Officer
- No one helped me
- Someone else
Who was that person

3. The Scottish Government wants to know what makes a good advocate — someone who helps you speak out.

What you would like your good advocate to be like:

→ What kind of person are they?

→ What things are they good at?

→ What do they NOT do?

My good advocate is....

You might want to draw your good advocate below — or get someone to help you?

4. Speaking out for you.

Advocates should help you speak out. They should not let anyone or anything stop them helping you. If they can't help you, they should find someone else who can.

4.1 Do you agree that advocates should help you speak out and not let anything get in the way?

Yes No Don't know

4.2 What might get in the way of advocates helping you? Tick which ones you agree with.

- 1) They don't listen to you.
- 2) They don't agree with what you say.
- 3) They don't have enough time.
- 4) They think adults know best.
- 5) They listen to other people instead of you.
- 6) Other things get in the way like their job or who they work for?
- 7) Other things (please add)

5. Can you help us?

These are the Principles - the things that are really important for advocacy.

They have been developed for everyone who has a role in supporting children and young people.

Do you agree with these Principles? These are a shortened version. You can look at the full Principles at <http://www.scotland.gov.uk/Topics/People/Young-People/families/advocacy>.

Principle 1: Children and young people's rights are protected including their right to be heard.

5.1 Do you agree with Principle 1? Yes No Don't know

Do you think anything else should be included?
.....

Principle 2: Children and young people’s voices are listened to and respected. Adults take children’s views into account when they make decisions.

5.2 Do you agree with Principle 2? Yes No Don’t know

Do you think anything else should be included?

.....

Principle 3: Advocacy is available where and when children and young people need it. Children and young people have the right to choose their own advocate.

5.3 Do you agree with Principle 3? Yes No Don’t know

Do you think anything else should be included?

.....

Principle 4: Advocates are completely loyal to children and young people. They only speak out or help children and young people.

5.4 Do you agree with Principle 4? Yes No Don’t know

Do you think anything else should be included?

.....

Principle 4: Advocacy for children and young people is the best it can be.

5.4 Do you agree with Principle 5? Yes No Don’t know

Do you think anything else should be included?

.....

6. Who should know about the advocacy principles and standards?

Tick the ones you agree with.

- 1. Advocates (like a worker from Who Cares? Scotland, another project or an independent advocacy organisation)
- 2. Children's Rights Officers
- 3. Youth workers
- 4. Panel members
- 5. Play workers
- 6. Social workers
- 7. Health workers
- 8. Teachers
- 9. Families
- 10. Children and young people
- 11. All of these people ...
- 12. Someone else (who is that person)

7. Could you give us some information? It helps us if we know more about the children and young people and projects that have taken part.

You don't have to fill this in. We don't ask for your name.

7.1 Are you completing this form in a group? Yes No

7.2 How many children and young people are in the group?

7.3 Your age(s)

7.4 Are you filling this in at a project or service? Yes No

7.5 What is the name of the project or service?

Thank you for your help. You can send your replies to us by email at childrens.rights@scotland.gsi.gov.uk or through the post to:

Children's Rights Team
Scottish Government
Area 2-B(Dockside)
Victoria Quay
Edinburgh
EH6 6QQ

APPENDIX 3: LIST OF RESPONDENTS

Organisational respondents

Local authority respondents

Aberdeen City Council -- Education, Culture and Sport Service
Angus Council
Argyll and Bute Council
Dundee City Council Social Work
Inverclyde Child Protection Committee
Midlothian Council
North Lanarkshire Council
North Lanarkshire Council (2)
Perth & Kinross Child Protection Committee
Renfrewshire Child Protection Committee
Scottish Borders Children and Young People's Planning Partnership
Social Work Services, Dumfries & Galloway Council
South Ayrshire Council
South Ayrshire Psychological Service
South Lanarkshire Child Protection Committee
South Lanarkshire Council Psychological Services
South Lanarkshire Council Social Work Resources
Stirling Council

NHS organisations

Division of Clinical Psychology - Scotland
NHS Forth Valley
NHS Greater Glasgow and Clyde - Rights of the Child Group

Non-governmental organisations

Equality and Human Rights Commission
Information Commissioner's Office
Scottish Children's Reporter Administration
Scotland's Commissioner for Children and Young People

Stand-alone advocacy organisations

Advocacy Orkney
CAPS (The Consultation and Advocacy Promotion Service)
Central Advocacy Partners
Equal Say Advocacy
Independent Advocacy Perth & Kinross
Partners in Advocacy
People First (Scotland)
People First Highland
Scottish Independent Advocacy Alliance
The Advocacy Project
Your Voice
Youth Advocacy (East Ayrshire)

Other third sector organisations

Aberlour Child Care Trust
Action for Children Scotland
Action for Sick Children (Scotland)
Barnardo's Scotland
BEMIS
Capability Scotland
ChildLine Scotland
Children 1st
Children in Scotland
Community Law Advice Network ('cl@n childlaw')
Cornerstone
Enable
Families Outside
Includem
Kibble Education and Care Centre
Long Term Conditions Alliance Scotland
National Deaf Children's Society (NDCS) Scotland
PAMIS
Quarriers
Scottish Children's Services Coalition (SCSC)
Scottish Women's Aid
Sense Scotland
Together -- Scottish Alliance for Children's Rights
Who Cares? Scotland
YouthLink Scotland
YWCA Scotland

Professional bodies

Royal College of Nursing
Royal College of Psychiatrists in Scotland
The British Psychological Society

Other organisational respondents

ACPOS Child Protection Portfolio
CELCIS
East Renfrewshire Community Health and Care Partnership
Scottish Parent Teacher Council

Individual respondents

Mr Allan Kidd
Ms Siobhan McMahon, MSP
and 9 other individual respondents

APPENDIX 4: LIST OF AGENCIES THAT SUPPORTED CHILDREN AND YOUNG PEOPLE TO TAKE PART IN THE CONSULTATION

Angus Council
Barnardo's East Ayrshire Youth Work service
Barnardo's Easterhouse YIP
Barnardo's — Fife Children's Rights Service
Barnardo's Fostering Edinburgh
Barnardos — Fraegarrach Stirling
Children 1st
Circle Scotland
City of Edinburgh Young People's Participation Team
Eildon HYPPE
ENABLE Scotland
ENABLE Scotland – Fife Services
ENABLE Scotland – Go For It
Ferndale Children's Unit
Glasgow Children's Rights Service
Having Your Say West Lothian
Hear 4 You
Intensive Support and Monitoring Service
Kingsfield Children's Home
North Lanarkshire Young Carers
Quarriers
Residential Child Care
Scottish Borders Council Participation Theme Group
Seafeld School, Quarriers
The Triangle
Tweeddale HYPPE Panel
VOX
Young People's Organising and Campaigning Group (YPOC)
Your Voice

APPENDIX 5: DEFINITION OF INDEPENDENT ADVOCACY IN THE MENTAL HEALTH (CARE & TREATMENT) (SCOTLAND) ACT 2003

For the purposes of subsection (1) above, advocacy services are “independent” if they are to be provided by a person who is none of the following—

- (a) a local authority;
- (b) a Health Board;
- (c) a National Health Service trust;
- (d) a member of—
 - (i) the local authority;
 - (ii) the Health Board;
 - (iii) a National Health Service trust,in the area of which the person to whom those services are made available is to be provided with them;
- (e) a person who—
 - (i) in pursuance of arrangements made between that person and a Health Board, is giving medical treatment to;
 - (ii) in pursuance of those arrangements, is providing, under the National Health Service (Scotland) Act 1978 (c. 29), treatment, care or services for; or
 - (iii) in pursuance of arrangements made between that person and a local authority, is providing, under Part II of the Social Work (Scotland) Act 1968 (c. 49) (promotion of social welfare) or any of the enactments specified in section 5(1B) of that Act, services for, the person to whom the advocacy services are made available;
- (f) in relation to a patient detained in a state hospital or a person who (by virtue of any of the means specified in subsection (11)(b) below) is no longer detained there, the State Hospitals Board for Scotland or a member of that Board.



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