

Who Cares? Scotland

The Right to Independent Advocacy for Scotland's Looked after Children and Young People and Care Leavers.



Independent Advocacy Provision in Scotland

We believe that looked after young people and care leavers across Scotland should have a **right to independent professional advocacy**. The role of an advocate is to support and empower young people to be able to express their views and assist them in making informed decisions on matters which influence their lives. If an adult is involved in powerful processes or systems which could potentially change their circumstances or the course of their life, they would undoubtedly seek support or representation from someone independent of the decision makers. Many adults seek independent remedy when involved in formal or legal processes.

Young people living in care and care leavers are expected to contend with life changing decisions and formal meetings on a frequent basis throughout their young lives, without the statutory right to independent advocacy. Article 12 of the UN Convention on the Rights of the Child, makes very clear that every child has the right to say what they think in all matters affecting them and to have their views taken seriously. Advocacy helps to make that right a reality for those children and young people who, for whatever reason, would not otherwise be able or allowed to share their views.

Who Cares? Scotland recognises that advocacy provision is inconsistent across Scotland, with service delivery dependant on decisions made by each local authority. Not all looked after young people and care leavers are able to access professional independent advocacy tailored to their specific need; in our estimation **less than 20%** of Scotland's looked after population have access to independent advocacy support. Experience has demonstrated that to safeguard vulnerable children and young people it is of utmost importance that independent advocacy is accessible to all, if required.

Understanding the Spectrum of Advocacy Support

Who Cares? Scotland is committed to the promotion and delivery of quality professional independent advocacy services for looked after young people and care leavers. However, we also recognise the existence of a **spectrum of advocacy** where there is recognition of the breadth of vital relationships which are integral to safeguarding the rights of young people in Scotland's care system. This spectrum takes account of the varying degrees of advocacy and support that can help ensure a young person understands and realises their rights, from their **family members to independent advocates to legal representation**. The role of such people, who can advocate and who strive to do their very best for the child or young person, is important. However, we also know that often without intention, that non independent approaches can often weaken the voice of the young person. A family member may hold a belief which is at odds with the young person's view. A professional providing a service will have a statutory obligation to look after the young person and their opinion might not reflect exactly that of the young person. Additionally, professionals are also

encouraged to adopt a holistic approach to assessments of children and young people, who necessarily takes into account the views of other family members.

While Who Cares? Scotland acknowledges the spectrum of advocacy, we also strongly believe in the distinct role of the independent advocate as a professional and skilled individual who is removed from the formal settings, structures and processes which can define the lives of looked after young people and care leavers. This clear distinction from family, statutory services and service providers can be crucial in ensuring that young people are supported to understand and realise their rights without **conflict of interest**.

Similarly an independent advocate requires relevant qualifications and specialist training to ensure they are in a position to promote rights and responsibilities. It is important to acknowledge that advocacy is not about assessing unmet need; nor should it be viewed as a mentoring or befriending service. The aim of an independent advocate is to engage with and empower the young person in enhancing **their own ability** to be able to express their views independently; aiming to prevent a reliance on services.

Understanding the Spectrum of Advocacy Tasks

The spectrum also takes account of the complex nature of advocacy tasks in which a young person may need support with from **informal, day to day** concerns to **formal support at children's hearings**. Additionally this spectrum recognises that regardless of the task at hand, ensuring longer term empowerment and safeguarding of rights through building safe and reliable relationships is at the core of all advocacy tasks. The development of a meaningful relationship between a young person and an advocate is fundamental in ensuring the full spectrum of advocacy is realised; from requests to redecorate a room in a children's unit, to increasing the level of planned contact with a sibling.

Informal Representation

Looked after young people and care leavers at times, request support from advocacy services to help them engage in day-to-day decisions that affect them. This type of advocacy support still requires to be professional and independent; however the nature of such tasks can help to build important relationships and trust between the young person and an advocate. In order to empower the young person to develop their own ability to advocate for themselves, they need to be shown how by someone who has a competent knowledge and skill base, but also by someone that they feel comfortable with; someone who they can count on to be there for only them.

The skill base and expertise is essential in ensuring those supported are best represented by an advocate who is objectively aware of the processes and structures that the young person has to navigate their way through in order to ensure their wants, needs and views are acknowledged and fully considered. However the relationship is the link between one-off advocacy asks and longer term development of rights knowledge and confidence building.

Ensuring care experienced young people have access to professional independent advocacy at this earlier stage adheres to **early intervention principles**. It enables young people to work in partnership with the adults in their life without immediately having to utilise formal processes. It is

one of their first experiences of active citizenship and taking an active role in processes which affect their lives. This is a necessary skill to develop as they mature into adults.

Formal Representation

Formal representation assists young people to navigate their way through statutory frameworks and processes. It is imperative that this support is underpinned by specialist knowledge and understanding, to ensure that looked after young people and care leavers are represented fairly and as effectively as possible.

Looked after young people and care leavers are subject to statutory processes which are based upon legislation, guidance and policies. The complexity and impact of such processes cannot be underestimated. This type of representation can be utilised for formal processes such as raising formal complaints, attending Children's Hearings or during child protection procedures. However, as always the advocate must **only** be directed by the young person and must represent their views alone.

The Right to Independent Advocacy in Scotland

Currently looked after young people and care leavers do not have a legislative right to independent advocacy services. While the Children's Hearing (Scotland) Act 2011 places a duty on the chairperson of the hearing to **inform** the child of advocacy support, the chairperson has the power to decide that the child does not require an advocate. This legislative provision is weak and from our work with looked after young people and care leavers across Scotland, we are aware that this duty is rarely upheld.

It has been evidenced that care experienced young people with complex needs often find it difficult to engage with services (Scottish Government, 2013). As a result they often leave the care system too early and struggle to achieve a positive destination. If a young person is unable to engage with the practitioners who are tasked with assessing their situation, the assessment cannot truly represent their need. A lack of relationship-based practice and inaccurate assessments can lead to inappropriate interventions being implemented (Milner and O'Byrne, 2009). When interventions are misinformed those supported are adversely affected and resources incorrectly distributed.

Ensuring that all care experienced young people have a **universal right to advocacy** will increase levels of engagement and better place professionals to develop the care plan and source and deliver appropriate and effective supports.