

The child's right? The provision of independent advocacy within the context of children's rights

Abstract: The provision of independent advocacy services for children has had an impact on promoting the rights of children in the UK. The Convention on the Rights of the Child (1991) has brought about a change in the discourse on the rights of children, not least to express themselves and have their views, wishes and feelings taken into account by adults. This paper interrogates that change and its impact on, and access to, third sector independent advocacy provision for vulnerable children. The paper looks at barriers to independent advocacy as well as reasons for its provision, using historic and recent cases, legislation and policy, to evidence need within a context of international children's rights. The paper will argue that attainment of this right has become diluted in its domestic application by vagaries of statute, over-burdened and decreasing resources, failures of integrated practice, and adult-child power relations in which the discourse of child voice has become muted.

Keywords: child-protection legislation; child advocacy; child voice; Convention on the Rights of the Child; children's rights; empowerment; children's participation; third sector independent advocacy.

Introduction

When Professor Eileen Munro submitted her report to the Government's Department of Education, entitled 'The Munro Review of Child Protection: Final Report - A child-centred system' (Munro, 2011), contributions were included from children via the Office of the Children's Commissioner for England. Within these submissions were the hopes of children that the child protection process listen to them separately from any parental consultation, and that they be practically and emotionally supported through a confusing system which they considered 'far from transparent' (Munro, 2011, p. 26). The Report also noted those things that children said they would value in the process: consistent support from the same worker, the continuation of services that may otherwise be withdrawn when the process had concluded, and the respect of the process and those adults involved in it. Children also specifically commented on the provision of third sector independent advocacy services, described as 'critical in helping them to disclose abuse and harm' (Munro, 2011, p. 26). Boylan and Dalrymple (2011) would concur suggesting that legislation and policy reflects a growing recognition that independent advocacy, particularly for those disadvantaged, disenfranchised or marginalised groups of children such as those with disabilities, within (or leaving) public care or wishing to complain, has an important role in challenging 'children's experiences of disempowerment and in promoting children's rights' (Boylan and Dalrymple, 2011, p. 20).

Widely recognised as experts in their own lives, as social agents who collaborate equally in both individual and collective decision-making processes, and as 'full-fledged citizens' (Twum-Danso, 2009, p. 109), the active participation of children is, however, still prone to conceptual tensions (Vis et al., 2012; Fargas-Malet et al., 2010). As Kellett (2009a, p. 43) notes, 'most adult constructions of child participation do not connect with child agency or active citizenship but are wedged in more passive agendas of listening and consulting.' Lansdown and Karkara (2006, p. 690) would support this view, suggesting that 'children's perspectives and experiences have been disregarded in favour of those of adults', in part due to a perceived lack of competence or experience. If the arguably tired term 'adults know best' is, however gradually, losing ground to the view that children can meaningfully engage in the decisions that affect their lives, and indeed have a legal right to do so, why does Munro's (2011) report highlight such poor experiences of children in this regard? Grugel (2013, p. 20), for example, notes the 'paradigmatic shift' from a child welfare discourse to a more liberal conception of children's rights that grew as development theory transformed the way we

considered the child and their place in society. However, Haynes (2009, p. 30) would argue that development theories can in fact be based on detached observation rather than an active engagement and participation with a child, positioning ‘children as the objects of teaching and research, rather than as subjects with their own stories, interests and views.’ Perhaps Twum-Danso (2009) occupies the middle ground of the debate, suggesting that whilst the international children’s rights movement and subsequent CRC (1991) did mark ‘a turning point in dealing with children’ (Twum-Danso, 2009, p. 109) it did so as an aspirational vision of what might be, the road to the legal realisation of which ‘has been a journey full of pitfalls’ (Twum-Danso, 2009, p. 111). The provision of third sector independent advocacy to support and uphold children’s rights would appear to be one such pitfall, with patchy and inconsistent provision, something Brady (2011, p. 9) considers a ‘postcode lottery... in terms of availability, independence and accessibility.’ Further, one might also wonder at the positioning of such provision in an already complex legal arena which not only presents ‘a rather chaotic sense of what childhood means in law’ (Fionda, 2009, p. 142), but which is being dramatically affected by changes to legal aid provision (Law Society, 2013; Children’s Society, 2013). This paper will therefore consider the provision of independent advocacy for vulnerable children, and its place within domestic and international policy, to try and establish just how far such support has progressed to ensure the views, wishes and feelings of vulnerable children are heard.

Method

The majority of the journal articles reviewed herein have adopted a qualitative epistemological and methodological approach. Creswell (cited in Punch, 2005, p. 19) suggests that terminology found in such studies, such as ‘explore a process’, ‘discover’, ‘seek to understand’, are actually linked to ethnography, case study, phenomenology and grounded theory respectively, and a theme analysis would seem prevalent amongst the literature I have chosen to engage with. Bhopal and Myers (2009, p. 304) used grounded theory to analyse data from their qualitative study, which were indexed ‘in relation to particular themes and categorized under topics and headings from which to build analyses’, and Lee (2009) adopted a similar approach, reading and reviewing interview transcripts and other materials to gradually identify themes within them. However, it is important to acknowledge that grounded theory is not without its critics. Thomas and James (2006, p. 768) cite three broad themes: that it oversimplifies otherwise complex data relationships; that procedure and design are prioritised above interpretation; and lastly that it ‘depends upon inappropriate models of

induction [asserting] equally inappropriate claims to explanation and prediction'. Thomas and James (2006, p. 768) cite Robrecht who suggests that grounded theory encourages researchers 'to *look for* data rather than *look at* data'.

My review, as a piece of discursive writing, seeks to identify and interrogate current research regarding the provision of independent advocacy to vulnerable children in the United Kingdom (UK), by exploring pertinent policy and statute, research and practice in this field. I had considered narrowing my research to data that referred specifically to the UK, but decided to broaden my exploration of this topic in an effort to capture relevant data from international sources, thereby placing the discussion within the wider context of children's rights. Whilst limiting my enquiries to articles written in English, I chose to explore research from a period extending beyond the last five years: this subject is relatively niche, so perhaps subject to intermittent research, but with a reliance on international legislation, chiefly the United Nations Convention on the Rights of the Child (CRC) (1991), both of which considerations informed my plans for the breadth of my literature search. Similarly I have elected to develop my review by thematic analysis rather than considering the data in chronological format. The area of independent advocacy for children, whilst essentially grounded in the principles of international children's rights, continues to develop at a varied pace which would support a thematic discussion. To this end, I located articles from the Open University Library and E807 Reader (Montgomery and Kellett, Eds., 2009), the Department of Health and Department of Education websites as provided by the UK Government, and by using generic search engines.

I have chosen to refer to both children and young people as 'children' throughout the paper. While there is perhaps some practical expediency to this choice, and although I acknowledge the inherent difficulties in the homogenous classification of people based on age, I also consider that the term offers a correct legal representation that is perhaps important to the focus of this review. Current UK and international legislature would require that 'child' means any person under the age of 18 years (or 16 years if married), unless majority is attained at an earlier age (Children Act 1989, Principles and Concepts, 2.1; CRC, 1991, Article 1). Although use of the term 'children and young people' would acknowledge the changing nature of childhood, certainly, perhaps, from the perspective of the growing child or adolescent, I would suggest such terminology nevertheless offers a very important legal distinction and one that has recently received attention in UK Courts. The Divisional Court's decision in *R (HC) v SSHD* (2013) EWHC 982 (Admin) (Judiciary, 2013) ruled on the

detention of a 17 year old, kept for 11½ hours in custody, and whose Mother was not informed despite the child's stated wish that she be so. The Court found that the CRC (1991) should inform the European Court of Human Rights (ECHR) Article 8 (Right to respect for private and family life, Human Rights Act 1998), and further that there was a failure to differentiate between adults and 17 year-olds that was inconsistent with Article 1 of the CRC (1991). Similar, unconnected cases resulted in the subsequent suicides of two children who were detained by Police but whose family remained unaware (Guardian, 2013).

To conclude my considerations regarding the methodological approach I have adopted for this review, I have also endeavoured to maintain a reflexive approach to the literature with which I have engaged. Punch (2005, p. 165) explains that reflexivity 'refers to the fact that social researchers are part of the social world they study', and Davis et al. (2000, p. 201) suggest that the self-analysis required by reflexive practice 'opens the way to a more radical consciousness of self' citing Hertz who argues that reflexivity is achieved through 'detachment, internal dialogue and constant (and intensive) scrutiny'. This is important to my practice, but perhaps moreso as I am currently employed by a charity that provides independent advocacy to children. I have, as much as possible, striven to maintain a reflexive practice, and my thematic analysis is discussed in terms of the legal and policy context; a case for advocacy; barriers to a child's voice and independent advocacy and concluding remarks.

The legal and policy context

When the UK Government ratified the CRC in 1991, it recognised the rights of children to express and have their views given due weight and be respected by those adults that make decisions about their lives. Article 12 grants that:

(1) 'States parties shall assure to the child who is capable of forming his or her own views, the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with age and maturity of the child.'

This right was further enshrined in Children Act 1989, s. 22, which places further requirements on a Local Authority to secure the views of the child:

(4) Before making any decision with respect to a child whom they are looking after, or proposing to look after, a local authority shall, so far as is reasonably practicable, ascertain the wishes and feelings of the child.

Article 10 of the Human Rights Act 1998 also offers further reinforcement, stating:

(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

Although we have arguably seen a sea-change in the way children are perceived following the CRC (1991), there remains less certainty about the way in which the lives of vulnerable children have actually been transformed (Grugel, 2013; Kellett, 2009b; Twum-Danso, 2009). Twum-Danso (2009) notes increasing difficulties for the Committee on the Rights of the Child to manage its workload. Member States are required to submit progress reports every five years, something which cannot provide a holistic or regular view, and which might justifiably question ‘the credibility of the monitoring process’ (Twum-Danso, 2009, p. 113) and its impact on the lives of vulnerable children and their opportunity to participate and be heard.

With increasing numbers of vulnerable groups of children being marginalized or excluded (Grugel, 2013; Bhopal, 2009), one might conclude that the need for a broader provision of independent advocacy seems quite urgent (Lagaay and Courtney, 2013; Munro, 2011; Barnes, 2007). Grugel (2013) provides the plight of trafficked and migrant, refugee or asylum seeking children as example of such a need. Suggesting that despite the CRC (1991) they remain a group very vulnerable to violence, abuse and exploitation, Grugel (2013, p. 23) also notes that ‘it is striking how relatively few organized advocacy movements’ there are to support them. Lagaay and Courtney (2013, p. 6) would concur, noting ‘a gap in [UK] statutory duties for local authorities when it comes to the provision of an advocacy service within the child protection process’. I would suggest this has contributed to a *mélange* of provision that sees independent advocacy provided by both third sector agencies and in-house by local authorities, although some may question the latter’s ability to remain independent. Brady (2011) would support this view, finding that 30% of advocacy provision was by a local authority’s in-house service, spot purchasing or register of advocates (please see Appendix 1, p. 25, and 3, p. 27). It might also be argued that individual state interpretations of the CRC (1991) have hindered the full delivery of its provisions and, therefore, the voice of the child.

Kellett (2009a) cites DfES (2006) in noting the failure of the UK Government to fully implement Article 42 (CRC, 1991), falling short of the ‘fundamental rights and freedoms’ enshrined within it and choosing only to record the need of vulnerable children to be protected and receive special assistance. If one accepts that this places children in the position of subject, reliant on the gift of adults, rather than empowered social actor (Kellett, 2009a), then I would suggest one must also accept that it encroaches on a child’s ability and opportunity to voice views, wishes and feelings, whether with the support of third sector advocacy provision or without.

Current evidence from the UK Government to support the provision of advocacy is included in the newly revised and issued Working Together to Safeguard Children guidance (HMSO, 2013, p. 38) which places on the Social Worker and Manager a responsibility to:

‘help prepare the child if he or she is attending or making representations through a third party to the conference. Give information about advocacy agencies and explain that the family may bring an advocate, friend or supporter.’

Although perhaps welcome news for third sector advocacy providers (there would appear few examples of the terminology ever appearing in legislation (Brady, 2011)) this recent legislative guidance might nevertheless seem rather ambiguous when held against the final recommendations of the Munro report (2011), which specifically recommended the provision of third sector independent advocacy services as critical in supporting children to disclose harm and abuse. Working Together (2013) allows the Social Worker or Manager fifteen working days to convene an Initial Child Protection Conference during which time many other statutory timescales and responsibilities must also be attended to; the inclusion of the term ‘advocate’ with ‘friend or supporter’ might also be argued to diminish the role, and the term ‘family’ can also become encumbered in the context of a child protection conference. Rasmusson (2011, p. 317) would agree with this view, noting ‘complications and tensions associated with applying of a child perspective in combination with a family perspective’. When considered alongside Munro’s (2011) reporting of children’s wishes that they be heard separately to family, parents or carers, some might also consider that the Working Together (2013) guidance offers not just further ambiguity but arguably a lost opportunity for that which Munro (2011) had clearly identified as critical to children’s welfare and self-determination. Masson (2009) agrees, suggesting that the safeguarding of children should lead to improvements in children’s lives, rather than merely offer ‘a way of conceptualising

the state's responsibilities for children' (Masson, 2009, p. 160). This opinion would also appear supported by the Children's Rights Alliance for England who, in their 2013 review of UK Government action on the strengthening of children's rights following Children's Rights Committee recommendations, found evidence to suggest 'that the Government does not routinely fulfill its commitment to give due consideration to the CRC when making new policy and legislation' (CRAE, 2013). And there are further examples of legislation disempowering and subjugating the child and inhibiting its ability to be heard.

Lansdown (2001) provides historical examples that policy and legal statute, devised for the promotion of a child's welfare, have sometimes achieved the exact opposite: the long-term separation of children from their parents during wartime evacuations; the promotion of adoption for the babies of unmarried mothers; and the institutionalisation of children with disabilities. More currently the placing of looked after children in independent foster placements, sometimes hundreds of miles from their birth families, occasionally followed by their uprooting and return to locale when budgets dictate, may offer evidence that local authorities are making placement decisions based on cost rather than best interests, as Children Act 1989, Sec. 1(1) would otherwise require. This particular argument of fiscal considerations over best interests is supported in more obvious terms by the Education Act 1996, Sec. 316, which requires local authorities to 'place disabled children in special schools on grounds of 'efficient use of resources' rather than the child's best interests' (Lansdown, 2001, p. 89). If, therefore, Article 3 of the CRC (1991) is to be balanced by the Article 12 rights of the child, third sector independent advocacy would seem a critical service not just, as Munro (2011) suggests, in the child protection process, but perhaps in the majority of social care services offered to vulnerable children.

Just as Lansdown (2001, p. 93) argues that 'children can, when empowered to do so, act as a source of expertise, skill and information for adults', so Hamilton (2009), former Director of the Children's Legal Centre (South East) suggests that children are participatory agents in their own social scene, with opinions and aspirations. Keep (2009), Senior Policy Officer for Childline, also provides evidence for the need to listen to children who explain that 'they haven't been heard [and display] a great terror of a professionals power and what they might do.' Again, we may identify an imbalance of knowledge and respect that endangers the rights of the child. Those young people that have called Childline do not ask for outlandish things, saying simply that what they most appreciate is 'being listened to and [having] their views respected' (Keep, 2009). One might consider it an unfortunate irony then that, even after the

Adoption and Children Act (2002) when advocacy was found in statute but only with specific regard to representations procedures for children, the only time a child is still legally permitted an independent advocate to help represent their wishes and feelings is when they are making a complaint against a local authority (Adoption and Children Act 2002, s. 26(a)). This was undoubtedly a step forward in redressing the potential power imbalances of the adult-child relationship but it is not without limitation, inasmuch that local authorities are partly charged with publicising this service to the children they look after and this can vary considerably from area to area (Brady, 2011; please see Appendix 1, p. 25 and 3, p. 27). Even independence and confidentiality can be challenging adult constructs for a child, when their Independent Reviewing Officer sits in the same building as their Social Worker and is employed by the same local authority. It is worth noting, therefore, the appointment from 2005 of a Children's Commissioner (currently Maggie Atkinson) whose role, independent from Government, is to promote awareness of the views and interests of children, ensuring that children's rights are upheld.

Further examples of legislation and policy that would challenge the view that 'adults know best' include the Criminal Records Bureau (now known as the Disclosure and Barring Service), introduced following the Cullen Enquiry (1996), into the murders at Dunblane, as well as further child abuse cases where employed staff had assaulted children in their care. Essentially an enhanced disclosure of recorded prior crimes, this procedure has tightened the application process for people wishing to work with children. Victoria Climbié's murder, at the hands of her aunt and her aunt's boyfriend, and the fact that she was involved with a wide range of statutory, health and third sector agencies at the time of her sustained abuse, compelled the Laming Report (2003). Laming's one hundred and eight recommendations culminated in the Government response Green Paper, Every Child Matters (later ECM: Change for Children) and, ultimately, the Children Act (2004). Far-reaching, in that it requires a multi-agency approach to the protection of children and their rights, its five outcomes shifted the professional focus to prevention rather than crisis management, joint working rather than isolated, task-focused intervention. This legislation sees the adult role slowly becoming more holistic in its considerations of the child as a citizen with rights but, and in no way would I suggest that the outcome might have been different, it is nevertheless important to note that of the police, the social services department of four local authorities, the National Health Service, the National Society for the Prevention of Cruelty to Children, and local churches, all of whom had contact with Victoria (albeit clearly hindered by her

abusers), she would not appear to have had access to an independent advocacy service (please see Appendix 2, p. 26).

Systematic safeguarding failures in Rochdale and Oxford have, more recently, raised serious questions about the extent to which children's services are placing children's views, wishes and feelings at the centre of their planning. Victims of a child sexual exploitation ring in Rochdale gave evidence that despite having stated very clearly what was happening to them to both Police and social workers they were not listened to and were rather deemed to be consenting or considered prostitutes. These latter points seem inconceivable when one considers not just the fact that these children were below the legal age of consent, but that many of them were as young as 12 and 13. Also of concern is the seeming failure of frameworks for integrated and multi-agency practice set up in the wake of cases such as those of Victoria Climbié and Peter Connelly: NHS staff, from both a sexual health services team for vulnerable young people and a crisis intervention team, made 127 referrals to Rochdale Borough Council and Greater Manchester Police regarding girls they thought were either being sexually exploited, or were at risk of exploitation, over a period of 6 years and yet the abuse continued (Guardian, 2012). If the concerns of professionals charged with the safeguarding of children are not listened to by other professionals in the same field, one might wonder how a child can make themselves heard.

A case for third sector independent advocacy?

Independent advocacy is used by children to be heard and the process seeks to empower them to ensure their rights are respected and their views, wishes and feelings are considered at all times and in any arena. It achieves this by providing confidential advice, information, representation and support (Brady, 2011; DH, 2002). Whilst confidentiality would certainly seem important to any successful, short-term advocacy partnership, independence is key to the strength and efficacy of the advocacy intervention and representation (Brady, 2011; Barnes, 2007; Boylan and Ing, 2005). The National Standards (DH, 2002) offer ten exemplars of practice (please see Appendix 4, p. 28), some relating to the more generic requirements of provision, such as that it be accessible and equitable, well publicised and quick to respond. But perhaps more important are the Standards that require the service to be child-led [1], championing the rights and needs of children [2], and that it works exclusively for children [6]. Standard 4.2 actually requires that, when publicising the service, it must be made 'clear that the service is independent' (DH, 2002). This independence offers a child the

opportunity to speak and seek support from a professional that holds no statutory duty to them; as Barnes (2007, p. 140) argues, advocacy is not:

‘[the] paternalistic approach of a professional who ‘knows what’s best for you’ or, for that matter, what is in your best interests, but is rather founded on a ‘strong awareness of ways that young people are excluded and oppressed.’

Issues and occasion in which vulnerable children may require confidential and independent support are numerous when one accepts that children have a growing right to self-determination that has the potential ‘to conflict with power gatekeepers’ (Kellett, 2009b, p. 245). The silencing of children’s voices ‘happens at a number of levels in various manifestations of adult-child power relations’ (Kellett, 2009b, p. 241) and can be identified in the fundamental failings in some of the examples already provided. Boylan and Ing (2005, p. 5) found a ‘common theme among the interviews with young people was the conflict of adult versus young person’s rights.’ For example, Brandon et al. (2012) found that 75 per cent of 21 overview reports of serious case reviews concerning the death or serious abuse/injury of a young child aged between 5 and 10 years refer to the child’s voice not being heard or taken into account. The failure to listen to children and to make sure their views, wishes and feelings are taken into account in child protection cases was also highlighted in an Ofsted (2011) report of 67 serious case reviews. The report concluded that professionals:

- did not see the child often enough or seek to establish their views and feelings;
- did not listen to adults who tried to speak on behalf of the child;
- were sometimes prevented from listening to the child by parents and carers;
- focused too much on the needs of parents without considering the implications for the child.

The APPG for Runaway and Missing Children and Adults and the APPG for Looked After Children and Care Leavers (APPG, 2012, p. 3) stated that ‘the sad reality is that children in care are often not looked after in the way we would expect if they were our own children.’ The Report goes on to assert that:

‘...the evidence clearly shows that we fail to keep the most vulnerable children safe whilst they are in our care. In fact, children who go missing from care are being systematically failed – and placed in great danger – by the very systems and professionals who are there to protect them. This is unforgivable.’

Systems set up to record the numbers of children missing from care also seem inadequate for purpose. The APPG (2012) reported on contradictions in data that suggested Police authorities could evidence 10,000 individual children going missing from care in a year, whilst official data from the Government recorded only 930 incidents, something the report called ‘a huge and worrying discrepancy’ (2012, p. 3). Almost a decade on from the Laming Report (2003) into Victoria Climbié’s death, which heard that many of the councils involved were under-staffed, under-funded, and poorly managed, we may again see similar strains on children’s departments. For example the recent inquiry following the discovery of the sexual exploitation ring in Rochdale found that the children’s services were debilitated by a ‘lack of co-ordinated funding and a failure to plan for issues such as governance, supervision and information sharing protocols’ (Cooper, 2012). If local authority officers are charged with the dual responsibility of both acting in the statutory best interests of the child and seeking, listening to and being influenced by their wishes and feelings, one may wonder which shall take precedence in their practice if over-burdened with cases and a lack of resources. There are also occasions when listening to the voice of children may be seen as simply an exercise in tokenistic participation, something which independent advocacy might otherwise prevent. Kellett (2009b), for example, notes the consultation carried out by the Scottish Government in 2002 regarding the potential prohibition of the smacking of children. 90% of those children consulted responded in favour of a ban, but an adult majority in favour saw the prospective legislation to criminalise the physical punishment dropped from a 2003 Bill with little fanfare. School Youth Councils are also suggested by Kellett (2009b) as an example of such tokenistic participation, and some Children in Care Councils (CiCCs), set up following the Care Matters reforms in England specifically to give a voice to children, have also suffered from a tension between the meeting of corporate parenting targets and the empowering of children (Thomas and Percy-Smith, 2012).

Bjerke (2011, p. 77-78), considering the shared equality of children and adults, suggests that ‘treating children with respect and accepting them as being responsible are... important for them to ‘become responsible’ in the sense that practice is needed to learn from experience.’ Developing this further he suggests that responsibility ‘is a dynamic and vital part of everyday life for both children and adults’, rather than a static value that applies only to adults (Bjerke, 2011, p. 78). Such a concept, though arguably relativist, seems incongruent with Boylan and Ing’s (2005, p. 5) findings that ‘young people’s accounts suggest a lack of effective mechanisms to facilitate their voice being heard and taken seriously.’ (Boylan and

Ing, 2005, p. 5) At a recent meeting of the Associate Parliamentary Group for Looked After Children and Care Leavers, Dr Mike Lindsay, National Coordinator for the Children's Rights Alliance for England, spoke about how the UK Government are the only parents not to be taken to court for not ensuring their children go to school, so entrenched is the discrimination, exclusion and bullying of children in the care of the State (Who Cares Trust, 2013). Statistical data would similarly suggest that outcomes for vulnerable children and those in public care in the UK offer cause for concern:

- children in care account for 49% of the 11,672 under 21 year olds in contact with the criminal justice system;
- more than half of looked after children have been in more than four care placements.
- they are 10 times more likely to be excluded from school;
- only 7% go into higher education compared with 50% of young people not from the care system;
- 18% of care leavers are unemployed a year after leaving school;
- 25% of young women who leave care are pregnant or are already mothers when they leave care, and half become mothers by the age of 24;
- 27% of the prison population are care leavers and 50% of people in prison under the age of 25 have been in care;
- 50% of care leavers develop or have a mental illness.

(The Who cares Trust, 2013; NYAS, 2013)

Thomas and Percy-Smith (2012, p. 487) argue that a need still remains to 'embed a culture of participation in services' that work with children, whilst Rasmusson (2011, p. 319) notes the need for a 'deepened understanding about the complexity in applying a child-centred approach and a child perspective within the domain of child protection'. Lagaay and Courtney (2013, p. 8-10) consider third sector independent advocacy contributes to: ensuring the child remains at the centre of the plan and is able to engage in the process; allowing the child an 'enhanced personal position' which empowers the child; providing additional, independent support to ensure a fuller picture emerges of the child's views, wishes and feelings; increasing the engagement of parents and carers by ensuring the child's perspective offers a shared point of reference, or common ground, for professionals and parents otherwise engaged in a very formal, adult-oriented forum. If we have established that bad things can

happen to children when adults, for manifold reasons, do not listen to them, why might third sector independent advocacy not be offered to every child, regardless of vulnerability?

Barriers to a child's voice and independent advocacy

Perhaps children eventually elect not to speak to adults. Not being listened to on more than one occasion can lead to a crisis of confidence and the assumption that there's no point in expressing your wishes and feelings if they are likely to be ignored (Boylan and Ing, 2005); victims in Rochdale spoke of how there was little point, as no one was listening to them or believing what they said. Kellett (2009b) considers the issues of power in relation to the voice of the child, suggesting that the words employed to enable participation describe power relations and adult authority: 'terms such as 'giving children a voice' do little to dispel' any notion that the right to express views, wishes and feelings and have them listened to is anything other than within the gift of an adult rather than a fundamental right (Kellett, 2009b, p. 240-241). Boylan and Ing (2005, p. 5) note a child's fear of abandonment by those adults with power and influence in their lives as 'a significant inhibitor' to their being able to voice concerns or speak up for themselves without the support of an independent advocate. Lagaay and Courtney (2013, p. 6) note that the less prescriptive guidance provided by the recently revised Working Together to Safeguard Children (2013) can support 'social workers to exercise their professional judgement [enabling] local practice to be more flexible.' Mitigating this concern of authority and power imbalance somewhat, Boylan and Dalrymple (2001, p. 27) consider the difficulty for social workers to balance their role as an advocate within the 'managerialist, target-driven culture in which social work operates', suggesting it is sometimes impossible for them to represent the wishes of the children they work with. Cooper (2012) reports further concerns following the Rochdale inquiry, not only that social workers were not properly following their child in need protocols for those girls that presented themselves for help and were not listened to and turned away, but that they were repeatedly ignoring 'victims of child sexual exploitation... because they perceived teenage girls to be "making their own choices"'. There would seem, at least within some of these examples, to be a creeping and pervasive disbelief in children and their voices, a 'mentality of adultism' (Hendrick cited in Kellett, 2009b, p. 241), which leads to their being ignored. Boylan and Ing (2005, p. 5), for example, note the 'sense of inevitability and powerlessness' felt by children within their own planning processes, where the professional needs and priorities of the local authority can supersede their own. Vis et al. (2012) do submit that social workers may hold vastly differing priorities toward a child's voice and self-

determination because it is at the centre of contested discourses about the nature and meaning of childhood (Sanders and Mace, 2006; Wyness, 2006). There are instances, however, when children who are aware of their right to participate in such as looked after reviews or initial child protection conferences have nevertheless ‘felt overwhelmed, fearful or disillusioned’ in such forums when a professional adult agenda or concern with timescale has taken precedence (Boylan and Ing (2005, p. 6). It should be noted, however, with particular regard to Looked After Reviews, that recent changes to the role of Independent Reviewing Officer (IRO) (as provided by the Local Authority charged with responsibility for the child) have strengthened the duty to consult and ensure the participation, where appropriate, of children in their own care plans (DCSFb, 2010). This legal guidance places a duty on the IRO to ensure that the child is aware of how independent advocacy could support them in the review and planning process, and that they are entitled to such support: [3.14] also states ‘Advocacy is an option available to children whenever they want such support and not just when they want to make a formal complaint.’ (DCSFb, 2010) It is also of interest to note that, throughout this particular legal guidance, the term ‘independent advocacy’ is applied, perhaps leaving little doubt as to the efficacy of such provision and requiring something other than an ‘in house’ service. However, Lagaay and Courtney consider the recently revised Working Together (2013) which, whilst purporting a child-centred approach, actually diminishes the participation of children within the child protection process when compared to the 2010 guidance: ‘In particular, there is no longer a presumption that the child, subject to age and understanding, should be invited to attend their conference with an advocate if they wish to do so.’ (Lagaay and Courtney, 2013, p. 5)

The issues that Thomas and Percy-Smith (2012) found in their study of CiCCs are, I would suggest, relational to the issues with the provision of third sector independent advocacy. They found that the CiCCs were largely dependent on the energies of specific participation workers rather than supported by an organisational belief in, and culture of, children’s participation. This seems comparable to issues regarding the gatekeeping of referrals to advocacy services and the reliance on a social worker or manager to inform a child of the service and its benefits during the child protection process (Lagaay and Courtney, 2013; Working Together, 2013; Munro, 2011). Similarly, Thomas and Percy-Smith (2012) noted the small numbers of children engaged in the CiCCs, and their lack of direct influence on decisions, although those involved clearly benefited from the experience. I believe we begin to see correlation here between the efficacy of third sector independent advocacy, the notions of responsibility as

discussed by Bjerke (2011), the considerations of power issues and inequality at various levels (Fionda, 2009; Kellett, 2009b; Masson, 2009) and what Thomas and Percy-Smith (2012, p. 495) refer to as the 'dominant model of decision-making in local government' where power resides with senior officers and elected members who are in turn answerable to central government. Policies and protocols may conspire to exclude the child from the centre of its own plan: Vis et al. (2012, p. 8) note 'that case processing needs to be made more 'child friendly' for children to participate effectively and that participation needs to be viewed as a process rather than a one-off event.' Age, or rather assumptions of immaturity, has also acted as a blurred boundary to child's voice, across which professionals and children are hesitant to step. However, Kellett (2009a) notes that the age of participation is now set at 7 in Norway, where once it was 12, and that children have a legal right to express themselves from that age, whilst 'at 15 years of age they can make decisions about their own education, religion and membership of organisations' (Kellett, 2009a, p. 44). Fionda (2009) also considers the varying legal concepts of competency, rationality, mental capacity and maturity that might be considered to conspire, however well-intentioned their rationale, to limit the voice of the child in UK courts, siting children as incompetent and dependent. Fionda (2009, p. 131) records the criticism that such a competence approach, now 'widely adopted in family law across the spectrum of decision making', is actually covertly complex and ambiguous. The House of Lords case of Gillick (1986) does suggest a different approach to the ability of the child to engage in decision making processes, express views, wishes and feelings, and take responsibility for decisions. Applying a 'transitional analysis' (Fionda, 2009, p. 130), Lord Scarman suggested a gradual diminishing of parental responsibilities as the child matures to full self-determination and responsibility, and this rigorous analysis of the individual prevents any rigid application of an age limit that 'would almost inevitably result in an inappropriate, possibly harmful implementation of the law' (Fionda, 2009, p. 132). I would suggest this contradictory confusion highlights the different social constructions of children and childhood that, on the one hand, see children as active and equal members of their society, with responsibility and agency, but on the other as vulnerable and immature 'human becomings' (Qvortrup cited in Bjerke, 2011) that lack competence and require protection during a (seemingly) static period of childhood. Disability should, by law, not provide a barrier to seeking and receiving any service, including third sector independent advocacy. Given Kellett's (2009b) concerns that marginalised children or those living on the edge of society and less able to be heard are therefore the most vulnerable it is of interest to note the particular guidance for IROs (DCSFb, 2010, p.64) which allows the presumption that:

‘a child with communication needs will be supported by an independent advocate, with the child having the right to opt out or choose someone else to support him/her if s/he wishes’.

This guidance also recognises that more time may be required to elicit the wishes and feelings of a child with communication difficulties, asking that workloads be adjusted accordingly, which may be considered a re-balancing of the competing priorities between adult and child prerogative. I have endeavoured to evidence an ever-increasing consideration for children’s rights and empowerment but, as tragedy follows serious case review follows scandal, our models of governance, susceptibility to swingeing budget cuts and ever-revised policy that is reactive to each new crisis, encroach on and gradually erode our ability, and that of children, to permit the full realisation of a child’s right to be heard that has been called for by such as Lagaay and Courtney (2013), Brady (2011) and Munro (2011).

Concluding remarks

My review of existing literature and research would indicate that vulnerable children would occasionally benefit from the confidential, independent and entirely child-led provision of third-sector advocacy. A confusion of delivery and lack of statutory right to such provision would, however, limit the accessibility to such a service for children for whom adult constructs of looked after reviews, child protection conferences, placement and school moves, planning meetings and leaving care pathways must surely, if only occasionally, combine to confuse, intimidate and exclude. When Munro (2011) concluded that children were left excluded from their own lives, disempowered by process over practice and unable to contribute to their own planning, she highlighted a fundamental discrepancy in the dynamic of our systems to support vulnerable children: that of the adult-child power relations and the potential plight of those that are easily ignored. That said, and if we now accept the premise that children are social actors, capable of advocacy and action to challenge rights abuses, development strategies for change, and participate in the implementation of programmes to promote their rights (Lagaay and Courtney, 2013; Brady, 2011; Kellett, 2009a; Lansdown and Karkara, 2006; Boylan and Ing, 2005), I would suggest that more research needs to be conducted as to the efficacy and outcomes of independent advocacy that involves children as co-researchers. Surprisingly few of the articles and reports I considered included the opinion of children and, as Jones (2004, p. 114) suggests, ‘knowledge about children is incomplete unless it takes into account the knowledge that children have of

themselves'. It is perhaps also important, however, to note Rassool (2004, p235) who suggests that 'research in deeply personal areas of people's lives can make them feel vulnerable and disempowered'. Further, there were examples, some to which I referred, that local authority budget considerations impinge on the provision of advocacy services to children, and I would submit that this should be investigated further within the context of local authority duties and obligations. Brady (2011) also suggests the areas of 'added value and cost effectiveness of advocacy in the long-term' have yet to be explored by research, something that I was unable to dispute during my review. The recent 'Report from the Joint Inquiry into Children who go Missing from Care' (APPG, 2012) made thirty one separate recommendations: at number one was that the recommendation that guidance should be amended so that all children in care have a statutory right to independent advocacy as part of care reviews and placement planning, not just as part of complaint processes. Whilst this would certainly seem to be welcomed by those more recent papers on the subject (Lagaay and Courtney, 2013; Brady, 2011), there would appear clear concerns that current changes to the draft Children & Families Bill may further restrict the voice of the child. Further research in this area, in partnership with children, seems necessary if we are to learn from the chequered history of failures in the safeguarding of vulnerable children so prominently in the news and social media at this time. Bjerke (2011) refers to children as now being 'differently equal', and the role of independent advocacy would certainly appear well-placed to support his emerging view, particularly as it is entirely 'led by the views and wishes of children and young people.' (DH, 2002, p. 3)

My review has explored both the international and domestic context of third sector advocacy provision for use by vulnerable children. Fraught with shifting and conflicting discourses of power, agency and legal right, the admittedly unsophisticated act of listening to a child and believing what they say would seem lost beneath a moraine of professional caution, legal ambiguities and pressing operational demands. We do not, after all, have to believe what we are being told, but simply by listening we are allowing a process to begin and end and inform further processes when it has; children who feel listened to may better accept the plans that adults have made for them. Those children that are ignored may not offer us, or be able to offer us, the opportunity to listen again.

Word count: 7597

Appendices: p. 25

1. Provision of Advocacy (June 2011) from Brady, L. (2011) 'Where is my advocate? A scoping report on advocacy services for children and young people in England', Office of the Children's Commissioner.
2. Chart of all professional and agency involvement with Victoria Climbié from Laming, W. (2003) *The Victoria Climbié Inquiry, Report of an Inquiry by Lord Laming*, HMSO.
3. Map of existing advocacy providers (June 2011) from Brady, L. (2011) 'Where is my advocate? A scoping report on advocacy services for children and young people in England', Office of the Children's Commissioner.
4. National Standards for the Provision of Children's Advocacy Services (Department of Health, 2002).

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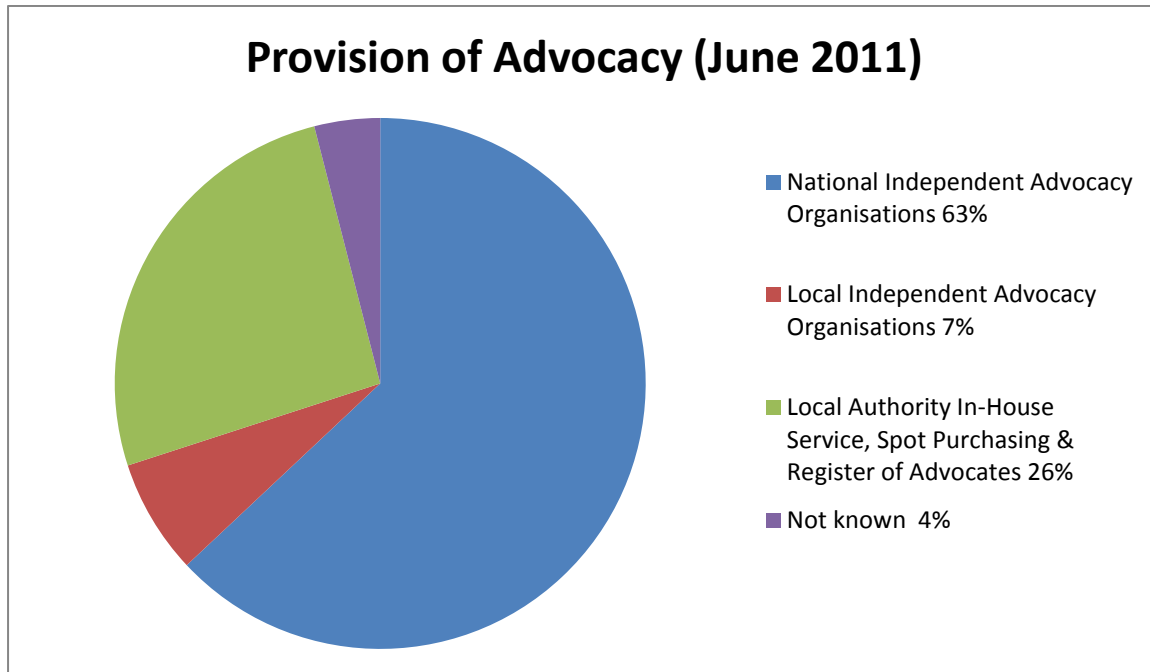
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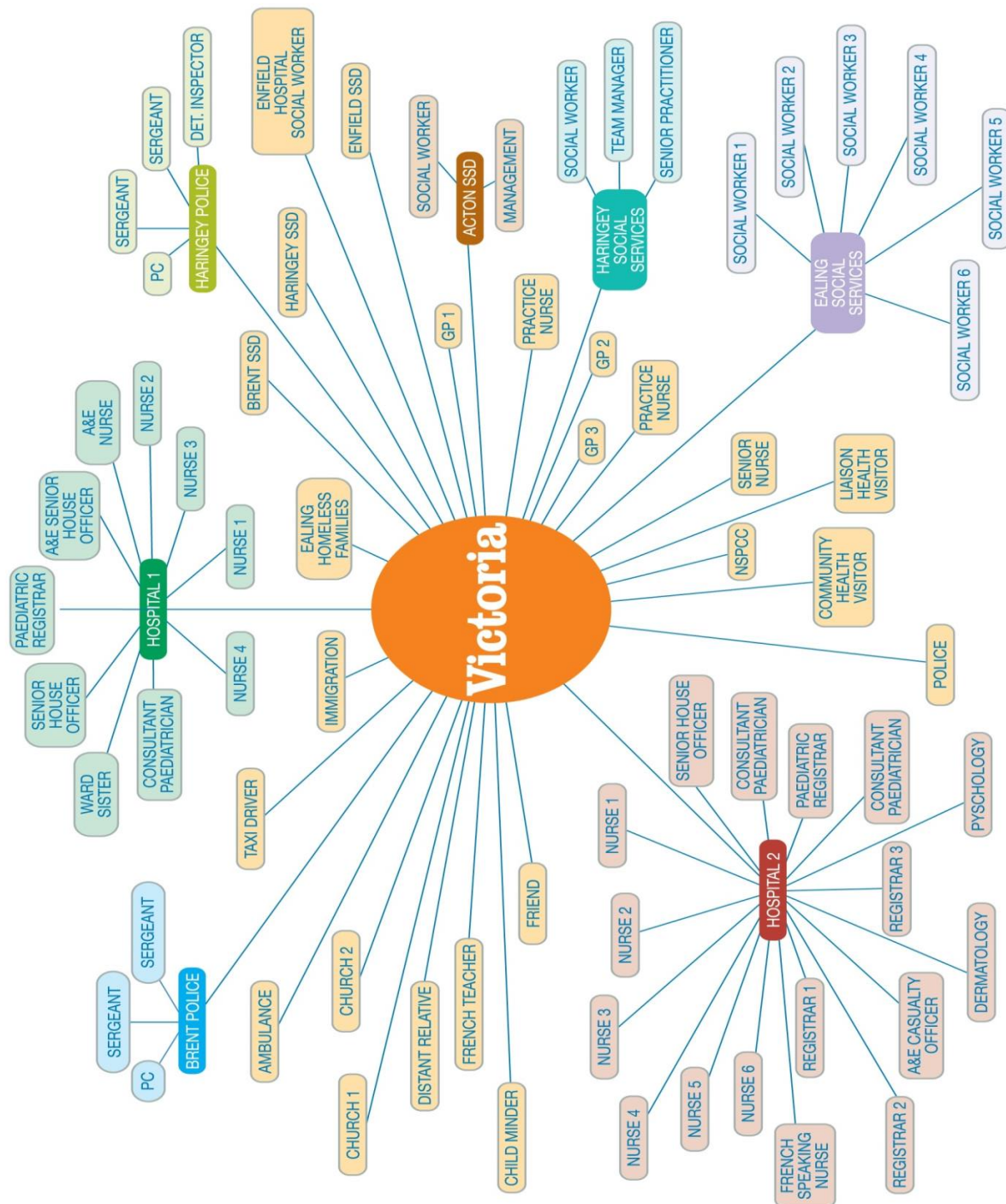
APPENDICES

Appendix 1



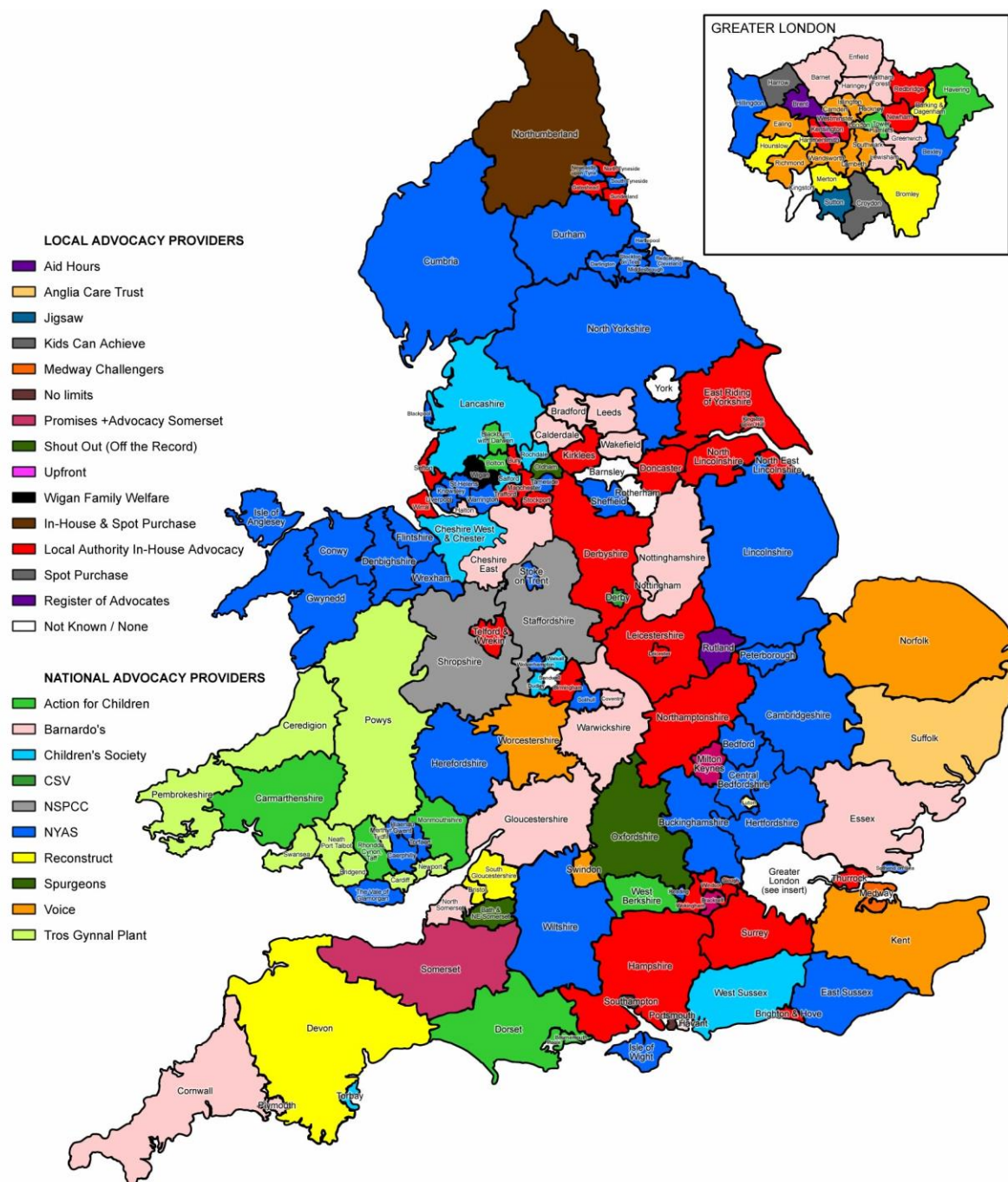
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Appendix 2



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Appendix 3



From: Brady, L. (2011) 'Where is my advocate? A scoping report on advocacy services for children and young people in England', Office of the Children's Commissioner.

Appendix 4

National Standards for the Provision of Children's Advocacy Services

1. Advocacy is led by the views and wishes of children and young people.
2. Advocacy champions the rights and needs of children and young people.
3. All advocacy services have clear policies to promote equalities issues and monitors services to ensure that no young person is discriminated against due to age, gender, race, culture, religion, language, disability or sexual orientation.
4. Advocacy is well publicised, accessible and easy to use.
5. Advocacy provides help and advice quickly when it is requested.
6. Advocacy works exclusively for children and young people.
7. The advocacy service operates a high level of confidentiality and ensures that children, young people and other agencies are aware of the confidentiality policies.
8. Advocacy listens to the views and ideas of children and young people in order to improve the service provided.
9. The advocacy service has an effective and easy to use complaints procedure.
10. Advocacy is well managed and gives value for money.

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