Older People's Commissioner for Wales
Comisiynydd Pobl Hŷn Cymru

Making Voices Heard

Older People's Access to Independent Advocacy in Wales

May 2018

An independent voice and champion
for older people

The Older People's Commissioner for Wales

The Older People's Commissioner for Wales is an independent voice and champion for older people across Wales. The Commissioner and her team work to ensure that older people have a voice that is heard, that they have choice and control, that they don't feel isolated or discriminated against and that they receive the support and services that they need.

The Commissioner and her team work to ensure that Wales is a good place to grow older, not just for some but for everyone.

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Foreword

There is much we all take for granted in life: our health, our independence, our friends and families. But perhaps most of all, we take for granted our ability – our right – to make decisions for ourselves. Decisions we believe are right for us and right for our families and those we care about. Decisions about crucial issues such as where we live, where we go, who we see, what we eat and when we go to bed. And crucially, decisions about the most intimate and personal aspects of our lives; whether we receive treatment or not, whether we have personal liberty and where and with whom we live. The ability to make or ensure that appropriate decisions are made is intrinsically linked to having an effective voice, a voice that is proactively sought, supported and given sufficient status to sit at the heart of decision-making.

The importance of having an effective voice is clearly recognised at a strategic level in Wales. One of the founding principles that the Social Services and Well-being (Wales) Act 2014 was built upon was that people would be given voice and control over their lives[1]. Within healthcare, there is a growing focus on joint decision-making through the prudent healthcare agenda and co-production has long been promoted by Welsh Government Ministers. The shift in priority to place greater emphasis on the voice of the individual is laudable. It is right that people sit at the heart of decision-making that affects them and for this right to be enshrined in legislation.

A focus of my role as Commissioner is to ensure that older people have a strong voice and to be a voice for those who do not have one. This principle was embedded in my Framework for Action 2013-17, which outlined my commitment to 'take action to ensure that older people in situations of vulnerability have a strong voice of their own and are heard, including a right to independent advocacy, both for those who have and do not have capacity'[2]. Not only do older people tell me that this is important to them, but it is also important to the wider public who want older people 'to be heard and to have a voice', viewing my role as Commissioner as a means of supporting this[3].

It is clear from my ongoing engagement with older people, my casework and my ongoing engagement with organisations that provide services for older people, in particular third sector organisations and Independent Advocacy Services across Wales, that many older people are still struggling to have a voice.

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[1] Foreword, Sustainable Social Services: A Framework for Action, Welsh Government, January 2011

[2] Priority 4, Framework for Action 2013-17, Older People's Commissioner for Wales, May 2013

[3] Wales Omnibus Survey: Older People's Commissioner for Wales Awareness and Perceptions Research Prepared, Beaufort Research, Nov 2017 – Of respondents aged 55+ who agree there should be an Older Peoples Commissioner for Wales 45% stated that older people need to be heard / have a voice, 30% stated that older people need someone to represent them, 23% stated that older people need someone to stand up for their rights and look after their interests, 19% stated that Older people need someone to listen to them, 17% stated that Older people are unable to speak for themselves

It is for this reason that I decided to review the extent to which older people in Wales are getting access to independent advocacy, including when they have a legal right to it, to enable them to participate in, and be at the centre of, decisions that affect their lives.

Whilst the offer of statutory independent advocacy is a more recent introduction in relation to the Social Services and Well-being (Wales) Act 2014, the concept of independent advocacy is not new. Indeed, it has long been established within other legislation and other sectors, being seen and used as an active tool to deliver the outcomes that matter to people and uphold people's rights.

I would have therefore expected to see strong progress following the implementation of the Social Services Act both in respect of the statutory duties therein in relation to statutory independent advocacy but also across the wider independent advocacy sector.

However, despite a range of action now being undertaken, it is clear that a significant number of older people are unable to access independent advocacy, both more generally and in relation to the legislative duties. Independent advocacy is not being routinely used as a means of ensuring people's rights are made real, throughout the delivery of health and social care across Wales.

In addition to extensive engagement with independent advocacy providers, commissioners, service users, policy leads and third sector organisations, as well as a range of other bodies, I examined the data available in relation to independent advocacy. It was clear that this was insufficient and can tell us little of practical value in respect of the effectiveness of legislation and the use of statutory independent advocacy.

All older people should feel that they have voice, choice and control over their lives and have the right support to make informed decisions, particularly in situations within which they are vulnerable. Voice, choice and control are important to us all. They are about identity, self-determination, self-expression and human rights. The lack of them damages confidence, self-esteem and wellbeing and undermines the achievement of key public service outcomes, whilst also adding costs to the public purse.

When services fail to listen effectively, where people's views, wishes and feelings are not put at the heart of decision-making, it can result in a loss of reputation as well as unnecessary hospital admissions, longer lengths of stay, statutory care needed earlier than that might have been required or earlier admissions to care homes, costing more to the public purse as a result. Whilst the price paid by public services can be very high, the cost paid by the individual of failing to listen effectively is always far higher. Nothing is as costly as getting it wrong and my casework continually highlights instances where public services have failed to listen to the individual.

I would like to extend my thanks to all the participants who contributed to this report and, in particular, to those who have shared with me their personal experiences of how access to an independent advocate has helped them to have a voice, and choice and control over their lives.

Sarah Rochira

Sarah Rochira
Older People's Commissioner for Wales

Commissioner's Findings

Ensuring that people have a strong voice so that they can effectively participate in and guide decisions made about their health and social care is key to the achievement of meaningful outcomes and the delivery of high quality services. This means proactively supporting people to express their views and giving those views sufficient status to place them at the heart of decision-making. For some, Independent Advocacy will be the only way to achieve this.

"Gives me courage to say what I want. [Advocacy] helps me communicate. Since the stroke, [I] couldn't get my words out." – Advocacy User

However, despite a range of action now being undertaken, it is clear that a significant number of older people are unable to access independent advocacy, both more generally and in relation to the legislative duties. Independent advocacy is not being routinely used as a means of ensuring people's rights are made real, across health and social care services in Wales.

It is also clear that the provider-base established as the result of Big Lottery Funding is fragile and is not sustainable without further investment. The current commissioning and contracting arrangements being developed must provide for the long-term viability of the sector.

Stakeholder interviews consistently highlighted several key areas of concern that appear to act as barriers across Wales:

- The legal rights to statutory independent advocacy are not always understood by professionals and there is a lack of clarity on what independent advocacy is.
- The offer of independent advocacy is too passive, which is further compounded by the lack of an 'active offer' from professionals.
- Shortcomings in current legislation and in the way in which it is applied can sometimes prevent people from having an effective voice in the decision-making process.
- The current and future need for independent advocacy is not sufficiently understood to inform the planning process and future investment in independent advocacy.

Of further concern was the finding that the data to indicate the extent to which older people can access their legal right to statutory independent advocacy is not sufficient. In the absence of robust data in relation to the provision of both statutory and non-statutory independent advocacy, a qualitative approach was necessitated to gather information and evidence for this report.

It is clear that the issues relating to the provision of independent advocacy are complex and often inter-related. Despite this, more must be done to ensure that people have access to independent advocacy, including, but not limited to, their legal rights. This is essential if we are committed to the principle that everyone has the right to part of decisions that affect their lives. Not only will this be good for older people, but it will help to drive forward the wellbeing and preventative agenda in Wales.

To address these barriers, I expect to see:

- Action taken by Local Authorities and Health Boards to ensure that the workforce is adequately trained so that they are aware of the legal rights to statutory independent advocacy and to increase awareness and understanding of the benefits that independent advocacy can bring. This must be supported by strong leadership to embed a culture of valuing a person's voice throughout public services.
- An 'active offer' of independent advocacy extended to older people living in care homes and older people awaiting discharge from hospital. This must be mandated by the Welsh Government to improve the offer of statutory and non-statutory independent.
- Improved and targeted awareness of independent advocacy to ensure that those in most need of independent advocacy are made aware of their rights and the benefits of independent advocacy.
- Action taken by the Welsh Government, Local Authorities and Health Boards to improve the approach to planning in relation to the provision of statutory and non-statutory independent advocacy. This must be supported by ensuring that robust data is available to demonstrate both the offer and uptake of statutory and non-statutory independent advocacy to support the planning process.
- Action taken by the Welsh Government to develop critical indicators to evidence what 'good looks like' in relation to access to, and the offer of, both statutory and non-statutory independent advocacy.

Whilst the landscape continues to change in relation to the provision of independent advocacy, it is timely to consider what more needs to be done. The findings in this report identify key areas for further action which, if not delivered, will undermine Wales ability to progress its wellbeing agenda, something that will both undermine the lives of older people and the wider reputation of public services.

Background

Ensuring that people's views are sought and placed at the heart of decision-making is a key factor in the delivery of good quality public services. Being able to have your voice sought, supported and given status is the foundation on which person-centred care and support is built. Without Independent Advocacy, this will not be a reality for many older people. It is therefore essential to ensure that independent advocacy is available to older people so that they can participate in decisions made about their lives is therefore essential.

"Advocacy helps you make informed decisions. Helps people make decisions in their own time." – Advocacy Service Provider

"Often, people just need to speak to somebody, [they] want to be fully informed." – Advocacy Service Provider

Placing the citizen at the heart of service delivery rightly forms the basis of recent Welsh legislation, such as the Social Services and Well-being (Wales) Act 2014 and the Regulation and Inspection of Social Care (Wales) Act 2016[4]. This principle is also reflected in the Mental Capacity Act 2005 in that 'every adult has the right to make his or her own decisions' and in the over-arching principles of 'empowerment and involvement' set out in the Mental Health Measure 2010. Furthermore, these principles of empowerment and involvement run through the approach adopted within The National Outcomes Framework that sits behind the 2014 Act and are specifically referred to in a number of its sections.

The Big Lottery Fund Cymru AdvantAGE Programme[5], which began in 2012, provided a significant funding stream for the development of advocacy with older people in Wales, growing the provider base significantly. It provided the resources needed to enable those public bodies who understood the benefits of independent advocacy to access it, before future legislation would mandate them to do so. However, as lottery funding cannot be used to fund statutory services, this funding could not be used for anything other than pump-priming a service-base that must ultimately transfer to the responsibility of the public sector.

This funding came to an end in 2016 and the number of advocacy services for older people have declined[6].

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[4] Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017

[5] https://www.biglotteryfund.org.uk/global-content/programmes/wales/advantage

[6] Advocacy Counts 5: A review of advocacy services for older people in Wales, Age Cymru, November 2016

What is independent advocacy and why is it important to older people?

All of us, at any age or at any time, could find ourselves in need of support. Many older people, especially those who are at increased vulnerability because of their situation or medical condition, will need assistance to have their voice heard. The move from independence to interdependence, as a result of increasing care and support needs, can result in a loss of personal power and authority for too many older people, and can significantly impact upon their physical and mental health and overall wellbeing. It can also place them at greater risk of abuse.

Independent advocacy ranges from simply providing emotional support to people who may be able to speak for themselves, to more formally representing and 'advocating' on behalf of a person who is unable to express their views and their needs. For some older people, independent advocacy will be essential if they are to retain personal power and control over their lives.

"[It's] the little things that depersonalise people." – Stakeholder

"Helped me get Horlicks and get the news on at 10pm" – Advocacy User and care home resident

Independent advocacy is different from the provision of advice and support. Independent advocacy will not seek to advise a person, tell them what decision to make or what would be best for them. Instead, independent advocacy ensures that any decisions made are done so by the individual themselves, as far as is reasonably possible. Even when a person lacks capacity or is experiencing fluctuating capacity, an independent advocate will seek to build a relationship with the person to ensure that they can form an independent view of what would be in that person's best interest.

"Explaining things in a different way – that's a key role of advocacy." – Advocacy Provider

Many older people may have a family member or friend who can act as their advocate and the support provided by these informal advocates can be invaluable. There are sometimes circumstances, however, where it would not be appropriate for family or a friend to advocate for someone, especially when the person is implicated in a safeguarding investigation or if the person has strong views and is likely to influence the decisions of the person for whom they are advocating. Furthermore, issues can sometimes be of an intimate and personal nature, which an individual needing an advocate may not wish to share with someone close to them. In these instances, it is important for the person's right to privacy[7] to be upheld.

Distinct from the informal advocacy often provided by family or friends, independent advocates are equipped with detailed knowledge of public services and the different legal frameworks in which they operate, which can be invaluable. My casework consistently highlights instances where older people and their families were not aware of their rights or how to navigate the health and social care systems, which reduced their ability to effectively advocate for their loved one and challenge decisions that were made.

In some instances, professionals will advocate for a person as part of their day-to-day job, such as a social worker or care home manager, and it is right for them to do so. However, there will be circumstances where this would not be appropriate and independent advocacy is required to ensure that a person's voice is put forward by someone who is fully independent. An independent advocate will ensure that the person's views and wishes are put forward regardless of what they may be – it is not their role to make a judgement on what is best for the person. Given the constraints and boundaries that many professionals face whilst working in public service delivery, a person will often speak more openly with an independent advocate, rightly perceiving them as being distinct apart from statutory services.

"Social Workers value advocates – especially when the family has a different view." – Stakeholder

An Independent Advocate's expert knowledge of a person's legal rights is invaluable alone but when coupled with their extensive experience and skills in communicating with an individual to elicit their views, wishes and feelings to help them decide on what is the best decision for them, it is clear to see why independent advocacy is such a vital service – both as a preventative service and as a critical intervention.

"People don't know their rights – especially around safeguarding." – Advocacy Provider

"Most people wouldn't know that they're not getting what they should be." – Stakeholder

"[An] advocate gives the person more power – sometimes just by being in the room." – Advocacy Provider

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[7] Human Rights Act 1998, Article 8

My work on independent advocacy

Ensuring that older people have a voice has been a continuous theme of my work as Older People's Commissioner for Wales. My first published report in 2012, 'Voice, Choice and Control'[8], highlighted that independent advocacy was not widely understood or accessed, and that there was a lack of consistency throughout Wales in the way in which independent advocacy was provided. It highlighted that too often older people were not sufficiently supported at times of major decision making and that older people, in care homes, often lacked the proper support to make their voices heard. A number of recommendations have been taken forward since the report, which I have welcomed and supported, such as the commitment made by the Welsh Government to place independent advocacy on a statutory footing, following the call I made in 'Voice, Choice and Control' for the provision of independent advocacy to be enhanced through its inclusion on the face of the Social Services and Well-being (Wales) Bill.

Noting the concerns I had raised in relation to the instances where older people are most likely to require the support of independent advocacy, on the request of the Deputy Minister for Social Services, I led a group of experts to develop 'A Business Case for Advocacy Services in Wales'[9] to advise Welsh Government on the introduction of a comprehensive advocacy service for older people, taking forward the commitment made in Sustainable Social Services for Wales: A Framework for Action[10]. A Business Case for Advocacy Services in Wales clearly set out the situations where older people's needs for independent advocacy must be considered[11], and for this to be embedded within the new legislation and the offer of independent advocacy.

Alongside this, I undertook a review into the quality of life and care of older people in care homes and I published my findings in my 2014 report, 'A Place to Call Home?'[12], which again highlighted the need for older people's access to independent advocacy, particularly at times of major decision making, such as a move to a care home, and during safeguarding. I was therefore pleased to note the overarching duty to 'have regard to the importance of providing appropriate support to enable the individual to participate in decisions that affect him or her to the extent that this is appropriate in the circumstances, particularly where the individual's ability to communicate is limited for any reason'[13] within the Social Services and Wellbeing

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[8] Voice, Choice and Control, Recommendations relating to the provision of independent advocacy in Wales, Older People's Commissioner for Wales, September 2012

[9] A Business Case for Advocacy Services in Wales, Older People's Commissioner for Wales, May 2014

[10] Paragraph 3.45, Sustainable Social Services for Wales: A Framework for Action, Welsh Government, January 2011

[11] When an older person is at risk of or is experiencing abuse or neglect, when a care home is closing, when an older person needs support to help them leave hospital (A Business Case for Advocacy)

[12] Requirement for Action 1.6, A Place to Call Home? A review into the quality of life and care of older people in care homes, Older People's Commissioner for Wales, November 2014

[13] Section 6(2)(d), Social Services and Well-being (Wales) Act 2014

(Wales) Act 2014 and the Code of Practice on Advocacy, which clearly sets out the points at which a person's need for independent advocacy must be considered, including during safeguarding, when a person's needs for care and support are being assessed and when a Care and Support Plan is being created.

In 2012, I highlighted the need for Local Authorities to identify a baseline in current advocacy provision and future need for independent advocacy in the areas where they operate[14], which has been taken forward through the requirement under the 2014 Act to include the provision of independent advocacy within Population Assessments[15]. I also called for a consistent and clear commissioning framework for independent advocacy, which has led to the work that is currently ongoing to develop and implement a Commissioning Framework for Advocacy[16], supported by the Golden Thread Advocacy Project.

In addition to the 2014 Act, the Regulation and Inspection of Social Care (Wales) Act 2016 has also responded to my recommendations in relation to independent advocacy, which I have welcomed. Voice, Choice and Control[17] called for older people who were considering moving in to a care setting to receive information on the independent advocacy services currently available and details of how to access them, areas that will be taken forward through the implementation of the Regulated Services Regulations[18] under the Regulation and Inspection of Social Care (Wales) Act 2016 in April 2018. The 2016 Act also introduces the regulation of advocacy services, through regulations due to be published for consultation this Spring. Whilst work is still underway in this area to further define which types of advocacy will become regulated, I have welcomed the introduction of regulation as it responds to my finding in 'Voice, Choice and Control'[19] that there is a lack of consistent and comprehensive inspection and monitoring of independent advocacy provision.

There is clearly much work underway in Wales in relation to advocacy and I welcome the fact that many of the recommendations I have made are now being taken forward. However, I have continued my scrutiny of the 2014 Act and the 2016 Act, which has been both extensive and remains on-going. This work includes my membership of the Welsh Government Technical Groups to advise on the development of the Part 10 Code of Practice on Advocacy[20] and more recently the development of regulations to regulate independent advocacy under the 2016

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[14] Voice, Choice and Control, Recommendations relating to the provision of independent advocacy in Wales, Older People's Commissioner for Wales, September 2012

[15] Population Assessment Toolkit, Social Services Improvement Agency, April 2016

[16] Implementing the Code of Practice on Advocacy: Self-Assessment Tool for Commissioners, Golden Thread Advocacy Programme – funded by the Welsh Government, November 2016

[17] Voice, Choice and Control, Recommendations relating to the provision of independent advocacy in Wales, Older People's Commissioner for Wales, September 2012

[18] Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017

[19] Voice, Choice and Control, Recommendations relating to the provision of independent advocacy in Wales, Older People's Commissioner for Wales, September 2012

[20] Part 10 Code of Practice on Advocacy, Social Services and Wellbeing (Wales) Act 2014

Act as well as my detailed commentary in the development of Regulated Services Regulations[21], which place further requirements in respect of advocacy within care homes from April 2018 onwards.

My casework also continues to highlight instances where older people were denied a voice, their need for independent advocacy was not considered or their legal right to it was ignored. Many of the people I support feel that their right to make choices about the things that affect their lives has been taken away from them. They feel that their concerns are considered irrelevant and that they have not been listened to, which leads to action being taken that does not reflect their wishes. In October 2017, I published my second Casebook[22], which highlighted that the complex and challenging nature of public bodies' procedures often leave people feeling that the processes are designed to benefit organisations rather than uphold their rights; that the ineffectiveness of communication leaves older people feeling powerless and ignored; and that the lack of understanding of the impact on people's lives of the decisions made, leads to older people feeling excluded from decision-making processes and marginalised by professionals, rather than the equal partner that they have a right to be.

"Helped me speak in meetings – extra support. Gives me confidence to speak to speak for myself." – Advocacy User

"[Advocacy] helped me know my rights." – Carer and Advocacy User

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[21] Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017
[22] Commissioner's Casebook: Older People's Commissioner for Wales, October 2017

Key Findings

1. There is a lack of understanding of independent advocacy and people's rights to it

Independent advocacy can support people in circumstances of vulnerability to exercise voice, choice and control, as well as helping to ensure that a person's voice is heard and that they are informed of their legal rights. It is therefore important that professionals are fully aware of the rights to advocacy that exist in law. It is also important that professionals understand what independent advocacy can and cannot do. Whilst independent advocacy can include providing emotional support to people who may be able to speak for themselves, it frequently includes formally representing and 'advocating' on behalf of a person who is unable to express their views and their needs, playing a critical role in improving older people's lives by enabling their enjoyment of rights, choices and interests. Independent advocates do not give their own opinion – they put forward the voice of the individual.

Professionals' knowledge of the role of independent advocacy and the benefits it can bring, together with an understanding of the legal right to statutory independent advocacy, are clearly major factors in enabling or preventing a person from accessing independent advocacy. This is even more important if the public are unaware of their rights.

1.1 The benefits of having a voice is not understood by all professionals

Advocacy providers across Wales were resounding that access to independent advocacy services is variable both across Wales and within local areas. They were clear that the likelihood of a referral for independent advocacy was largely dependent on the individual professional (e.g. a social worker) and their view of independent advocacy and the benefits it can bring.

"You know when you're on a ward that doesn't get it." – Advocacy Provider

"Depends on how good the social worker [is] as to whether you get an advocate." – Advocacy Provider

Aside from the professionals that fully understood the role of independent advocacy and the role it plays in helping people to achieve their outcomes, advocates spoke of a group of professionals that had 'come around' to the use of independent advocacy as they had experienced first-hand the difference it can make. It was felt that a lot of time and effort was given towards building relationships with professionals in statutory services as this was viewed as essential to changing the culture within public services and increasing the use of independent advocacy. However, concerns were expressed about how staff turnover can undo the time and effort put into this, which demonstrates the need for systemic cultural change relating to independent advocacy across public services, particularly health and social care.

"Forever feel like you have to 'sell your wares'." – Advocacy Provider

"Contact is patchy when you are involved with a case. Hit & miss - down to personalities. [There is] more will to work with advocacy from higher up but it's the frontline that can be a problem - more paternalistic in their approach." – Advocacy Provider

"Level of contact varies by social worker. Sometimes [we're] not invited directly to a meeting – have to find out from client. Culture is starting to change. This is in part due to the professional service that advocates have provided which has enabled social workers to see the benefits of engaging with advocacy. Advocates have helped changed the culture." – Advocacy Provider

Whilst most of the stakeholders engaged with stated that cultures are slowing changing as a more accurate perception of independent advocacy spreads amongst professionals, it was clear that a postcode lottery currently still exists in relation to access to both statutory and non-statutory independent advocacy. Advocacy providers reported that many referrals are made during the later stages of a case, where the situation had escalated to a crisis point, rather than statutory bodies making referrals as a proactive means of achieving a person's outcomes.

"Tend to be called in when the person has reached crisis point. Meeting that they want you to attend is usually the next day. Services expect you to respond ASAP." – Advocacy Provider

"Some social workers are brilliant, but others dump tricky cases. [We're] seen as a last resort to sort things out." – Advocacy Provider

"Traditionally seen as when something has gone wrong." – Commissioner

"Often referrals come when it's got difficult for them [statutory services]." – Advocacy Provider

This indicates that independent advocacy is not consistently understood or embedded within regular working practices as a means of ensuring that a person is part of decision-making process from the start. With the introduction of the Social Services and Well-being (Wales) Act 2014 in April 2016, involving a person in decisions about their care and support is no longer considered solely as best practice, it is the law. Professionals are required to consider a person's need for advocacy at defined points throughout their contact with social services, from accessing information to the review of a Care and Support Plan. In this respect, the law is clear.

A noticeable impact on referrals to independent advocacy providers would therefore be expected following the introduction of the 2014 Act. However, many advocacy providers expressed real concerns that the Act has made little to no difference to working practice and the level of referrals that they receive.

"Advocacy is an afterthought." – Commissioner

"Referrals from social services hasn't gone up as a result of the Act." – Advocacy Provider

"Busier before legislation came in." – Advocacy Provider

"Things have got worse since the Act – this is austerity though." – Advocacy Provider

"Referrals from social services hasn't gone up as a result of the Act." – Advocacy Provider

This is a concern, especially for older people, who are the predominate users of care and support services[23] and are more likely to need the support of an independent advocate. Moreover, the apparent lack of independent advocacy to uphold the overarching principle of ensuring that people have a voice undermines the spirit of the 2014 Act.

My 'Voice, Choice and Control'[24] report highlighted that independent advocacy was often synonymous with dispute resolution and complaints. Whilst it is to be expected that Local Authorities will exercise professional judgement even when working within the parameters of co-production, it was reported by advocacy providers that some professionals were more open to challenge and scrutiny than others in relation to the decisions they make about people.

"Some social workers are suspicious of advocates." – Commissioner

"People often think advocates are there to cause trouble." – Advocacy Provider

"Staff are often defensive." – Advocacy Provider

Independent advocacy must be seen by professionals as a way of ensuring that a person's voice is heard in the decision-making process and not a way to 'make their jobs harder'. The value placed on independent advocacy is often synonymous

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[23] The Statistical First Release data relating to Adults receiving care and support in Wales, 2016-17 (Experimental statistics) and The Statistical First Release data relating to Children receiving care and support by local authority and age group, 2016-17 (Experimental statistics)

[24] Voice, Choice and Control, Recommendations relating to the provision of independent advocacy in Wales, Older People's Commissioner for Wales, September 2012

with the value placed on people's voices within an organisation's leadership and expressed corporate messaging. A professional's view of the purpose of independent advocacy and the value they place on a person's views, including the extent to which they exercise the legal requirement under the 2014 Act to start with the assumption that the person is best placed to judge what is best for them[25], will clearly impact upon their decision on whether and when to offer the support of an independent advocate.

"Equal partners on the whole – some feel that advocates are busy bodies." – Advocacy Provider

"People think 'it's just the advocate, they don't need to come'." – Advocacy Provider

"Some will ask me to stop talking as [they] want to hear the client speak. If the client sees the advocate being told to shush, how will that make them feel?" – Advocacy Provider

"Organisations that are negative about advocacy clearly don't value [the] voice of people." – Stakeholder

Many professionals advocate for people as part of their day-to-day role, and it is right that they continue to do so. However, a professional's role and/or position will mean they cannot be fully independent. A professional acting as an advocate when a decision is being made, such as in the assessment of care and support needs, would prevent an individual from being an equal partner in the decision-making process, which would be contradictory to the two-way conversation that is required by the Social Services and Well-being (Wales) Act 2014.. Moreover, advocacy providers were able to offer copious case studies of instances where the professional was unable, quite possibly for very sincere reasons, to listen to and act upon what a person felt was in their best interest as their professional opinion on what would be best for the person superseded those of the individual.

"It was important for professionals to understand that an advocate Is there to help the person convey their wishes, whatever they may be." – Commissioner

Whilst exercising a person's wishes may not always be in the 'best interest' of the person, recognising their right to make their own, albeit potentially unwise, decision, is a driving principle of the 2014 Act and highlights the important role of an independent advocate, statutory or otherwise.

"People ask advocates for their [own] opinion. [They say] "don't you see how ridiculous what they want is?" – Advocacy Provider

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[25] Section 6(3)(a) Social Services and Wellbeing (Wales) Act 2014

“Often you’re the first person who’s listening to them and not tell them what they ought to do.” – Advocacy Provider

1.2 There is currently confusion over what independent advocacy is and what it is not

Discussions with advocacy providers revealed that there is currently a degree of confusion amongst professionals over what is meant by ‘independent advocacy’. Many advocacy providers are clear about the service that they deliver and what they can and cannot do for their clients under the banner of independent advocacy. However, services that provide befriending and help with completing forms, whilst vital in their own right, are offering support that is fundamentally different from the provision of independent advocacy.

Subsequently, the blurring of what an independent advocacy service does by some providers may add to the apparent confusion by professionals in public services and may explain the high level of inappropriate referrals received by advocacy providers. Many stated that they often received referrals from professionals, such as social workers, to assist individuals in ways that were not in keeping with their role as an independent advocate.

“Requests for advocates to complete benefit forms for people – lots of inappropriate referrals indicate that people don’t really know what advocacy is / what we do.” – Advocacy Provider

“May say advocacy on their leaflets but [they] do befriending.” – Commissioner

Further clarity amongst public services and some providers is therefore needed about what is meant by the term independent advocacy.

In addition to this, advocacy providers reported increased levels of complex cases where, due to the lack of availability of other support services, they were providing support in addition to their advocacy services to ensure that the people they work with were adequately assisted. This raises further questions in relation to organisational culture and the investment in preventative services, such as support services that work alongside independent advocacy to ensure that a person can take the steps needed to achieve their outcome.

“Tends to be the oldest older people. Most cases tend to be complex.”
– Advocacy Provider

1.3 Legal rights to advocacy are not understood by professionals

The 2014 Act places a legal duty on Local Authorities to listen to the 'views, wishes and feelings'[26] of people in need of care and support. This extends to all of the actions that a Local Authority takes in relation to providing care and support for individuals. Additional 'overarching duties'[27] set out by the 2014 Act also place a legal duty on Local Authorities to presume that it is the person rather than the professional who is best placed to judge what is best for them[28] and to promote the independence of a person where possible[29].

Moreover, and significant in relation to independent advocacy, is the legal duty set out by the 2014 Act which states that Local Authorities must:

"...have regard to the importance of providing appropriate support to enable the individual to participate in decisions that affect him or her to the extent that is appropriate in the circumstances, particularly where the individual's ability to communicate is limited for any reason."[30]

These duties, together with provisions in the Code of Practice on Advocacy of the 2014 Act[31], give life to the underpinning principle of 'voice and control'[32] within the legislation and provide the basis for independent advocacy to be included as an essential aspect of in the delivery of social services. The Code of Practice on Advocacy[33] instructs Local Authorities to 'consider the need for advocacy'[34] at certain points during a person's contact with social services. It is important to note the difference between this duty to 'consider the need for advocacy' and the legal right to independent advocacy, albeit in certain circumstances, set out by other legislation, such as the Mental Capacity Act 2005 and the Mental Health Measure 2010, which provide legal rights to an Independent Mental Capacity Advocate (IMCA) an Independent Mental Health Advocate respectively.

The plethora of legal rights in relation to independent advocacy more generally can cause confusion to professionals if not fully trained in this area. Social Care Wales (SCW), which supports the social care workforce to be the best they can be[35], developed a range of training materials to accompany the implementation of the 2014 Act and a recent independent evaluation of the second year of the National Learning and Development Plan[36], which focused on rolling out core training to the

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[26] Section 6(2)(a) Social Services and Wellbeing (Wales) Act 2014
[27] Section 6(2) Social Services and Wellbeing (Wales) Act 2014
[28] Section 6(3)(a) Social Services and Wellbeing (Wales) Act 2014
[29] Section 6(3)(b) Social Services and Wellbeing (Wales) Act 2014
[30] Section 6(2)(d) Social Services and Wellbeing (Wales) Act 2014
[31] Para 50, Part 10 Code of Practice (Advocacy), Social Services and Wellbeing (Wales) Act 2014
[32] Sustainable Social Services for Wales: A Framework for Action, Welsh Government, January 2011
[33] Part 10 Code of Practice (Advocacy), Social Services and Wellbeing (Wales) Act 2014
[34] Para 50, Part 10 Code of Practice (Advocacy), Social Services and Wellbeing (Wales) Act 2014
[35] https://socialcare.wales/about
[36] 2016-2017 Evaluation of the Resource and Learning Programme for the Social Services and Well-being (Wales) Act 2014, ICF and Social Care Wales, May 2017

workforce and providing more specialised learning materials, indicated that ‘nearly 12,000 core training modules were completed in 2016-17’ and that the ‘majority of modules were completed by individuals employed by Local Authorities’[37]. The evaluation report also notes that it is likely that more than 12,000 individuals[38] have completed some if not all the core modules and noted the programme’s reach as one of the main strengths of its delivery model[39].

Whilst the report does not provide comparative data on numbers within the workforce that require training on the 2014 Act, given that there are nearly 3,900[40] social workers social workers employed across Welsh Local Authorities, the reported uptake of training appears positive. The number of non-social worker staff who are delivering duties under the 2014 Act, and therefore also require training, are is unclear (such staff may include those working in the Information, Advice and Assistance Services, for example).

The SCW core training modules on the 2014 Act include introduction and general functions, assessing and meeting needs and safeguarding – all key areas in relation to independent advocacy. However, the evaluation report does not draw a distinction between the different levels of training within each core module – Level A and Level B. The SCW Learning Hub states that Level A materials include ‘summaries of the key messages and are suitable for all roles across the sector to provide an overview of the key changes’[41], whereas Level B training provides more ‘detailed learning... designed to help implement change’[42]. Whilst Level A materials refer to advocacy, the information is brief and it does not include reference to the points at which the need for independent advocacy should be considered i.e. the Local Authority’s legal duties; the Level B materials include far greater detail on advocacy provision under the 2014 Act, which is positive. However, it is unclear from the evaluation report which level of training materials were used in the training of the workforce.

In addition to this, evidence from Social Care Wales indicates that only 69 delegates have attended the Masterclass on Advocacy to date. Whilst extensive learning materials are also available on the SCW Learning Hub on advocacy, the extent to which these materials have been used to train the workforce is unclear.

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[37] 2016-17 evaluation of the resource and learning programme for the Social Services and Well-being (Wales) Act 2014, May 2017, ICF Consulting Services

[38] “The figure of 12,000 core training modules completed is a sum of the total number of individuals completing each of the five core training modules. Therefore the total does not represent the number of individuals who have completed all or some of the core module training.”, 2016-17 evaluation of the resource and learning programme for the Social Services and Well-being (Wales) Act 2014, May 2017, ICF Consulting Services

[39] Page 6, 2016-17 evaluation of the resource and learning programme for the Social Services and Well-being (Wales) Act 2014, May 2017, ICF Consulting Services

[40] Nearly 3,900 social workers were employed in local authorities at the end of March 2016, Social Worker Workforce Planner, 2015-16: A National Report of the Social Worker Workforce in Wales, Care Council for Wales, March 2017

[41] Social Care Wales, Information and Learning Hub: Learning resources

[42] ibid

Uncertainty over the level of training across the workforce on the legal duties in relation to advocacy therefore remains.

“Some social workers are unclear about advocacy. Staff are mainly trained on the general Act.” – Commissioner

“Advocates [are] trained on the Act – advocates know the Act better than social workers.” – Advocacy Providers

“Education must go along with advocacy.” – Commissioner

Whilst it was SCW’s role to develop the national materials on the 2014 Act, training delivery is the responsibility of Local Authorities and other organisations discharging duties under the Act. This data may therefore exist within Local Authority training departments, despite the lack of data at a national level.

Older people expect professionals to know the legal framework in which they operate and to inform people of their legal rights. This not only applies to the duties under the 2014 Act, but equally in relation to the rights to statutory independent advocacy under the Mental Capacity Act 2005 and the Mental Health Measure 2010. A national picture on levels of training for Local Authority and Health Board staff in relation to this legislation also appears to be lacking.

It is essential that professionals are trained in and understand not only the principles of the law, but the exact legal requirements of it and, more importantly, what rights this gives to the people they serve. Assurance from corporate public bodies that their training on independent advocacy is adequate is therefore essential.

2. Shortcomings in the way in which independent advocacy is offered

It is important that people who need independent advocacy understand what 'independent advocacy' means and how it may help them participate in decisions about their care and support. Without an understanding of the term independent advocacy, a legal entitlement can be meaningless.

It is important that professionals not only inform people of their rights to statutory independent advocacy but also ensure that people understand the difference between the informal advocacy provided by family or a friend and independent professional advocacy. For those in most need or the most vulnerable, such as people living with dementia or older people living in care homes, the offer of independent advocacy is crucially important.

2.1 Offer of independent advocacy

Whilst many independent advocacy providers advertise and promote their services in a variety of ways and in a range of places, concerns were raised around the general public's awareness of independent advocacy services and how well its benefits are understood. This is reflected in the work of my casework team: many of those who contact me have a lack of awareness of what independent advocacy is and their legal entitlements to statutory independent advocacy in certain circumstances.

All well and good posters being up but it they're not told about them…leaflet given: tick – not being followed up." – Advocacy Provider

"[You are] reliant on people telling you about the [advocacy] service]."
– Advocacy Provider

The view that 'you don't know what you don't know'[43] is a common one and it may be especially applicable to the seemingly complex world of legal entitlements to statutory independent advocacy. Rights are often not understood by people, making access to independent statutory advocacy dependent on the offer made by a professional, such as a social worker or nurse.

The recent Age Alliance Wales report, 'ReAct to the Act'[44], which captures the voices of older people, their families and their carers on how the Social Services and Well-being (Wales) Act 2014 has impacted on their lives and their experiences of accessing support and care services, revealed that 'large numbers of older people are not having their needs reviewed in line with requirements'. The report states that

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[43] Older person, Alzheimer's Cymru SURPs Group

[44] The experiences of older people in Wales following the introduction of the Social Services and Well-being (Wales) Act 2014, Age Alliance Wales, December 2017

a significant number[45] of the respondents would not be able to identify someone to speak on their behalf and yet almost half of respondents[46] who experienced a needs assessment were not offered the support of an appropriate ‘other’ person or an independent advocate. The report rightly raises the concern that ‘older people are not being fully empowered to ensure their voice is heard’[47], suggests that older people are unaware of their rights under the 2014 Act and are therefore unable to challenge practice that is not in keeping with the law.

The less a person knows about what independent advocacy is and how it can help, the less likely they may be to accept the offer, let alone seek out their legal rights to it. Further work is therefore clearly needed to upskill the population on the role of independent advocacy and in relation to how the offer of advocacy is made. One way of addressing this may be to extend what is known as an ‘active offer’ to ensure more people are made aware of what independent advocacy is and what it can do before a decision is made on whether to accept an offer.

“Most vulnerable are slipping through the net.” – Advocacy Provider

The 2014 Act restated the ‘active offer’ for Looked after Children and Children on the Child Protection Register. An ‘Active Offer’ is a sharing of information about the statutory right and entitlement of a child or young person to access support from an Independent Professional Advocate. The information shared during the ‘Active Offer’ includes an explanation about the role of Independent Professional Advocacy, what it can and cannot do, how it operates based on their wishes and feelings, its independence and how it works solely for the child/young person, it’s confidentiality policy, including when confidentially may need to be breached to protect the child/young person from significant harm – it explains the statutory right of children and young people to be supported to express their views, wishes and feelings, as well as their right to make a representation or complaint.

The ‘Active Offer’ for specific groups of children helps to ensure that an informed choice is made in relation to the offer of independent advocacy, providing robust assurance to statutory bodies that the rights of a child in relation to IPA have been properly understood – making real their rights in law. Given the vulnerability of some older people, especially those living in care homes, the merits of extending an ‘active offer’ to other vulnerable people must be explored.

2.2 There is an increased need for independent advocacy for older people living in care homes

Advocacy providers resoundingly emphasised concerns in relation to the increased

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45 36% of respondents to who part in the ReAct to the Act survey
46 48% of respondents to who part in the ReAct to the Act survey
49 The experiences of older people in Wales following the introduction of the Social Services and Well-being (Wales) Act 2014, Age Alliance Wales, December 2017

need for advocacy for older people living in care homes. They raised concerns for those residents who received little contact from outside services, especially those who were self-funders and therefore not in contact with social services. The availability of independent advocacy for vulnerable older people living in care homes is essential and an issue that has been continually highlighted throughout my work. 'Voice, choice and control'[48], and 'A Place to Call Home?'[49], published in 2012 and 2014 respectively, called for an increased offer of independent advocacy within care home settings to support older people at times of major decision-making and transitions, and to ensure that their rights are upheld.

Considerable change is underway with the introduction of the Regulation and Inspection of Social Care (Wales) Act 2016. The new standards of care[50], which require care home providers to publicise the availability of independent advocacy services[51] and embed a person-centred approach to the delivery of care, aim to ensure that care and support is tailored to people's wishes, and the use of advocacy is an essential part of enabling this. This is welcome given the strong case for increasing the availability of independent advocacy for older people to increase their voice, choice and control.

However, these changes won't come quickly enough for many older people living in care homes today. Whilst the new standards will be introduced in April 2018, it is well known that it takes much longer to change practice and culture. Ensuring that older people are enabled to make decisions about their day-to-life and the ways in which they receive care and support is vital.

In addition to ensuring a greater quality for life for some of the most vulnerable people in our society, increasing the use of independent advocacy in care homes is an additional method by which to ensure that older people are protected from abuse and neglect. The Statistical First Release: Adult safeguarding, 2016-17[52] shows that 38% of reported abuse and neglect occurred in care homes. This reiterates the concerns raised by advocacy providers around the increased vulnerabilities of older people in care homes. Questions must therefore be asked as to whether the current uptake of independent advocacy in care homes is satisfactory or whether an 'active offer' approach, like that offered to specific groups of children, is required to ensure that older people living in care homes are safeguarded effectively.

"People in care homes are very vulnerable but we don't tell them about their rights – posters, talks needed." – Advocacy Provider

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[48] Voice, Choice and Control, Recommendations relating to the provision of independent advocacy in Wales, Older People's Commissioner for Wales, September 2012

[49] A Place to Call Home? A review into the quality of life and care of older people in care homes, Older People's Commissioner for Wales, November 2014

[50] Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017

[51] Regulation 19, Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017

[52] http://gov.wales/docs/statistics/2017/171130-adult-safeguarding-2016-17-en.pdf

Whilst most independent advocacy providers work within care home settings, often they do so when a referral has been made from a care home or the person that they are supporting in the community moves into a care home. Whilst there are examples across Wales of projects where the advocacy provider goes into care homes to work with older people, it appears that these are limited. This is concerning as many advocacy providers highlighted that whilst older people living in care homes are more likely to need independent advocacy due to their potential vulnerability, they are the group that is least likely to receive it. Coupled with the increasing numbers of older people living with dementia in care homes, it is clear there is a need for more independent advocacy services proactively engaging with care homes.

"People in care homes are just left there." – Advocacy Provider

Whilst advocacy providers appear to make on-going efforts to advertise their services within care homes, something that varies depending on the capacity within the advocacy service, they expressed concern that the success was often in the hands of the care home manager and their view of the role of independent advocacy.

"People in care homes very vulnerable but we don't tell them about their rights - posters, talks needed." – Advocacy Provider

"Really important to have advocacy offered in care homes. Residents don't understand what advocacy is and care home managers can be unwilling to engage/poor relationships." – Advocacy Provider

"We operate in most care homes, but some won't let us in. [It's a] shame as we can fix issues at a lower level before they become a problem." – Advocacy Provider

"Referrals from care homes vary. Homes can be very suspicious. [We would] welcome care homes being mandated to interact with advocacy via contract monitoring." – Advocacy Provider

Advocacy providers were clear in their support of mandating care homes to engage with independent advocacy providers as part of their contract with statutory bodies. They were also clear that using contract monitoring as a means of compelling care home providers to proactively engage with independent advocacy providers would be welcome. Many social care commissioners were aware of the vulnerability of older people in care homes and supported the use of contract monitoring in this way; it would therefore be a natural progression to mandate the use of independent advocacy through contracts, to further complement the requirements that will be introduced under the 2016 Act.

“Referrals from care homes varies. Homes can be suspicious. [We] would welcome care homes being mandated to interact with advocacy via contract monitoring.” – Advocacy Provider

2.3 The need for specialist independent advocacy for people living with dementia

My Dementia: More Than Just Memory Loss[53] report highlighted that there are a significant number of people living with dementia, and carers, who do not feel that their full needs – for care, support, information and advice – are currently being met by services and those who deliver them. I called for people living with dementia, and their carers, following a diagnosis of dementia, to be proactively offered information and advice through a single point of contact such as a memory clinic, including information on the support available through independent advocacy. The specialist communication skills and knowledge of dementia required by independent advocacy services who work with people living with dementia were highlighted by advocacy providers were highlighted by advocacy providers, as was the fact that the demand on these services is likely to increase significantly in the future (the number of people in Wales living with dementia is projected to reach 50,000 by 2025, with nearly a quarter of them aged 90 or over[54]).

Advocacy providers delivering non-statutory independent advocacy to people living with dementia were concerned about the future of their services, given that funding for these specialist advocacy services can be short term and reliant on an organisation’s own resources. This can result in difficulties in staff retention as organisations cannot offer sufficient job security or compete with higher salaries sometimes offered by other advocacy providers. The level of skill involved in delivering non-statutory advocacy to people living with dementia is considerable and it is therefore concerning therefore that trained advocates are being lost from this specialist role, and sometimes from the sector completely. The level of specialist independent advocates working with people living with dementia is unclear, with the most recent review of advocacy services for older people in Wales, Advocacy Counts 5[55], noting that ‘there has been a decrease in availability of services for safeguarding (elder abuse) and dementia’.

“Advocacy not just about people’s rights – takes longer to express someone’s views [in relation to non-verbal clients].” – Advocacy Provider

Access to independent advocacy within healthcare settings is often limited to statutory forms of independent advocacy through IMCAs or IMHAs. Whilst most health boards also deliver community advocacy for people with low-level mental

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[53] Dementia: More than Just Memory Loss - The experiences of people living with dementia and those who care for them, Older People’s Commissioner for Wales, March 2016

[54] Future Trends Report, Welsh Government, May 2017

[55] Advocacy Counts 5, Age Cymru (Golden Thread Programme), November 2016

health issues, there is little access to independent advocacy for older people living with dementia when they enter a hospital setting. That is why I called for individuals living with dementia who are admitted to hospital and do not have a carer to be offered access to effective non-instructed independent advocacy[56]. Some people living with dementia will have a legal right to statutory independent advocacy in the form of an IMCA, IMHA or Independent Professional Advocate, and this entitlement must be proactively offered to individuals. However, there appears to be a gap in provision for those who fall outside of this.

The Dementia Action Plan for Wales[57], published recently by the Welsh Government, makes reference to the importance of independent advocacy, stating that 'the potential value of the role of independent advocacy as 'the voice of the citizen' should be recognised at all stages of a person's lived experience of dementia, explained and actively offered'[58]. Whilst this statement is welcome, no detail is provided about how this will be delivered.

"Maybe [a person living with] dementia needs an independent advocate as a standard – not family. Needs to be a proactive offer." – Advocacy Provider

2.4 Offer of independent advocacy for carers

Whilst the estimated value of unpaid care in Wales is £8.1 billion[59], State of Caring 2017[60] report states that 1 in 5 carers caring for 50 hours or more a week receive or buy no practical support to help them[61]. Similarly, Carers Wales' Track the Act report[62], which provides a 6 month and 12 month 'sense check' on the lived experiences of carers in relation to the Social Services and Well-being (Wales) Act 2014, highlights that there is currently 'a 'postcode lottery' where carers in some areas will receive an assessment, whereas others won't'[63]. The fact that over half[64] of the 370,000[65] people in Wales providing unpaid care may not be accessing a carer's assessment means that carers' access to independent advocacy may be limited as their need for advocacy, both statutory and non-statutory, is not being identified.

"I don't think people are being offered an advocate during assessment – exception rather than the rule." – Advocacy Provider

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[56] Dementia: More than Just Memory Loss, Older People's Commissioner for Wales, March 2016
[57] Taking Wales Forward – a Dementia Supportive Wales, 2017-22, Welsh Government, February 2018
[58] ibid
[59] Valuing Carers 2015: The Rising Value of Carer's Support, Carers UK, University of Sheffield and University of Leeds, November 2015
[60] State of Caring 2017, Carers Wales, July 2017
[61] ibid
[62] Track the Act: Briefing 2, Carers Wales, September 2017
[63] ibid
[64] 66% of carers in Wales said they had not been offered or requested an assessment, State of Caring 2017, Carers Wales, DATE 2017
[65] State of Caring 2017, Carers Wales, July 2017

More needs to be done to ensure that carers' needs for independent advocacy are being appropriately considered under the 2014 Act. Carers, many of whom are older people themselves, are a vital part of delivering the principle set out by Sustainable Social Services for Wales: A Framework for Action[66] to 'build on people's desire to help each other, especially at times of difficulty', and it is therefore important to ensure that the rights of carers are upheld so they can access the services and support they may need.

"Social workers' say "don't rock the boat." – Carer and Advocacy User

"[I] can't fight anymore so the local authority gets away with it." – Carer and Advocacy User

"What about those who don't even recognise themselves as carers? Information needed elsewhere to pick these people up." – Carer and Advocacy User

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[66] Sustainable Social Services for Wales: A Framework for Action, Welsh Government, January 2011

3. Effectiveness of current legislation and the way it is applied

There are three specific pieces of legislation that, in certain circumstances, give a person the right to an independent statutory advocate: the Mental Capacity Act 2005, the Mental Health Act 2006 and the Social Services and Well-being (Wales) Act 2014. It should be noted that, whilst the Mental Capacity Act and the Mental Health Act give the right to independent statutory advocacy (albeit for certain people in certain circumstances), the 2014 Act is different in that it instead places a duty on the statutory body to 'consider a person's need for advocacy'.

Often the entitlement to statutory independent advocacy can be subjective, potentially making its application more challenging and harder to scrutinise. It is therefore essential that staff are able to implement both the spirit of the law, as well as the letter of it, to achieve its intended aim.

3.1 Information, Advice and Assistance Services

The Social Services and Wellbeing (Wales) Act 2014 requires all local authorities to provide an Information, Advice and Assistance (IAA) Service. The IAA service within each Local Authority is intended to act as the 'front door' to social services within each Local Authority in Wales. Whilst IAA Services have taken a variety of forms across Wales, with some local authorities opting to out-source the IAA service and others delivering in-house, the success of IAA services across Wales as a single point of contact for all people, including people with care and support needs, remains to be seen.

Advocacy providers commented that they had received low numbers of referrals from IAA Services. This is concerning when the Part 10 Code of Practice on Advocacy clearly states that a person's need for advocacy must be considered in the 'provision of information, advice and assistance'[67] and in the 'assessment of needs for care and support, support for carers and preventative services'[68] – key areas of delivery for IAA Services. This raises questions around whether IAA Service staff are aware of their duties in relation to independent advocacy under the 2014 Act and more generally in respect of the other legislation that provides a right to independent advocacy.

"IAAs not working as they should be. IAAs should be seeking out advocacy services. Tend to just rely on Dewis online." – Advocacy Provider

"IAA staff need to understand advocacy." – Commissioner

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[67] Para 50, Part 10 Code of Practice on Advocacy, The Social Services and Wellbeing (Wales) Act 2014
[68] ibid

"People in contact centres are not of the quality to assist with legal requirements." – Advocacy Provider

Due to the lack of data relating to advocacy recorded under the 2014 Act, and the fact that no data is recorded on referrals to IAA Services, it is not clear why reported referral rates are low. Local Authority commissioners raised the lack of data as an issue and suggested that the type of contact experienced by IAA Services may have an impact upon referral rates. They highlighted the fact that IAA Services are often contacted by family members with, or on behalf of, the person who requires care and support and therefore the need for independent professional advocacy was perceived to be reduced. This raises further questions about the offer of advocacy more widely and assumptions that may be made by professionals in relation to a person's need for independent advocacy when they have an apparent 'appropriate person' to represent their views, wishes and feelings.

"Advocacy being interpreted to suit their [local authority's] own agenda." – Advocacy Provider

The Information, Advice and Assistance Services provide the opportunity to reach people beyond those with existing care and support needs at an early stage. It is a vital part of the preventative and early intervention agenda promoted by the Social Services and Well-being (Wales) Act. It is therefore important that these services implement the duties within the 2014 Act robustly, with staff fully aware of the duties in relation to independent advocacy, to ensure that people are enabled to exercise voice and control during their contact with the IAA Service. A failure to ensure that IAA Services meet this standard would be a missed opportunity in delivering the 'high quality responsive, citizen centred social services' set out by Sustainable Social Services[69].

"Hospital discharge is an issue - mainly with older people. People 'bed-blocking' whilst waiting for an assessment [for care and support]." – Advocacy Provider

"[We are] getting very complex cases. Revolving door - symptoms picked up but not the underlying issue." – Advocacy Provider

People being told to discharge themselves if social work assessment hasn't happened." – Advocacy Provider

"Medically fit to go – social circumstances not their problem." – Carer and Advocacy User

Whilst the interaction between health and social care is a much wider issue than the scope of this report, the social care needs assessment process in health

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[69] Sustainable Social Services for Wales: A Framework for Action, Welsh Government, January 2011

settings is a vital way of securing the support of an independent advocate. If needs assessments are not being carried out in accordance with the 2014 Act, or if they are not being carried out at all, a person could be denied their potential right to the support of an Independent Professional Advocate.

Whilst access to an Independent Professional Advocate may be an option available to people with care and support needs where needs assessments are conducted in line with the 2014 Act, outside of statutory independent advocacy linked with capacity (IMCA) or advocacy linked with mental health (IMHA or non-statutory Community Advocacy provided by some Health Boards), there appears to be a gap in the provision of independent advocacy for people in healthcare settings to assist with hospital discharge.

"Patients need independent advocacy – someone who is not under pressure from budgets." – Advocacy User

My recent review into the effectiveness of safeguarding within hospitals[70] found that whilst Health Boards reported that they were familiar with their responsibilities with respect to the appointment of IMCAs and IMHAs, they had not recognised the requirement under the 2014 Act for an Independent Professional Advocate to be made available during a safeguarding enquiry. It also highlighted that Health Boards do not seem to have considered joint commissioning advocacy services to reduce its current fragmentation. Whilst this finding relates to the provision of independent advocacy within safeguarding in hospitals, the concern around the lack of offer of Independent Professional Advocacy during hospital discharge, together with the apparent lack of non-statutory independent advocacy available to older people in hospital settings, may indicates that Health Boards may not be implementing the 2014 Act robustly and consistently.

Research shows that even in situations in which an older person is surrounded by family or professionals, they may still feel powerless or unable to voice their opinions. In such circumstances, they may find it daunting or feel unable to influence or challenge major decisions that are made about and impact upon their life, further reinforcing their sense of powerlessness.

"People in hospitals say 'they don't care about me because I'm old'." – Advocacy Provider

We know that 31% of people living in care homes self-fund their care[71] and it is therefore important that older people in hospital settings who are not in contact with social services and who may be considering their accommodation needs, including

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[70] Review of the Actions which Health Boards are taking to ensure that older people who are hospital in-patients are safeguarded from harm in line with the requirements of the Social Services and Wellbeing (Wales) Act 2014 Sections 7 and 10, Older People's Commissioner for Wales, April 2018

[71] LaingBuisson, Care of Older People: UK Market Report – 27th edition, p210, table 7.3 and LaingBuisson, Care of Older People: UK Market Report, 28th edition, May 2017, table 7.3

a move to a care home, have access to independent advocacy. As well as helping to ensure that a person knows their rights and the available options available to them, having your voice heard and acted upon creates a much greater sense of ownership over major decisions, such as a move to a care home, which can make a significant difference in a person's wellbeing and their outlook on entering a care home.

3.3 Use of 'Appropriate Person'

Access to statutory independent advocacy is often dependent on whether a person has someone who can act as their advocate or 'Appropriate Person', a role that is often fulfilled by a family member or friend. The law states that entitlement to an Independent Mental Capacity Advocate (IMCA) or an Independent Professional Advocate (IPA) is dependent on a person having no-one else to represent them. The Code of Practice on Advocacy[72], and the Mental Capacity Act Code of Practice[73] to a lesser extent, sets out the instances when a person may not be appropriate to act as an advocate. This is right given that it may not always be appropriate for a person to take on this role in certain circumstances.

For some people, it is natural for a family member or friend to advocate on their behalf and it is right that they can do so. Many people will be supported by a family member or friend rather than by an independent advocate and whilst this is not a concern in itself, the complexity of the 'Appropriate Person' role must be fully understood. The Part 10 Code of Practice on Advocacy states that:

"Appropriate individuals are expected to support, represent and to facilitate the individual's involvement in securing their well-being outcomes. Whilst often this will be a family member, friend or someone in the wider support network it is likely that some people may not find it that easy to fulfil this role. For instance, a family member who lives at a distance and who only has occasional contact with the person; a spouse who also finds it difficult to understand the local authority processes; a friend who expresses strong opinions of their own prior to finding out those of the individual concerned. It is not sufficient to know the person well. The role of the appropriate individual is to support the individual's full engagement and participation in determining their well-being outcomes."[74]

The Code states that it is not sufficient to simply know the person to advocate for them. However, it is unclear on how strictly this is being applied. Part of the role of an independent advocate will be to inform the person of their rights under the law. Questions must therefore be asked as to the extent to which a lay person can perform this function and ensure that their loved one is able to enjoy the same level of support that would be provided by a professional independent advocate.

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[72] Para 61, Part 10 Code of Practice on Advocacy, Social Services and Wellbeing (Wales) Act 2014
[73] Mental Capacity Act 2005: Code of Practice, UK Government, April 2007
[74] Chapter 13, Part 10 Code of Practice on Advocacy, Social Services and Well-being (Wales) Act 2014

“Emotional connection makes it very hard to be objective. Advocacy’s strength is it can transcend this.” – Advocacy Provider

Under the Mental Capacity Act, informal advocates such as family or friends can receive support from an IMCA[75] to help advise them in their informal advocate role. However, advocacy providers highlighted this as a right that is not often offered to those acting as unpaid representatives. Some stakeholders felt that this may be due to the additional cost incurred by the Health Board as a result. This is a concern if people are prevented from accessing an IMCA because they have someone to represent them, but the person appointed as the person’s informal advocate or unpaid representative is not given the support they require to be effective, thus undermining the voice of the person.

“Social services and health assume family member will advocate.” – Advocacy Provider

“Interpretation of the Act is an issue – people falling through the net.” – Advocacy Provider

3.4 Application of ‘Best Interest’ decisions

Inappropriate use of ‘best interest’ decisions has been a continuing area of concern, with my casework highlighting that ‘best interest’ decisions are not always being used in line with the spirit of the Mental Capacity Act 2005. Examples of where the decision-making process can be unduly influenced by the public body rather than the views wishes and feelings of the person subject to the ‘best interest’ decision are not uncommon.

Advocacy providers raised concerns about the lack of consideration of the IMCA role in ‘best interest’ decisions, particularly when there is a disagreement between the public body and the family representatives. They also re-iterated concerns around the inappropriate use of ‘best interest’ decisions and reported being asked to rubber stamp ‘best interest’ decisions following the meeting taking place or being involved at a very late stage in the process, often leaving little time to prepare.

Don’t always hear about meetings - short notice. [It’s] getting better though.” – Advocacy Provider

“Meetings – misinformed / short notice.” – Advocacy Provider

“Generally invited to meetings – can be the day before though.” – Advocacy Provider

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[75] The Mental Capacity Act 2005 states that where a person has an unpaid representative, a 39D IMCA must be instructed if a request is made by the person or their unpaid representative or the supervisory body believes that the person or their representative would benefit from the support of a 39D IMCA

"Don't have chance to build a relationship – one off [meeting] restricted to certain issues." – Advocacy Provider

This calls into question not only the adequacy of the application of the law but the culture that exists within some organisations. If the importance and benefits of ensuring that a person's views are listened to and understood, the IMCA, or those acting as an informal advocate would be sought and included in Best Interest meetings. That this is not the case indicates that the 'professional view', such as that of the Consultant, can be prioritised over the person.

"Social services still don't understand advocacy. Don't see the need for independence or Conflicts of Interests." – Advocacy Provider

"Reluctant to have advocates involved as it stops them doing what they want. Families are railroaded." – Advocacy Provider

3.5 Parity afforded to independent statutory advocates

There were varying accounts given by advocacy providers in relation to the level of respect afforded to them and their role by other professionals working in public bodies. Independent advocates felt that it was often dependent on the individual relationships between those working in statutory bodies and the advocacy provider, as well as the professional's view of the benefits of independent advocacy. IMCA providers reported that they were often asked to 'rubber stamp' decisions and were expected not to challenge. Concerns were raised that, under the current law, any challenges they make could be easily brushed aside by decision-makers without sufficient consideration.

"Doctor had already made up their mind before the meeting – meeting was just a tick box." – Advocacy Provider

"[They] don't always listen to me – I'm outnumbered." – Advocacy Provider

Advocacy providers generally felt that professionals such as consultants do not always treat an independent advocate, whether statutory or non-statutory, as an equal partner in the decision-making process. Whilst the independent advocate can only put forward their client's views in the hope that they will be heard and acted upon, the importance of the person's views, wishes and feelings can often give way to 'professional judgement'.

Despite the input of statutory independent advocates sometimes being over-looked by other decision makers, advocacy providers felt it was a positive step forward to place independent advocacy on a statutory footing under the Social Services and Well-being (Wales) Act 2014. The creation of the statutory Independent Professional Advocate role will, according to advocacy providers, help to increase the status of the role, giving Independent Professional Advocates increased authority. The effect of the creation of the statutory Independent Professional Advocate role is yet to be

known, but many advocacy providers welcomed this move and the move to regulate independent advocacy (yet to be defined) in relation to the provision of social care.

"Welcome regulation – [advocacy organisations] need to give correct information and know legal rights." – Advocacy Provider

"Regulation is a good thing – recognises quality." – Advocacy Provider

It is important that the impact of the Independent Professional Advocate role is monitored to ensure that they are afforded an equal voice in decisions about a person's care and support.

3.6 Rights of people living with sensory loss

The evidence provided by people living with sensory loss and their experience of accessing services raised concerns about the practice of some statutory bodies. It is essential for those who may have a heightened need for independent advocacy because of their communication needs to gain access to appropriate support and it is unacceptable for people living with sensory loss to be unable to access services simply because there is no appropriate support available.

The level and consistency of availability of statutory services available through the medium of British Sign Language (BSL) was raised as a concern. Instances of people being unable to access their rights, such as their right to an assessment of their care and support needs under the 2014 Act, because of the lack of available social workers who use BSL to a standard sufficient to conduct such specialist work is unacceptable. Whilst the law is clear in relation to the support that must be provided under the Equality Act 2010, questions must be asked as to whether the legislation is being properly implemented and whether people's legal rights are being upheld.

Whilst the implementation of the Equality Act is a separate issue to the provision of independent advocacy, an association does exist. If staff in public services are unable to effectively communicate with a person living with sensory loss, it must be called into question how they would undertake any discussion around the person's potential need for independent advocacy and the benefits it may offer an individual. It is a concern if people living with sensory loss are being denied a potential right to independent advocacy because of the lack of support to meet their language needs.

"I know there are funding cuts but I pay my taxes like everyone else."
– Advocacy User

"We just want to access a service, get out needs met and go home like any other person." – Advocacy User

People living with sensory loss can often experience a heightened need for independent advocacy because of the lack of accessible information on rights and entitlements compared to what is available to the non-sensory impaired community. Without access to information, and a lack of appropriate support available in the form of professionals in statutory services who can use different forms of communication to a high standard, people living with sensory loss will have an even greater need for independent advocacy support, including statutory independent advocacy.

"Fine line between information, advice and advocacy – as a deaf person, accessing information and interpretation can become advocacy – explaining of concepts and rights." – Advocacy User

Given the relationship that must be built between an independent advocate and their client, together with the specialist knowledge of legal rights and entitlements and their communication skills, it would be wrong to assume that professional translators would be able to fulfil the role of independent advocate. Furthermore, the number of trained independent advocates that specialise in communication with people living with sensory loss is currently unclear. This is a concern and should be a consideration for health and social services when assessing the current need for independent advocacy and planning for future demand.

"When you get a good advocate, it can make things so much easier. A good advocate understands the culture of deaf people – social services would not understand and think [we] are stupid – 'oh poor you' – people with hearing loss go to the bottom of the pile." – Advocacy User

3.7 Welsh Language independent advocacy provision

Advocacy providers appeared confident in their ability to provide Welsh-speaking independent advocates but some expressed concern around the apparent lack of demand for independent advocacy through the medium of Welsh. Assumptions made by some professionals regarding a person's language preference were stated as a possible explanation for this low demand and it was acknowledged that a person may have different language preferences for different types of interactions. Instances where professionals in statutory services were unaware of a person's ability to speak Welsh until they had engaged with an independent advocate appear relatively common.

"I got more out of him than they had in 4 weeks." – Advocacy Provider

An additional explanation for the low demand for independent advocacy through the medium of Welsh was proposed as a direct result of inadequate recording systems used by professionals in statutory services. Whilst commissioners were confident that language preference is recorded on assessment, advocacy providers questioned whether this information was being adequately recorded and shared appropriately.

“Safeguarding and Care Plans don’t always say whether people want Welsh – so are people being asked? Most providers ignore Welsh language – missing from outset. Assumption that people want English.” – Advocacy Provider

“Welsh speaking advocate available but very few people asking for Welsh language.” – Advocacy Provider

4. Insufficiency of the data in relation to statutory independent advocacy

The evidence to provide assurance that older people's rights to statutory independent advocacy are being upheld largely does not exist. This not only raises concerns as to whether public bodies are complying with the statutory duties places upon them by legislation, but also calls into question whether non-statutory independent advocacy, considered good practice and not mandated by law, is being consistently offered to people to ensure their have a voice.

Without robust data available, it is impossible to demonstrate whether people who have a legal right to statutory independent advocacy are being told of their rights and are being offered access to it. The lack of data also does not allow us to understand the extent of the use of non-statutory independent advocacy as part of the 'preventative agenda'.

This is a concern as without sufficient data, both local and national governments will be unable to assure themselves that people's rights are being upheld and they will be less informed about the culture that exists within public services.

4.1 Social Services performance data

The implementation of the Social Services and Well-being (Wales) Act 2014 began on 6 April 2016, with the first release of data in relation to Local Authorities' implementation of the Act published on 31 October 2017. This data corresponds to the first year of the Act's implementation[76] and includes local and national data on a number of areas set out by the Code of practice in relation to measuring social services performance[77]. However, despite being a central thread running throughout the Act, the data collected in relation to access to independent advocacy is limited.

Central to the personalisation agenda are the overarching duties, such as the duty to have 'due regard to views, wishes and feelings'[78], promoted by the 2014 Act, as well as the accompanying duties set out in the Code of Practice on Advocacy[79], to provide Independent Professional Advocacy to people who have barriers that prevent them from participating in decisions made about their care and support (or support in the case of carers). However, the most recent data on the implementation of the Act[80] provides no indication of the extent to which the overarching duties have been implemented. Moreover, the data does not provide any evidence of whether

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[76] Financial Year 2016-17

[77] Code of practice in relation to measuring social services performance, Social Services and Wellbeing (Wales) Act 2014

[78] Section 6(2)(a), Social Services and Wellbeing (Wales) Act 2014

[79] Part 10 Code of Practice on Advocacy, Social Services and Wellbeing (Wales) Act 2014

[80] The Statistical First Release data relating to Adults receiving care and support in Wales, 2016-17 (Experimental statistics)

a person's need for independent advocacy has been considered at the required points during their contact with social services or whether access to Independent Professional Advocacy has been granted.

"They don't collect other data around advocacy – only what Welsh Government require." – Commissioner

"Currently [we] only monitor advocacy against delivery contracts." – Commissioner

The Annual Report on the National Outcomes Framework[81] shows that 79% of people receiving care and support, and 71% of carers receiving support, agreed that they had been involved in any decisions made about how their care or support was provided. Despite this, the report also indicates a decrease in the percentage of people agreeing that they were in control of their daily life since the implementation of the 2014 Act[82]. Whilst the report notes a similar decrease amongst people who did not received care and support feeling in control of their daily life, the data is unable to provide further evidence that may indicate whether certain duties within the 2014 Act had been successfully implemented.

The Annual Report also does not provide further detail on the reasons why almost 30% of people with care and support needs (or support needs in the case of carers) did not feel involved in decisions made about them. Furthermore, it makes no reference to the extent to which people's rights are respected or their access to an independent advocate, which are significant omissions.

The data within the Statistical First Release tells us that only a small number of people[83] accessed advocacy services as part of their Care and Support Plan (or Support Plan in the case of carers). A clear shortcoming with this data is that it is limited solely to people receiving care and/or support. The impact of this is two-fold: it does not show the number of people who may have accessed independent advocacy as a preventative service, as the ethos of the Act encourages, and it does not provide assurance that a Local Authority is acting in accordance with the law in relation to the offer of statutory independent advocacy (i.e. Independent Professional Advocacy). The data also does not provide any details on what form of 'advocacy' was accessed – Independent Professional Advocacy, IMCA, non-statutory independent advocacy or peer advocacy, for example.

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[81] Measuring national well-being: A report on the national outcomes framework for people who need care and support, and carers who need support, 2016–17, Welsh Government, November 2017

[82] In 2016–17, 72 per cent of people who received care and support and 79 per cent of carers who received support agreed that they were in control of their daily life as much as they can be. In 2014–15, 81 per cent of people who received care and support and 87 per cent of carers agreed that they were in control of their daily life as much as they can be. Measuring national well-being: A report on the national outcomes framework for people who need care and support, and carers who need support, 2016–17, Welsh Government, November 2017

[83] 762 adults aged 18+ accessed advocacy services as part of a Care and Support Plan or Support Plan. 147,336 services were provided to adults through a Care and Support Plan or Support Plan, The Statistical First Release data relating to Adults receiving care and support in Wales, 2016-17 (Experimental statistics)

The shortcomings in the data on independent advocacy is an area of concern that I have previously highlighted[84]. Whilst I am pleased to know that work is already underway to review the data collected in relation to the 2014 Act, without robust data on access to independent advocacy more generally, together with data on the uptake and offer of Independent Professional Advocacy as a statutory duty, it is impossible to know to what extent older people are gaining access to independent advocacy – whether as a preventative service or through their right under the 2014 Act.

The data on the 2014 Act[85] is accompanied by a disclaimer which states that there are potential issues with the quality of the data due to system changes within Local Authorities to capture new data and reporting processes not being fully implemented. This has resulted in some Local Authorities being unable to provide data on certain performance measurements, including independent advocacy. The potential weakness in the quality of the data to accompany a major piece of Welsh legislation is a concern. Moreover, questions must be asked as to whether the current performance measurements are sufficient to provide adequate assurance that older people's rights are being upheld. People who need independent advocacy to engage in decisions made about their care and support, are potentially being denied their right to have their 'views, wishes and feelings'[86] heard as part of their care and support provision, as there is no evidence to prove otherwise.

If it is the intention for this data is to be used 'both within and outside the Welsh Government to monitor adult social services trends'[87] to 'provide a summary of activity in relation to new legal duties introduced in the Social Services and Well-being (Wales) Act'[88], the shortfalls in relation to the data collected on independent advocacy, as well as the data collected on the implementation of the overarching duties, must be addressed if this data is to achieve its purpose. Both local and national governments must be able to assure themselves that the legal duties set out by 2014 Act are being made real for people in need of care and support.

"You can't manage what you don't measure." – Advocacy Provider

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[84] Older People's Commissioner for Wales response to the Welsh Government consultation on the Code of practice in relation to measuring social services performance and through conversations with Welsh Government Officials

[85] The Statistical First Release data relating to Adults receiving care and support in Wales, 2016-17 (Experimental statistics)

[86] Section 6(2)(a), Social Services and Wellbeing (Wales) Act 2014

[87] The Statistical First Release data relating to Adults receiving care and support in Wales, 2016-17 (Experimental statistics)

[88] The Statistical First Release data relating to Adults receiving care and support in Wales, 2016-17 (Experimental statistics)

4.2 Safeguarding data

Further compounding the lack of robust data in relation to advocacy under the 2014 Act, the data in relation to adult safeguarding[89] does not include any data in on the use of independent advocacy. This is a concern given the requirement that 'Local authorities must have regard to the need to help protect adults and children from abuse and neglect'[90]. The 2014 Act progresses the expectation set out in my Business Case for Advocacy[91] and again in A Place to Call Home?[92] for independent advocacy to be offered when an older person is at risk of, or experiencing, physical, emotional, financial or sexual abuse. However, it is impossible to know if this legal requirement has become reality due to the lack of data on the use of non-statutory or statutory independent advocacy, such as IPA or IMCA, during safeguarding inquiries.

The variation in records on the use of independent advocacy during safeguarding amongst safeguarding teams in Local Authorities and Health Boards persist, despite this issue being highlighted as an area of concern in my 2015 position statement 'Crimes against, and abuse of, older people in Wales'[93]. Whilst this data is not available nationally, some data is collected at a local level, ranging from the attendance of independent advocates or appropriate individuals at case conferences to information on whether a referral is made. Some bodies stated that referrals to independent advocates are made on a case by case basis and would only be captured on the individual's case recording or within the safeguarding recording.

This local variation on the collection of data on the use of independent advocacy during the safeguarding process is unhelpful as it does not provide any assurances that a person's legal right to an advocate are being considered. 'Crimes against, and abuse of, older people in Wales'[94] highlighted that victims of abuse were more likely to engage with a justice provider if they were given additional time with one worker to build a relationship, establish trust and develop a rapport, with the advocate model of practice more likely to empower an older person than the current 'case management' model approach. This was supported by practitioners, who commented that 'documenting information about the clients' social contacts would benefit case management, improve the accuracy if risk assessment and increase the effectiveness of any subsequent action plans'[95].

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89 Statistic First Release, Experimental Statistics: Adult safeguarding, 2016-17

90 Para 67, Part 10 Code of Practice on Advocacy

91 A Business Case for Advocacy Services in Wales, Older People's Commissioner for Wales, May 2014

92 A Place to Call Home? A review into the quality of life and care of older people in care homes, Older People's Commissioner for Wales, November 2014

93 Crimes against, and abuse of, older people in Wales: Access to support and justice: working together, Older People's Commissioner for Wales, January 2015

94 ibid

95 Crimes against, and abuse of, older people in Wales: Access to support and justice: working together, Older People's Commissioner for Wales, January 2015

The lack of data to evidence the use of independent advocacy as part of the safeguarding process under the 2014 Act on a national and consistently on a local basis is concerning. More must be done to address this issue to provide assurance that rights of some of the most vulnerable people in society – those at risk of, or those experiencing, abuse and neglect – are upheld and their voices are heard.

My recent review of safeguarding in hospitals[96] found that whilst Health Boards stated that they were familiar with their responsibilities in relation to the appointment of IMCAs and IMHAs in the safeguarding process, not all have recognised the duties under the 2014 Act in relation to Independent Professional Advocacy when a patient is subject to a safeguarding enquiry. It highlighted that Health Boards are not collecting any data on their referrals for Independent Professional Advocacy and so will be unable to assure themselves of their compliance with the 2014 Act, when undertaking investigations on behalf of the Local Authority Social Services Department. This raises a further question about the extent to which Health Boards are required to report on their implementation of the Social Services and Well-being (Wales) Act 20214, both in relation to the provision of independent advocacy during, and more generally in their exercise of, social services functions.

The absence of reported national data on the use of statutory and non-statutory independent advocacy means that it is impossible to know the extent to which it is used consistently and appropriately during the safeguarding process. Additionally, the current data is not robust enough to be able to compare data sets[97] to show correlation or causation, such as comparing the number of people accessing independent advocacy in a Local Authority with the number of 'adult at risk' reports in the same Local Authority. The need for a robust common strategic performance framework in clear.

The data shows that 53% of abuse and neglected was committed by paid employees and another 27% was perpetrated by a relative or friend. This further demonstrates the essential need for independent advocacy as it is not always appropriate for family or friends, or those employed to advocate as part of their role, to represent a person, especially during the safeguarding process.

The National Independent Safeguarding Board, established by Welsh Government to work with the safeguarding adults boards (and safeguarding children boards) across Wales to ensure they are effective, is required to report annually on the effectiveness of arrangements to safeguard children and adults and to make recommendations to Welsh Ministers on any required improvements. The National Safeguarding Board's Annual Report for 2016-17 states that whilst 'it is not yet

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[96] Review of the Actions which Health Boards are taking to ensure that older people who are hospital in-patients are safeguarded from harm in line with the requirements of the Social Services and Wellbeing (Wales) Act 2014, Older People's Commissioner for Wales, January 2018

[97] The Statistical First Release data relating to Adults receiving care and support in Wales, 2016-17 (Experimental statistics) and Statistic First Release, Experimental Statistics: Adult safeguarding, 2016-17

possible to report properly on the adequacy and effectiveness of arrangements to safeguard children and adults'[98] as the Board did not become operational until 6 April 2016, the Board's intention is to gather data on a number of areas, including 'how Safeguarding Boards are fulfilling their statutory functions', to meets its objectives. As the National Safeguarding Board Annual Report was published in advance of the publication of the regional Safeguarding Adults' Annual Reports, the National Board's Annual Report states that it can only highlight interim findings. Whilst acknowledging this point, it is disappointing that the use of advocacy or the lack of data in relation to the use of advocacy has not been highlighted as a concern within the National Board's Report. However, the need to look at what safeguarding data tells us is highlighted as a future action in the National Board's Annual Report which is to be welcomed. There is very little reference to the use of independent advocacy and the need to capture data in relation to this in the Regional Safeguarding Boards' Annual Reports or Action Plans. More work therefore needs to be done if we are to ensure that the data is available to evidence the level of use of independent advocacy during the safeguarding process.

4.3 IMCA data

'Voice, Choice and Control'[99] set out the need for Local Authorities to collect information on the availability of IMCA services in their local area and the frequency with which IMCAs are instructed. Despite this, there appears to be a lack of publicly available date to demonstrate the offer and uptake of IMCAs, outside of the Deprivation of Liberty Safeguards (DoLS) process. This absence of data calls into question the ability of the Welsh Government to be assured that the rights of some of the most vulnerable people in our society are being upheld, and that the funding provided is adequate to meet need.

The lack of referrals to IMCA services during DoLS applications is an issue often identified in the casework that I undertake. In their Annual Monitoring Report[100], Care Inspectorate Wales (CIW) and Health Inspectorate Wales (HIW) reported that the number of applications for DoLS saw a 16-fold increase on the previous year[101] and that the number of cases where an IMCA was appointed had increased from 79 in 2013-14 to over 500. However, the report highlighted that this increase in the use of IMCAs represents only 5% of the total number of DoLS authorisations, due to the sharp increase in DoLS applications 2014-15.

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[98] National Independent Safeguarding Board Wales, Annual Report 2016 –17

[99] Voice, Choice and Control, Recommendations relating to the provision of independent advocacy in Wales, Older People's Commissioner for Wales, September 2012

[100] Deprivation of Liberty Safeguards: Annual Monitoring Report for Health and Social Care 2014-15, CSSIW and HIW, January 2016

[101] From 631 applications in 2013-14, to 10,679 applications being made during the period April 2014 to March 2015, Deprivation of Liberty Safeguards: Annual Monitoring Report for Health and Social Care 2014-15, CSSIW and HIW, January 2016

This data on use of IMCA in the DoLS process shows a year on year decline[102].

Whilst the data available on IMCA referrals during DoLS is welcomed, the trend shown by this data is highlights a concerning picture, one where the rate of IMCA referrals during DoLS is falling. CIW and HIW state in their report that, in relation to challenges made to deprivations of liberty, 'the appointment of an IMCA appears to make a difference as nearly half of referrals [to the Court of Protection] occurred when an IMCA had been appointed'[103]. This clearly shows the importance of the voice of the individual in the DoLS process and the expert knowledge that is needed to ensure a person's rights are upheld. Whilst CIW and HIW's report repeatedly highlighted the rate of IMCA referrals as an area for concern, there appear to be no measures in place to address this decline.

Robust data is important but must be used to drive change. It is unclear how the data in this report is subsequently used, which is a concern. The Law Commission's recent review of DoLS[104] is therefore welcome. However, any new system must be accompanied by robust data monitoring to ensure that more people are able to access IMCAs where they have this right. It is a concern that there appears to be no publicly available data on the use of IMCAs in Wales, apart from their use in DoLS. This is a concern as a lack of data calls into question the ability for both local and national governments to find assurance that people who lack capacity have their rights upheld.

Whilst data is currently collected by the Welsh Government in relation to Part IV[105] of the Mental Health Measure 2010, it is not publicly available, although following conversations that I have had with officials in relation to this report, the data collected may be published on the StatsWales[106] website in the near future. This would be welcomed as the data currently collected includes a number of measures relating to IMHA services, including the number of people who are currently using IMHA services across Wales.

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[102] From 12.5% in 2013-14 to 5% in 2014-15. Decreased from over 500 in 2014/15 to 336 in 2015/16 stated in Deprivation of Liberty Safeguards: Annual Monitoring Report for Health and Social Care 2015-16, CSSIW and HIW, January 2016

[103] Deprivation of Liberty Safeguards: Annual Monitoring Report for Health and Social Care 2014-15, CSSIW and HIW, January 2016

[104] Review of the Mental Capacity Act and the Deprivation of Liberty Safeguards (DoLS), Law Commission, March 2017

[105] Part IV, Mental Health Measure 2010 includes requirements for the provision of advocacy

[106] Statswales.gov.uk provides detailed official data on Wales

5. The planning process for independent advocacy is not sufficient

Without knowing the needs of the population, it will be impossible to adequately meet need. If we do not know how many services are required to provide the appropriate level of support to people who require independent advocacy services, we will not know whether current supply is sufficient.

Underpinning any planning process must be knowledge of the current and future need for independent advocacy services, including the need for more specialist forms of independent advocacy. A sophisticated understanding of the population's need for independent advocacy is required if we are to effectively plan for how this need will be met.

5.1 Population Assessments

In April 2017, every Local Authority in Wales was required by the Social Services and Well-being (Wales) Act 2014 to make a joint assessment, with its local Health Board, of the care and support needs of their local population. These Population Assessments, as well as identifying current care and support needs, aim to identify future care and support needs and identify the services that will be required to meet those needs. To guide Local Authorities and Health Boards in making their Population Assessment, a toolkit was published to outline the areas that must be included within the Population Assessment reports.

Despite the toolkit clearly stating that reports must 'set out the assessment of preventative services, including advocacy services'[107], two Population Assessment Reports (spanning a total of five Local Authorities) make no reference to advocacy[108]. The remaining Population Assessment Reports do not feature independent advocacy in any detail, even when the report itself clearly identifies its importance. It is disappointing to note that several of the Reports merely contain a definition of what advocacy is and how it may help people, with others including brief references to the need for future work to map advocacy provision. There appears to be little reference to other forms of advocacy, such as statutory independent advocacy (e.g. IMCA and IMHA), with the only mention of IMHA limited to an explanation of what an IMHA does, and the only mention of IMCA in relation to safeguarding, again limited to a definition of the IMCA role.

"Wasn't involved in Population Assessments – advocacy isn't a big consideration in the published report." – Advocacy Provider

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[107] Population Assessment Toolkit, Social Services Improvement Agency, April 2016

[108] Advocacy was not mentioned in the main summary document or any of the subject specific reports covering areas such as mental health.

Whilst this may be expected given that Population Assessments are focused on social services, it raises concerns about the level of integration between public services – in particular between health and social services as Health Boards are required to contribute to the Population Assessments. The apparent lack of a joined-up approach calls into question the effectiveness of the planning process if there is no emphasis on a whole-population approach to the delivery of public services. This is a concern when considering the gaps in provision that currently exist, such as independent advocacy services for people in hospital settings who are not entitled to statutory independent advocacy.

No baseline information is provided on the amount of independent advocacy that is currently available in any of the Population Assessment Reports and they do identify any gaps or predicted future need. Similarly, there is no information contain within the reports on the current availability of IMHA or IMCA services. Several different groups are identified within the Population Assessment Reports, including people with a learning disability, people with a mental health condition and older people, each potentially requiring independent advocates with different skills. However, no indication is given as to what different types of independent advocacy services may be required given the identified care and supports needs of different groups of people. It should be quite possible to analyse data on specific groups of people to estimate demand for independent advocacy: an increase in the number of people living with dementia, for example, will indicate a need for a proportionate increase in the number of independent advocates who are able to work in this area. It is concerning that this link has not been made in any of the Population Assessment reports.

This is a significant missed opportunity and raises concerns about the effectiveness of the Population Assessments as a tool to 'ensure services are planned and developed in an efficient and effective way by public sector partners to promote the wellbeing of people with care and support needs[109].

"Advocacy need is rising but they won't find out as they don't want [to meet] the challenge." – Advocacy Provider

The lack of focus on independent advocacy provision within the Population Assessment Reports is significant, demonstrating an apparent lack of importance placed on independent advocacy, suggesting that independent advocacy is 'afterthought' within the implementation of the 2014 Act. The Minister for Children and Social Care, Huw Irranca-Davies, stated that the Population Assessment Reports will 'help the NHS, social services and other partners to shape policy and service delivery to provide people with the care and support they need, when they need it'[110].

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[109] Paragraph 79, Part 2 Code of Practice (General Functions), Social Services and Well-being (Wales) Act 2014

[110] Welsh Government Press Release, December 2017 - http://gov.wales/newsroom/health-and-social-services/2017/assessment/?lang=en

However, it is unclear how this aim will be achieved in relation to the provision of independent advocacy given the lack of focus on this area within Population Assessment Reports.

Health Boards have a clear role to play in the creation of Population Assessments, both more generally and specifically in relation to the provision of independent advocacy. Population Assessments should provide the opportunity to assess any unmet need for independent advocacy that may exist within healthcare settings. As an example, the Welsh Government's Guidance for Continuing Healthcare Funding sets out that 'LHBs and Local Authorities should ensure that individuals are made aware of local advocacy services that may be able to offer advice and support'[111]. The Guidance clearly states that Health Boards 'need to consider whether any action should be taken to ensure adequacy of advocacy services for those who are eligible or potentially eligible for CHC'[112] to ensure that services are available to those people who may not qualify for IMCA but who require independent advocacy. Given the remit of Population Assessments, it would be expected for there to be reference to independent advocacy provision from the perspective of health services and it is concerning, as well as a missed opportunity, that this is not the case.

One Population Assessment Report identifies the need to 'look at council and local health board commissioning arrangements for advocacy services to recognise and respond to any potential overlap in arrangements'[113], which is welcome. However, the apparent lack of joint working between Health Boards and Local Authorities in relation to the provision of independent advocacy, both under the 2014 Act and in relation to the provision of statutory independent advocacy more widely in the creation of the Population Assessments is a concern. This issue was highlighted in the findings of my Review of Safeguarding Arrangements by Health Boards[114], which concluded that Health Boards do not seem to be aware of the opportunity to jointly commission Independent Professional Advocacy with Local Authorities to meet their safeguarding duties under the 2014 Act.

The original intention of Population Assessments was to 'ensure that Local Authorities and Local Health Boards jointly produce a clear and specific evidence base in relation to care and support needs and carers' needs to underpin the delivery of their statutory functions'[115] and to 'drive change, including by enabling both local authorities and Local Health Boards to focus on preventative approaches to care and support needs'[116]. It is therefore concerning that Population Assessment

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111 Continuing NHS Healthcare: The National Framework for Implementation in Wales, Welsh Government, June 2014

112 ibid

113 Page 10, North Wales Population Assessment, April 2017

114 Review of the Actions which Health Boards are taking to ensure that older people who are hospital in-patients are safeguarded from hard in line with the requirements of the Social Services and Well-being (Wales) Act 2014, Older People's Commissioner for Wales, March 2018

115 Paragraph 79, Part 2 Code of Practice (General Functions), Social Services and Well-being (Wales) Act 2014

116 Paragraph 80, Part 2 Code of Practice (General Functions), Social Services and Well-being (Wales) Act 2014

Reports appear to be falling short of this aim in relation to the evidence they are able to provide on the current and future need for independent advocacy services within each area of Wales.

A National Population Assessment Report[117] has recently been published to bring together the main findings of the first Population Assessment Reports, which is welcome. The Report notes that it ‘does not make a judgement on the quality of the population assessments, nor does it make recommendations on what regions may want to do to improve their assessments’[118] and the ‘themes in this report are based solely on information from the published population assessment reports of each region’[119]. This is a concern and it calls into question the robustness of the data used within Population Assessments and the level of assurance that can be provided in relation to their content. The Welsh Government has a clear role to play in the quality assurance of Population Assessment Reports at a local level to ensure that an accurate and intuitive national picture is created of the population’s care and support needs. Whilst the Minister for Children and Social Care notes in relation to the publication of the National Population Assessment Report that ‘For the very first time, we now have an extremely useful overview of the care and support needs across Wales’[120], it is questionable whether this in fact is the case for the provision of advocacy services.

“Biggest issue is knowing what the need will be. How do you price when you don’t know how many?” – Commissioner

5.2 Commissioning and statutory duties

The 2014 Act placed Independent Professional Advocacy (IPA) on a statutory footing for the first time in Wales, answering calls I made to require local authorities to provide access independent advocacy so that people who need support to have their voices heard are enabled to participate in decisions made about their care and support (or support in the case of carers). Whilst this is welcome, the provision of statutory independent advocacy must compliment the provision of non-statutory advocacy: the requirement to provide Independent Professional Advocacy must not come at the expense of other, non-statutory forms of independent advocacy. As advocacy must be included as part of the assessment of the population’s need for preventative services[121], both statutory and non-statutory independent advocacy must be provided under the 2014 Act.

“Funding is not based on need.” – Advocacy Provider

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117 Care and support in Wales: National Population Assessment Report, Social Care Wales, November 2017
118 ibid
119 ibid
120 Welsh Government Press Release, December 2017 - http://gov.wales/newsroom/health-and-social-services/2017/assessment/?lang=en
121 Para 136, Part 2 Code of Practice (General Functions), Social Services and Wellbeing (Wales) Act 2014

"As public awareness increases, so will demand which has to be met as a duty. Costs will increase." – Stakeholder

"Advocacy is not sexy – not valued by the funders." – Advocacy Provider

Whilst some providers of independent advocacy hope that the introduction of Independent Professional Advocates will increase the status of independent advocates to that of other forms of statutory independent advocates, there is much concern and uncertainty within the advocacy sector about what the future of independent advocacy services, both statutory and non-statutory, will look like in relation to independent advocacy under the 2014 Act.

Currently, most Local Authorities commission a range of independent advocacy services, ranging from peer-to-peer advocacy to independent professional advocacy[122]. Many of these advocacy services have a remit much wider than just social services, working with their clients on issues from housing to family law. Whilst commissioners in Wales appear to recognise the shortcomings of only funding statutory Independent Professional Advocacy at the expense of other forms of advocacy, scrutiny is required to ensure that, in this challenging financial climate, all Local Authorities continue to fund both statutory and non-statutory independent advocacy.

"A lot of local authorities are thinking about advocacy in its widest sense – community advocacy has gone in England. Maybe this is why [there has been] a delay in commissioning as thy try to understand the market." – Advocacy Provider

"[We] recognise the need for other forms of advocacy – the preventative advocacy as well as IPA. However, it's difficult to fund both." – Commissioner

The Golden Thread Advocacy Project (GTAP), funded by the Welsh Government and facilitated by Age Cymru, has provided much needed capacity to commissioners working to implement the 2014 Act, and they were unanimous in their praise for the support that GTAP has provided. The GTAP, as well as working with both commissioners and advocacy providers, has been working to develop an Advocacy Commissioning Framework[123]. This is welcome as it responds to the findings of my 'Voice, Choice and Control'[124] report, which highlighted the lack of a coherent and consistent approach to assessing need and planning for advocacy provision. Despite this work underway, the apparent length of time taken to commission new

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[122] Independent professional advocacy - involves a one-to-one partnership between an independent professional advocate who is trained and paid to undertake their professional role as an advocate. This might be for a single issue or multiple issues. Independent professional advocates must ensure individuals' views are accurately conveyed irrespective of the view of the advocate or others as to what is in the best interests of the individuals, Para 32, Part 10 Code of Practice on Advocacy, Social Services and Wellbeing (Wales) Act 2014

[123] Implementing the Code of Practice on Advocacy, Self-Assessment Tool for Commissioners, Golden Thread Advocacy Programme, November 2016

[124] Voice, Choice and Control, Older People's Commissioner for Wales, September 2012

advocacy services, with work plans in some Local Authorities taking almost two years to commission advocacy services, remains a concern and it is unclear as to why this is the case.

5.3 Regulation

Whilst work is still on-going to set the parameters of what forms of advocacy will be subject to regulation under the Regulation and Inspection of Social Care (Wales) Act 2016, it is difficult to predict what affect this will have on the sector. Advocacy providers were mainly supportive of the move to regulate independent advocacy provision, reporting that it would help provide greater status to the sector, but they were also concerned about what regulation would look like and how this would affect their organisations.

The Welsh Government Technical Group on Advocacy was tasked with advising the Welsh Government on how the new Regulated Services Regulations[125] could be applied to advocacy services. The outcome of this work will not be known until Spring 2018 when these regulations will be published for consultation, nor will the definition of what type of advocacy services will be subject to regulation. It is vital that these new regulations are fit for purpose and recognise the unique undertakings of independent advocacy services and how this differs to that of other regulated services. Tailoring existing regulations drafted for regulated services, such as the provision of care homes, will not be sufficient.

The current uncertainty around how the requirements of registration will be applied to the advocacy sector is a cause for concern for advocacy providers who want to be able to effectively plan for their organisation's future. Moreover, the regulation of advocacy services will be a new area of work for Care Inspectorate Wales. It will be vital for the service regulator to have a good knowledge of the advocacy sector and how best to support it through the regulatory process.

The absence of a body to represent advocacy in Wales has been raised as a potential area of concern, especially given the scale of change that the advocacy sector is currently facing with the introduction of Independent Professional Advocates and with forthcoming regulation under the 2016 Act. It is important that the long-term future of the advocacy sector in Wales is considered to ensure that the sector is adequately supported, in particular in relation to the implementation of regulation of Independent Professional Advocacy.

Whilst it is unconfirmed which forms of advocacy will be subject to regulation, Independent Professional Advocacy under the 2014 Act is very likely to be one of the forms that becomes regulated.

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[125] Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017

Commissioners working in social care welcomed this as it will help assure them of the quality of the Independent Professional Advocacy services that they provide. However, they also raised questions in relation to referrals they make to non-regulated forms of advocacy, such as IMCA services, and whether this would present any issues in terms of accountability.

5.4 Funding

The subject of funding was an area addressed by both advocacy providers and commissioners. For commissioners working to implement the advocacy requirements under the 2014 Act, there was concern that Local Authorities were being required by the Welsh Government to do more without the additional funding to support this work. Whilst the implementation of the 2014 Act is intended to be cost neutral, with spend on prevention off-set by future savings, there was concern that this will not ‘play out’ in practice.

Key to this is the acknowledgment that a return on investment does not always result in a physical monetary saving: it does not result in ‘cash back’ for the Local Authority, instead it prevents them from having to spend money in the future or creates savings for other bodies. In addition to this, any ‘saving’ that is incurred may not be realised until a future date; it is therefore not a commodity that can be used to fund services at the early stages of the Act’s implementation. Because of this, Local Authorities are required to either re-allocate current money or find new money to commission independent advocacy services under the 2014 Act. Whilst this issue was not stated as insurmountable, there was a clear call for more evidence to demonstrate the gain from investment in independent advocacy services as a preventative tool.

“No extra funding – using current money and reshaping service provided.”
– Commissioner

“Need evidence of advocacy return on investment as proof for the nay-sayers and to convince those higher up controlling the budgets.” – Commissioner

“Act places increased duties on local authorities but no extra funding.”
– Stakeholder

“Hard to prove preventative side.” – Advocacy Provider

Advocacy service providers stated that uncertainty over funding was a real issue for the viability of the services they provide. A history of short-term funding, together with the uncertainty created whilst awaiting new tenders to be issued under the 2014 Act, has meant that some services were losing highly trained and skilled staff as they were unable to provide a level of job security that staff need.

"Need longer contracts to retain qualified people." – Advocacy Provider

"Spot contracts don't work – can't afford to keep advocates on without funding." – Advocacy Provider

The Commissioning Framework for Advocacy[126], developed by the Golden Thread Advocacy Programme in partnership with Local Authorities, will soon be implemented, which should help to provide longer-term funding for Independent Professional Advocacy under the 2014 Act. Whilst the Framework is aimed at the delivery of the statutory element of independent advocacy under the 2014 Act, the self-assessment tool as part of the Framework should prompt Local Authorities to think about other forms of advocacy as part of their assessment. This is welcome and, if implemented correctly, should lead to the commissioning of other forms of advocacy, such as peer-to-peer or independent advocacy, which act as a preventative tool to reduce or delay a person's need for care and support, in addition to Independent Professional Advocacy.

Many advocacy providers reported that funding outside of Local Authority funding streams was becoming harder to source. It is well known that many funding providers such as the Big Lottery will not fund a service where public services have a statutory duty to provide it. As Local Authorities now have a statutory duty to provide Independent Professional Advocacy and other forms of advocacy as part of their duty to provide preventative services, concerns were expressed as to whether advocacy services, including independent advocacy services, will be able to secure funding from external sources as before. It is concerning that without dedicated funding or a robust oversight on the national spend on all the different forms of advocacy, including independent advocacy, the goal of ensuring that older people get access to the support they need will not be delivered. This is a concern as without the driving force of appropriate funding to meet identified need, independent advocacy is likely to remain an 'afterthought' in service delivery.

An additional area of concern was in relation to how independent an organisation can truly be when they are funded by a Local Authority or Health Board. Advocacy providers expressed concerns that the more challenging they were to a body, the more likely it would be for their contract not to be renewed. This is a concern if it is the case that independent advocacy providers are prevented from challenging as often as they wish due to pressures in relation to long-term funding. It is unclear how wide-spread an issue this may be, but it further demonstrates the case for improved monitoring and considerations made to the way in which the contracts for independent advocacy services are issued throughout Wales.

"Providers are not being re-commissioned if they cause too much of a problem." – Advocacy Provider

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[126] Implementing the Code of Practice on Advocacy: Self-Assessment Tool for Commissioners, Golden Thread Advocacy Programme – funded by the Welsh Government, November 2016

“Health boards won’t commission [us] if they’re taken to court too much. Should be commissioned by Welsh Government or an independent body.” – Advocacy Provider

Action required

This report outlines a number of significant barriers that are currently preventing older people from accessing independent advocacy, including when they have a legal right to it. It is important for action to be taken now to address these areas if Wales is committed to ensuring that all people have an effective voice.

1. Local Authorities and Health Boards must ensure that their workforces are sufficiently skilled and trained so that they are knowledgeable on independent advocacy and the benefits of its use, and this should include sufficient knowledge and competencies on the legal entitlements to statutory independent advocacy. Local Authorities and Health Boards must scrutinise the effectiveness of workforce competencies in relation to independent advocacy.

Increasing the understanding of the benefits of independent advocacy and the role it can play amongst professionals will help to ensure that people get the right assistance when they need it. For professionals to understand the value of independent advocacy, they must also understand the importance of effectively listening to people and acting on what they say. Ensuring that people's voices are at the heart of decisions that affect them will result in a more effective and sustainable approach to public service delivery.

As well as understanding the benefits of independent advocacy as a tool to ensure that people's voices influence decisions that affect them, health and social care professionals need to be fully trained in relation to when they have a legal duty to offer or consider a person's need for statutory independent advocacy. It is important to ensure that all relevant staff are aware of and understand new legislation that affects their working practice, including ensuring that health professionals are aware of the more recent duties placed on them by the Social Services and Wellbeing (Wales) Act 2014.

There must be robust scrutiny of the level of workforce training and staff competencies in relation to independent advocacy. Corporate bodies need to assure themselves that the law is being complied with and effectively implemented, so that people's rights are upheld and statutory duties are complied with. The culture and leadership within public bodies must openly demonstrate the value they place on proactively seeking a person's views and acting on what is said. Ensuring that the law is fully implemented, and that a culture of listening to people's views, wishes and feelings is present throughout public service delivery, will improve both the quality of services and the wellbeing outcomes that people want to achieve.

2. Local Authorities and Health Boards must improve the offer of statutory and non-statutory independent advocacy, with the Welsh Government mandating an 'Active Offer' to include older people living in care homes and older people awaiting hospital discharge.

It is clear that more needs to be done to improve the offer of independent advocacy. To address the existing concerns amongst both advocacy providers and commissioners in relation to the increased vulnerability of some older people living in care homes and older people in hospital settings awaiting discharge, the 'Active Offer' should be extended.

Whilst this applies to all older people, it is particularly important for those older people who either self-fund their care and support, and therefore will not be subject to a review of their Care and Support Plan by a social worker, or those who are not in contact with social services on discharge from hospital. Whilst a requirement exists, under the 2014 Act, for a person's need for advocacy to be considered during the review of a Care and Support Plan, the effectiveness of the implementation of this duty remains unclear due to the lack of data recorded. In addition to this, the effectiveness of the assessment process for care and support needs for people awaiting discharge from hospital is also unclear for the same reason.

Older people living in care homes are particularly vulnerable as they are reliant on other people to meet their day-to-day needs. Ensuring that these older people, who are at increased vulnerability because of their situation, have an effective voice is therefore vital – both for enabling a good quality of life and to ensure they are effectively safeguarded from abuse and neglect. An 'Active Offer' would ensure that older people living in care homes who are without a voice receive a meaningful offer of independent advocacy, allowing them to make an informed choice on whether to engage with an independent advocacy service.

Older people awaiting discharge from hospital, especially those who do not want, or are unaware of, the option to have contact with social services, are not consistently being offered the opportunity to discuss their care and support needs on return to the community. Access to independent advocacy can help to inform them of their rights and enable them to participate in decisions made about them, including when people are considering a move from hospital to a care home. This reflects the recommendations made in 'A Place to Call Home?'[127], which highlighted the need for people to be enabled to fully participate in significant decisions, such as a move to a care home, vital if we are to ensure that they are to be enabled to do 'what matters' to them.

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[127] Requirement for Action 1.6, A Place to Call Home, A Review into the Quality of Life and Care of Older People Living in Care Homes in Wales, Older People's Commissioner for Wales, November 2014

Whilst this issue may be addressed in part through improved implementation of the Social Services and Well-being (Wales) Act 2014, the duty under the Act will not assist those people who are not in contact with social services. An ‘Active Offer’ will therefore be vital to ensure their access to independent advocacy.

3. The Welsh Government must ensure that those most in need of independent advocacy are made aware of their rights and the benefits of independent advocacy more generally.

More needs to be done to ensure that those who are most vulnerable are aware of their rights – in relation to independent advocacy and more generally in relation to recent legislation, such as the Social Services and Wellbeing (Wales) Act 2014. The lack of awareness and understanding of the role of independent advocacy across the population, but in particular in relation to specific client groups, clearly impacts upon its offer and uptake. Without an understanding of what independent advocacy is and how it may benefit them, individuals will be unable to make an informed decision on whether to accept its offer.

Targeted awareness raising for specific groups, such as carers and/or people living with dementia, would help to ensure that those who may be in most need are aware of their potential rights to independent advocacy. Population Assessments under the Social Services and Well-being (Wales) Act 2014 should be used to aid the understanding of which groups of people are most vulnerable and would benefit from targeted awareness raising of independent advocacy. Information on independent advocacy, including on the legal rights to it, should be available in the places where people come into contact with services. This should include, but not be limited to, GP surgeries, Libraries and Memory Loss Clinics, and should be promoted by those professionals that come into contact with vulnerable individuals more widely.

The Welsh Government must ensure that the new duties under both more recent and longer standing legislation are properly promoted to older people. For example, it is important that older people are aware of things such as the requirement placed on service providers to ensure that individuals have the information they need to make or participate in assessments, plans and day-to-day decisions about the way care and support is provided to them[128], which includes the requirement to ensure arrangements are in place to enable individuals to access relevant advocacy services[129].

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128 Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017

129 Guidance in relation Regulation 23, Statutory guidance for service providers and responsible individuals on meeting service standard regulations, Welsh Government, November 2017

4. The Welsh Government, along with Local Authorities and Health Boards, must ensure effective planning across Wales in relation to the provision of statutory and non-statutory independent advocacy, and ensure that robust data is available to support this.

The data available to evidence the offer and uptake of statutory and non-statutory independent advocacy is currently lacking. At present, there is no requirement to report on this (outside of IMHA services, the data from which is not currently published), and no national data exists as a result. Without this data, it is impossible to assess whether the rights of those who are entitled to statutory independent advocacy are upheld and it is impossible to know to what extent non-statutory advocacy is being implemented across Wales.

Robust data is essential if both the Welsh Government, Local Authorities and Health Boards are to evaluate the extent to which the law is being upheld and statutory duties are complied with, thereby ensuring that people's right to statutory independent advocacy and more generally in terms of access to independent advocacy are being met. This includes the overarching duties of the Social Services and Well-being (Wales) Act 2014, such as the duty to have due regard to views, wishes and feelings.

At a local level, data is essential to support effective forward planning to ensure that there is enough capacity to meet need. Without it, it is impossible to evaluate the extent to which Corporate Bodies are complying with statutory duties and it undermines the ability of Local Authorities and Health Boards to evaluate the effectiveness of their internal processes. Whist baseline quantitative data is essential, it must sit alongside more qualitative evidence to demonstrate the extent to which the law is embedded in practice, for example Internal Quality Reviews. Whilst it is important to know through data that an offer of statutory independent advocacy has been made, Internal Quality Reviews can aid further learning on where improvements may be made.

The need for improved data in relation to access to both statutory and non-statutory independent advocacy during safeguarding is vital. Without this, Welsh Government, Local Authorities and Health Boards will be unable to gain assurance that some of the most vulnerable people are enabled to have their voice heard. Improved data must form part of a common strategic framework so that one organisational or thematic data set can be compared against another, such as the number of 'adults at risk' investigations compared with the use of statutory independent advocacy as part of the safeguarding process. This will allow for a more nuanced understanding of service delivery, helping to paint a more complete picture of organisational practice and national compliance.

In addition to robust data being required to underpin scrutiny of compliance with statutory duties, it is also essential in respect of effective forward planning. Without this, there is a danger that independent advocacy services, even where they are recognised as being required, will not be available. It is essential that Welsh Government, Local Authorities and Health Boards act on what the data illustrates, allocating resources accordingly. This must be based on intelligent use of the data in relation to statutory and non-statutory independent advocacy, which recognises the particular demographics of need, such as the number of older people living with dementia, or the need for advocacy through the medium of Welsh and other languages, including BSL, to inform the planning process and ensure sufficient provision of specialist independent advocates. Population Assessments under the Social Services and Well-being (Wales) Act 2014 must be strengthened to include both statutory and non-statutory independent advocacy provision across both health and social care and including any need for more specialist forms of independent advocacy.

5. The Welsh Government must provide effective leadership and scrutiny to ensure that legislative duties in relation to statutory independent advocacy are complied with and that the principle of 'voice and control' is embodied throughout the delivery of health and social care.

The Welsh Government must seek assurances that the rights of older people in Wales are being upheld and statutory duties in relation to the law are being complied with, including scrutinising the effectiveness of implementation of the offer of independent advocacy when a person as a legal right to it. Additionally, the Welsh Government must seek assurances that wider duties in relation to delivering services in a person-centred way is being made real, such as the duty to have due regard to views, wishes and feelings under the Social Services and Well-being (Wales) Act 2014 – a driving principle of the Act.

As set out above, the issue of insufficient data in relation to independent advocacy is an issue that must be addressed. This must include the creation of 'strategic critical indicators' to demonstrate what success looks like in relation to independent advocacy, which will ensure that success can be robustly evaluated and reported upon. Using this kind of indicators would allow for a benchmark to be set in relation to the different elements that are needed to ensure all individuals have an effective voice in the decision-making process in relation to the delivery of health and social care provision.

Ultimately, the success of legislation can only be measured by the impact it has on individuals' lives and the extent to which intent is made tangible; a lack of strategic critical indicators will undermine the Welsh Government's ability to scrutinise, evaluate and provide assurance to the wider public that the intent of its legislation has been made real.

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Alzheimer's Society - South East
Alzheimer's Society - West Wales
Aneurin Bevan HB
Big Lottery
Bridgend CBC
Caerphilly CBC
Carers Wales
Carmarthenshire CBC
Children's Commissioner for Wales
Conwy & Denbighshire Mental Health Advocacy (CADMHAS)
Conwy CBC
Cwm Taff UHB
Denbighshire CBC
Dewis CIL
Disability Can Do (Advocacy Service)
Eiriol Mental Health
Equality and Human Rights Commission
Golden Thread Advocacy Programme
Gwynedd CBC
Hywel Dda UHB
Learning Disability Wales
Mental Health Advocacy Scheme
Mental Health Matters Wales
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North Wales Regional Equality Network (NWREN)
People First – Bridgend
People First – Caerphilly
People First – Pembrokeshire
Person to Person Citizen Advocacy
Pro-Mo Cymru
RNIB Cymru
Social Care Wales
Swansea University
Torfaen CBC
Wales CHC
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West Wales Action for Mental Health
WLGA
Wrexham CBC
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