

Advocacy for families when social workers make plans for their children

Introduction

This advice sheet is written for parents and others caring for children. It sets out the law and guidance that social workers and other professionals should follow when involving families in making plans for their children and how families may be able to use an 'advocate' to support them with this. To make it easier to read we have divided it into sections:

- [Part 1](#): Having an advocate (or supporter) to attend meetings with you (page 3)
- [Part 2](#): Advocates for children (page 10)
- [Part 3](#): Where to get further information (page 12)

Since things can seem quite complicated when Children's Services are involved with your family, you may want to ask a friend or anyone supporting you to explain anything in the advice sheet that you don't understand.

The references for all the legal and practice requirements are in endnotes which you can find at the end of the advice sheet. For full details of all the documents referred to in the endnotes, see the references section also at the end of the advice sheet.

Note: "Social services" are now known as "Children's Services". This is how they are referred to throughout this advice sheet.

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Key terms used in this advice sheet:

- **‘Accommodation’** means that the child is being looked after in the care system by Children’s Services with the agreement of the parents/others with parental responsibility. See Duties of Children’s Services to Children in the Care System
- **A Child ‘in need’**: is a child who is disabled, or who is assessed by Children’s Services to be in need of extra support for their safety, health and/or development. If your child is assessed as a child in need, they may provide your family, or child, with extra help if their needs have a high enough priority according to local eligibility criteria. see FRG advice sheet on Family Support.
- **‘In care’** means that the child is either under a court order (an interim or full care order or an emergency protection order) or is in police protection. For more information, see FRG advice sheet on Care and related proceedings.
- **‘Looked after’** means that the child is in *care* or *accommodation* (as described above) with Children’s Services;¹
- **Parental responsibility** means the legal right to make decisions about how a child is raised. Those who have parental responsibility (PR) include: mothers; fathers who have been married to the mother at any time since the birth of the child or are jointly registered on the birth certificate as the father (after 1.12.03) or have acquired PR by formal agreement with the mother or by court order; anyone who has a child arrangements order (saying where the child will live), residence order, special guardianship order or adoption order in their favour on the child; guardians; step-parents who have acquired PR by formal agreement or court order. For more information about parental responsibility, see FRG advice sheet Parental Responsibility:

All FRG advice sheets mentioned above can be found on FRG’s website at

<http://www.frg.org.uk/need-help-or-advice/advice-sheets>

PART 1: HAVING AN ADVOCATE (OR SUPPORTER) TO ATTEND MEETINGS WITH YOU

Why might I want an advocate?

You may find it difficult to participate in meetings held by social workers and other professionals, especially if you don't agree with the social worker's view of what is best for your child, or you don't understand the procedures for deciding. However, it is important that you do attend and you may find it easier if you are ***supported by an independent advocate or a supporter*** (for example a friend of the family who is not directly involved in the case) to help you say what you think in these meetings.²

Research³ shows that family advocates can really help families work in partnership with social workers. However, sometimes, social workers are reluctant to allow parents and other family members to bring advocates or supporters with them to meetings. We have set out below what advocates do and the relevant law and guidance on advocates/supporters, in case the social worker says you cannot bring an advocate or supporter with you.

Who is an advocate?

An advocate is usually someone independent who can help you have your voice heard when social workers are making plans about how your children will be cared for. Research⁴ suggests that advocates are most helpful to you if they are professionally trained and have detailed knowledge of child care law. It is good practice if they follow the Protocol on advice and advocacy for parents (child protection)⁵ and Family Advocacy Standards⁶ and Code of Practice⁷, set by Family Rights Group.

However, if you find an advocate or supporter who does not have this knowledge, don't worry, they can get more information about the relevant law and procedures that Children's Services must follow by contacting Family Rights Group Advice line – contact details at the end of this advice sheet.

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How can an advocate help me?

Advocates (or supporters) can help you to:

- prepare for meetings with social workers
- ask the social worker questions
- speak up and get your point of view across
- negotiate with social workers,
- challenge social workers in a constructive way if you don't agree with what they or other professionals are saying and
- remind you of what was said after the meeting to help you to plan what to do next.

Do I have the right to have an advocate/supporter at a child protection conference?

Not exactly, although this should normally be allowed.

As a parent or someone with parental responsibility, you do not have a legal *right* to bring an advocate or supporter with you to meetings with social workers.⁸ However government says that social workers and their managers should give information about advocacy services, and explain that the family may bring an advocate, friend or supporter to the child protection conference;⁹ So when you ask the social worker if you can bring an advocate or supporter with you, you may find it helpful to refer them to this guidance.

Also you could mention to them that research shows that independent specialist advice and advocacy can help parents to participate in local authority planning processes from an informed position. Specifically, it can help them to:

- understand their rights and options and how child protection planning and decision-making works;
- reflect on why social workers are worried about their child;
- make safe plans for their child (which may include alternative care within the family) within the child 's timescale; and
- have their voice heard by professionals.¹⁰

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Do I have a right to take a solicitor to a pre-proceedings meeting?

Normally, yes. If your parenting is not improving enough to protect your child from significant harm, and the local authority's legal planning meeting decides that there should be a further period of time for you to make changes with the aim of avoiding court proceedings, the local authority will send you (i.e. the parents and others with parental responsibility) a **letter before proceedings**. This letter is the formal written notification that proceedings are likely. It should set out a summary of the local authority's concerns, what you need to do to overcome them (and within what timescale) so that your child is safe AND information on how to obtain legal advice and advocacy.

If you receive this letter, it is really important that you see a solicitor specialising in children law as soon as possible to get advice about why Children's Services are thinking of going to court and the procedures involved. You should ask the solicitor to help you prepare what you want to say at the meeting and to come to the meeting with you.

If you give the solicitor this letter before proceedings you will be able to get free legal advice,¹¹ help with negotiations and have the solicitor accompany you to the meeting.

Do I have the right to have an advocate/supporter when I discuss plans for my child when they are in the care system?

Maybe. Although you do not have an absolute legal right to an advocate in this situation, it is well established by case law that:

- when Children's Services want to make important changes to the care plan (especially after a care order has been made) the decision-making procedures have to be fair to parents, otherwise the decisions of those meetings may be overturned;¹² and
- you should be allowed to attend or be represented at professionals' meetings (i.e.: meetings of social workers, health visitors, psychiatrists, psychologists,

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medical consultants etc) if you want, so you can answer any allegations made against you.¹³

For more information, see FRG advice sheet: Duties toward children who are looked after in the care system: <http://www.frg.org.uk/need-help-or-advice/advice-sheets>

What can I do if the social worker tells me I am not allowed to bring an advocate or supporter with me to a meeting?

You can politely remind them that case law has established the principle that parents should be allowed to be supported by an advocate provided the advocate is not too adversarial (argumentative). For example, in a judicial review case, the judge declared that Children's Services' policy, which said that solicitors could only attend a child protection conference on behalf of parents to read out a prepared statement, was unlawful. He added that while formal legal representation in case conferences was not appropriate: "*in general solicitors ought to be allowed to attend **and participate** [emphasis added] unless and until it is felt that they will undermine the purpose of the conference by making it unnecessarily confrontational*".¹⁴

You could also politely remind the social worker that the Human Rights Act 1998¹⁵ also says that Children's Services procedures for making decisions to keep children safe, must be fair. You can argue that fairness includes bringing an advocate with you to meetings to support you.

If the social worker still refuses to allow you to bring an advocate, you could consider making a formal complaint. For more information see FRG advice sheet on Complaints – see <http://www.frg.org.uk/need-help-or-advice/advice-sheets>

Do I have a right to an advocate if I am disabled?

Yes, but only if your disability stops you from participating fully in meetings on your own, for example if you have a learning disability or mental health vulnerability. This is because under equality laws all public bodies, including Children's Services, must make 'reasonable adjustments' to ensure that disabled people are not put at substantial disadvantage, when providing services to them.¹⁶

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So if you are a parent with a disability that impacts on you participating in meetings, you can argue that you need an advocate as part of this ‘reasonable adjustment.’

If ***Children’s Services don’t offer you an advocate in these circumstances***, they may be breaching the law under the Equality Act 2010 as well as the Human Rights Act 1998. ***This applies to all Children’s Services procedures not just child protection*** but it may be particularly important in child protection.

There is also important good practice guidance that says parents with learning disabilities should always have access to an independent advocate when there are child protection procedures or care proceedings taking place.¹⁷

Note: The more vulnerable you are as a parent and the more serious the child protection measures, the stronger your argument that you should be allowed an advocate to avoid your or your child’s human rights being breached.

Will Children’s Services pay for me to have an advocate?

Not necessarily. Children’s Services don’t generally have to pay for you to have an advocate but the more vulnerable you are as a parent and the more serious the child protection concerns, the stronger the argument that they ought to pay in order to avoid breaching your, or your child’s, human rights. For example:

- If you are a parent with a learning disability or mental health difficulties, you can argue that the Human Rights Act and Equality Act require Children’s Services to pay for you to have an advocate. (You could also look into using any direct payments you might receive for this purpose.)
- In some other cases Children’s Services may be persuaded to pay for an advocate as a matter of good practice, for example where the relationship between you (the parent) and the social worker has broken down. But they don’t have to.

How can I find an advocate to come with me to meetings with social workers?

Unfortunately there is no national system providing advocates to families who are involved with social workers about the care of their children. So whether or not you can find an advocate will depend on the area in which you live.

- Family Rights Group usually offers a London based spot purchasing advocacy service, using highly skilled and experienced advocates. See <http://www.frg.org.uk/involving-families/parental-advocacy/commission-our-advocacy-service>
- There are also some national organisations which sometimes provide advocacy for specific groups of parents. For example: Women's Aid, Mind and Mencap (full contact details for these organisations are in part 3 of this advice sheet).
- You can also ask an adviser at Family Rights Group to help you see if there are any projects in your area.

But you need to be aware that each organisation has their own criteria about the types of cases they can help with, so you will need to ask them about this. You will also need to ask them about their funding arrangements and, if they need to be paid, it is worth trying to persuade the social worker to pay for an advocate to support you, using the arguments set out on page above.

What can I do if I cannot find an advocate to go with me to a meeting with social workers?

If you cannot find a professional advocate but you still want some help at the meeting with the social worker or conference, think about whether there is someone else you know for example, a work colleague or a religious or community leader. They can help you –

- understand Children's Services procedures – see FRG advice sheets for further information about this <http://www.frg.org.uk/need-help-or-advice/advice-sheets>
- think about realistic solutions for your child, taking into account what the social worker is saying about their needs
- prepare what you want to say at the meeting

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- remind you of anything you have forgotten during the meeting
- keep calm and focussed on what is being discussed and
- remember what was said after the meeting has finished.

If you can find someone suitable you can ask the social worker if they can come to the meeting with you as your supporter. You can also suggest to them that they read any of FRG advice sheets that are relevant to your situation so they understand Children's Services procedures and how best to approach supporting you.

<http://www.frg.org.uk/need-help-or-advice/advice-sheets>

They can also call FRG advice line – contact details at the end of this advice sheet.

PART 2: ADVOCATES FOR CHILDREN

Can my child have an advocate?

It depends on the circumstances:

- **Children wanting to attend their child protection conferences** have no legal right to an advocate but statutory guidance¹⁸ says that they should be
 - given information about advocacy agencies and advised that they may bring an advocate or supporter to the conference (in the same way as parents); and
 - helped by their social worker to prepare for the meeting if they are attending or making representations through another person, such as an advocate. This implies they should be allowed an advocate in child protection.
- **'Looked after children' (i.e.: those who are in care with your agreement or under a court order), 'care leavers' and 'children in need'** have a right by law to an advocate for support in making a complaint or a representation of some kind about the Children's Services they are receiving.¹⁹
- **Looked after children** don't have a *right* to an advocate to support them with other things for example going to their statutory reviews. But government guidance strongly encourages this.²⁰ It also says that
 - Children's Services should have a system to let children know they can ask for an advocate and how to do this;²¹
 - Independent Reviewing Officers should check they know this before their reviews.²²
- **Care leavers** do not have a right to an advocate (except to support them with a complaint as above) but again Government Guidance clearly expects advocates to be available to them. It says:²³
 - advocacy may be particularly important when children's services are deciding whether a young person is ready to move from their care placement; and
 - young people *may frequently require* independent support to enable them to put their view across and express their wishes and feelings about the future help they think they will need so they can reach their potential.

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- **16 and 17 year olds who lack capacity** or are sectioned under mental health law, have a right by law to an advocate.²⁴
- **Children sentenced in secure training centres** have a legal right to an advocate under youth justice rules.²⁵

Who can be an advocate for my child?

Children's advocates are independent of the social worker even though they are organised and paid for by Children's Services. Some Children's Services departments have a Children's Rights Officer, who is responsible for providing advocacy for children, independently from the social work team making the decisions. Other's have contracts with independent organisations like National Youth Advocacy Service, Voice of the Child in Care or Barnardo's.

What do children's advocates do?

Children's advocates work with the child or young person to help them understand what is happening and ensure that their wishes and feeling are heard. They can also help them make complaints.

How can I help my child to find an advocate?

You can ask their social worker or Independent Reviewing Officer or the Children's Rights Officer in Children's Services.

Children's Services must have advocacy services in their area; they usually contract with voluntary organisations to provide this on their behalf. Otherwise there are several national organisations which provide advocacy for children and young people that you can contact:

- National Youth Advocacy Service and
- Voice of the child in care (for children who are in the care system);
- Barnardo's Youth Advocacy service

Contact details for these organisations are in Part 3 of this advice sheet.

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PART 3: WHERE TO GET FURTHER HELP OR INFORMATION

A. Finding an advocates for parents/ carers

- Contact the **Family Rights Group** Advice Line or read our information leaflet to find out more about **FRG spot purchasing advocacy service** in the London area: <http://www.frg.org.uk/involving-families/parental-advocacy/commission-our-advocacy-service>. Or ask your social worker to look at our information about this on our website.
- Or try specialist national projects who can sometimes offer advocates to parents that fit their criteria such as:
 - **Women's Aid** – For women and children affected by domestic violence
 - Website: <http://www.womensaid.org.uk/>
 - 24 hour telephone helpline: 0808 2000247
 - **MIND** – For better mental health
 - Website: <http://www.mind.org.uk/>
 - Telephone information line: 0300 123 3393
 - **Mencap** – Voice for people with learning disabilities
 - Website: <http://www.mencap.org.uk/>
 - Telephone Mencap Direct (0808 808 1111, from 9am to 5pm, Monday to Friday) or email help@mencap.org.uk
 - to get advice and information and find Mencap services in your area on:

B. Finding an advocate for a child or young person who is in care/a care leaver

- **Voice of the child in care**

Website: <http://www.voiceyp.org/young-peoples-zone/talk-voice>

Telephone line: 0808 800 5792

- **National Youth Advocacy Service**

Website: <http://www.nyas.net/>

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Telephone line: 0300 330 3131

- **Barnardo's Children's Advocacy Services**

Website:

http://www.barnardos.org.uk/what_we_do/our_projects/advocacy.htm

Contact email service available from that website page.

C. Sources of Further advice

- **Family Rights Group:** is an organisation which provides free telephone and email advice to family members who are involved with Children's Services about the care and protection of their children.

- Contact FRG's advice line for specific advice about your case on 0808 801 0366. It is open Monday-Friday 9.30am-3.00pm. You can also email to advice@frg.org.uk.
- You can also visit www.frg.org.uk/advice_sheets.html where you can download other relevant advice sheets.
- Or join the FRG parents' or family and friends carers' discussion boards.
- Family Rights group can also put you in touch with a **Family Group Conference Service**. Email office@frg.org.uk

- **Specialist child welfare solicitor:**

To find a solicitor who specialises in childcare law, you can contact:

i) Solicitors Regulation Authority, Ipsley Court, Redditch, Worcestershire B98 0TD Telephone: 0870 606 2555. <http://www.sra.org.uk/consumers/find-use-instruct-solicitor.page>;

ii) The Law Society of England and Wales, 113 Chancery Lane, London WC2A 1PL Tel: 020 7242 1222. Minicom: 0870 600 1560 Fax: 020 7831 0344
E-mail: info.services@lawsociety.org.uk www.lawsociety.org.uk

You can search their website for details of local solicitors who are members of the Children Panel:

<http://www.lawsociety.org.uk/choosingandusing/findasolicitor.law>

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Regarding solicitors costs, note:

- If there are court care proceedings or a letter warning of possible court care proceedings has been sent to you, you will automatically qualify for free legal advice from a solicitor if you are a parent or person with parental responsibility.
- If not, you **may** be able to get free advice and advocacy from a solicitor paid for by the Legal Services Commission if you are on a low wage, or on income support or job seekers allowance.

References

CPPCRR	Care Planning, Placement and Case Review Regulations 2010 http://www.legislation.gov.uk/ukxi/2010/959/contents/made
CA	Children Act 1989 http://www.legislation.gov.uk/ukpga/1989/41/contents
ECHR	European Convention on Human Rights and Fundamental Freedoms http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm
HRA	Human Rights Act 1998 http://www.legislation.gov.uk/ukpga/1998/42/contents
G & R 1	DFE, 2014, Children Act 1989, Guidance and Regulations Court Orders and pre-proceedings (Volume 1) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/281452/Statutory_Guidance_on_court_orders_and_pre-proceedings_18.2.pdf
G&R 2	Children Act 1989, Guidance and Regulations, 2010, Department of Education , Volume 2: Care Planning, Placement and Case Review https://www.education.gov.uk/publications/standard/Childrenandfamilies/Page3/DCSF-00185-2010
Practice Guide	Good Practice Guidance on working with parents with a learning disability DH 2006 Good practice guidance on working with parents with a learning disability : Department of Health - Publications
WT 2015	Working Together 2015

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¹ s.22 (1) Children Act 1989

² Hunt, J & McLeod, A, 1999, The Last resort: Child Protection, the Courts and the Children Act, HMSO, London at pp149-152; P. Freeman, & J Hunt, Parental Perspectives in Care Proceedings, 1998;

³ Lindley B, Richards M & Freeman P, 'Advice and advocacy for parents in child protection cases – what's happening in current practice?' [2001] Child and Family Law Quarterly 167

⁴ Protocol for advice and advocacy for parents (child protection), Lindley, B and Richards, M. Centre for Family Research, University of Cambridge, DoH, December 2002:

http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4127568

And (b) Professional Advocacy Services – Principles and Standards, Family Rights Group, 2009 :

<http://www.frg.org.uk/images/PDFS/advocacy-standards.pdf>

⁵ http://www.londonparents.net/pdf/advocacy_protocol.pdf

⁶ <http://www.frg.org.uk/images/PDFS/advocacy-standards.pdf>

⁷ <http://www.frg.org.uk/images/PDFS/advocacy-code.pdf>

⁸ See below for exceptions concerning some parents with disabilities

⁹ Working Together 2015, page 42

¹⁰ The Protocol of Advice and Advocacy for Parents in Child Protection Cases and the Code of Practice for Professional Advocacy sets out a framework for such specialist advice and advocacy.

<http://www.frg.org.uk/images/PDFS/advocacy-code.pdf>

¹¹ Family Help Lower (Legal Aid Agency)

¹² G v N County Council [2009] 1 FLR 774

¹³ Re L (Care: Assessment: Fair Trial) [2002] EWHC1379 (Fam); [2002] 2 FLR 730; Re: C [2007] EWCA Civ 2

¹⁴ R-v- Cornwall CC ex parte LH (1999 [2000] 1 FLR 236, at p.244C.

¹⁵ Article 6, Human Rights Act 1998

¹⁶ S.20 Equality Act 2010

¹⁷ Department of Health, 2006, Good Practice Guidance on working with parents with a learning disability, Para 1.5.3

¹⁸ Page 42 Working Together to Safeguard Children 2015

¹⁹ s.26A Children Act 1989 as inserted by s.119 Adoption and Children Act 2002;

²⁰ *The Children Act 1989 Guidance and Regulations, Volume 2; Care Planning, Placement and Case Review*. DSCF 2010. HM Government ; DSCF (2010). *The IRO Handbook: Statutory guidance for Independent Reviewing Officers and local authorities on their functions in relation to case management and review for looked after children*, p.15

²¹ P 15, IRO Handbook

²² P15 IRO Handbook

²³ Department for Education (2010). *The Children Act 1989 Guidance and Regulations, Volume 3: Planning Transition to Adulthood for Care Leavers*, paras 2.14 – 2.15.

²⁴ The Mental Capacity Act 2005; and s.130A Mental Health Act 1983, inserted by the Mental Health Act 2007

²⁵ Secure Training Centre Rules (1998)