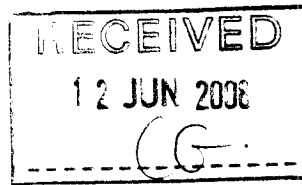


Hutt AC/AM
Gweinidog dros Blant, Addysg, Dysgu Gydol Oes a Sgiliau
Minister for Children, Education, Lifelong Learning and Skills



Llywodraeth Cynulliad Cymru
Welsh Assembly Government



Ein cyf/Our ref JH/00787/08

Helen Mary Jones AM
Chair of Children and Young
People Committee
National Assembly For Wales
Cardiff Bay
Cardiff
CF99 1NA

9 June 2008

Dear Helen Mary,

Thank you for your letter of 22 May seeking clarification on legal competence in respect of various scenarios concerning the commissioning and provision of advocacy services for children and young people.

I have provided a response to each of the Children and Young People Committee's requests below. However in considering each point it is important to clarify that the new Specialist Integrated Service Model (SISM) for children and young people to be commissioned through the Children and Young People's Partnerships will bring together existing advocacy services with some enhancements in relation to health, education and social care. As such the SISM will not be restricted to services for children and young people under section 26A of the Children Act 1989.

National funded body responsible for commissioning local advocacy services

Section 60 of the Government of Wales Act 2006 provides Welsh Ministers with wide powers to do anything that is considered appropriate to promote or improve the social wellbeing of Wales. There are certain restrictions on the use of this power (for example it could not be used to override existing specific statutory restrictions or to transfer statutory responsibility or accountability for a function to another public authority). These restrictions would not prevent the power being used to commission a national advocacy and advice line, which would be available to all children and young people. No such service is currently required by statute and the intention is that it should complement existing services and enable appropriate referrals to be made to the relevant local statutory integrated service.

If the Welsh Assembly Government wished to establish a national funded body responsible for the commissioning of local statutory services, it would need to consider, and possibly amend, existing legislation. If the service were to be placed on a statutory footing, by placing the Welsh Ministers under a duty to provide those advocacy services which local authorities are currently required to provide it would require a change in legislation. In addition to avoid confusion and to ensure clarity as to where the responsibility lay it would be necessary to remove the current statutory duty placed on local authorities under section 26A of the Children Act 1989. This is explored in more detail below.

moving local authorities' statutory duty to provide advocacy services

Section 26A of the Children Act 1989 places a specific duty on local authorities to provide advocacy services in making arrangements for the provision of assistance, including assistance by way of representation, to persons who make or intend to make representations under section 24D and section 26 of the 1989 Act. To remove this duty would require us to repeal the current provision and restate in law where the new duties lie. This would require changes to primary legislation.

With regard to the Assembly Government's legislative competence in this area, the proposed Legislative Competence Order (LCO) for Vulnerable Children and Child Poverty has broad coverage. This LCO should provide sufficient flexibility to allow the Assembly Government to respond to future changes in the way services, including advocacy services, are developed and delivered to children and young people. The LCO is still at the pre-legislative scrutiny stage of the approval process and we hope to secure full competence by the autumn.

The Assembly Government has carefully considered the future direction of advocacy services and has decided to pursue a new service framework that continues to place statutory responsibility for local services with the local authority. We believe that the new framework will bring improvement and independence at all levels of the service and, more importantly, that it will make provision for all children and young people to access advocacy and advice through the national service.

We are committed to keeping the development of advocacy under review. However, I am sure the Committee will appreciate that the new service framework will need to be in operation for a reasonable period before we can make any informed judgments on its performance in terms of improved outcomes for children and young people. The National Independent Advocacy Board will have a key role in the monitoring and ongoing evaluation of the service at all levels and will report independently to the National Assembly for Wales and make any necessary recommendations.

Given the above, it would be inappropriate to commit to bringing forward within the Welsh Assembly Government's current legislative programme a future Measure transferring or removing the existing advocacy duties of local authorities. Prior to any such Measure we would also need robust evidence to demonstrate that this was appropriate and necessary.

I can however assure the Committee that the LCO on Vulnerable Children and Child Poverty is intended to provide a legislative framework that has the flexibility to allow the Assembly Government to respond to changing needs and future developments.

I am copying this letter to Gwenda Thomas in her capacity as Deputy Minister for Social Services with responsibility for the statutory provision of advocacy services by local authorities.

Bert Wishes,