

Section 5 Review of arrangements: Older people's access to independent advocacy services arranged by local authorities and health boards, with particular emphasis on safeguarding

1. Background and context

The Commissioner is using her statutory power to conduct a review of independent advocacy services. **Independent advocacy** refers to advocacy services arranged for older people by Local Authorities and Local Health Boards, but delivered by persons who are independent of those authorities, and independent of any third parties on whom authorities rely to deliver services on their behalf (e.g. private care or nursing homes). The term covers both commissioned advocacy services and services provided by voluntary organisations. The review does not cover advocacy provided as part of the day-to-day work of service providers (e.g. by social workers for their clients). These terms of reference and any annexed questionnaires should therefore be read and understood to cover independent advocacy services only.

Independent Advocacy plays a vital role in supporting older people to exercise their rights, have their voices heard, and navigate complex systems of health and social care.

Independent Advocacy is a key part of the health and social services landscape in Wales and features in many statutes and regulations.

Independent Advocacy is a fundamental element of the Social Services and Well-being (Wales) Act 2014. The Part 10 Code of Practice (Advocacy) of the Social Services and Well-being (Wales) Act 2019 sets out the requirements for local authorities under the Act in relation to advocacy. Advocacy is also included in the Mental Capacity Act 2005 (MCA) and the Mental Health Act 1983 (as amended).

Independent Mental Capacity Advocates (IMCA's) are a type of statutory advocacy introduced by the MCA. The MCA gives some people who lack capacity a right to receive support from an IMCA.

In certain circumstances, Health Authorities and Local Authorities have a duty to make sure that IMCAs are available to represent people who lack capacity to assist them in making specific decisions, so staff affected will need to know when an IMCA must be involved.

IMCA services are provided by organisations that are independent from the NHS and local authorities.

Under the Mental Health Act 1983 (the MHA), Independent Mental Health Advocates (IMHAs) have provided an important safeguard for patients treated under the compulsory powers of the MHA since the statutory scheme was introduced in Wales in 2008.

The scope of the independent mental health advocacy scheme under the 1983 Act is expanded in Wales, by Part 4 of the Mental Health (Wales) Measure 2010 to patients detained under certain short-term sections of the 1983 Act and to informal (i.e. non-detained) inpatients receiving assessment or treatment for mental health problems in hospitals in Wales.

The role of independent advocacy is particularly important where safeguarding concerns arise, including situations involving abuse, neglect, coercion, exploitation, or risk of harm, and where there may be significant power imbalances between older people and those making decisions about their lives.

Enquiries to the Commissioner's Advice and Assistance Service highlight a variety of instances where access to an independent advocate would have been beneficial to an older person and could help (or have helped) to achieve better outcomes.

More broadly, a thematic review of Adult Practice Reviews (APR's) in Wales, commissioned by the National Independent Safeguarding Board (NISB) Wales, and published in 2025, examined some of the most difficult and distressing cases within adult safeguarding in Wales.ⁱ Over half of the individuals reviewed in the NISB research were aged 60 or over, with a significant proportion experiencing age-related vulnerabilities.

A recommendation to practitioners, managers, strategic leaders and Regional Safeguarding Boards concerns the prioritisation of the offer and use of advocates. These need to be considered at all parts of the safeguarding process and at the earliest possible stage. A greater understanding of how the use of advocates is promoted and reviewed is emphasised.

The proposed Review by the Commissioner reflects concerns raised by older people and existing research in relation to independent advocacy, including safeguarding.

It will also draw on the conclusions from the 2018 Older People's Commissioner for Wales report. "Making Voices Heard: Older People's Access to Independent Advocacy in Wales" (May 2018).ⁱⁱ The 2018 report built on previous work on advocacy undertaken by the Older People's Commissioner for Wales: "Voice, Choice and Control Recommendations relating to the provision of independent advocacy in Wales", published in 2012.ⁱⁱⁱ

Unlike the 2018 work, the current Commissioner intends to use her legal powers to undertake a Section 5 review of advocacy arrangements.

2. Definition of advocacy

Section 5 (4) of the Commissioner for Older People (Wales) Act 2006 defines advocacy arrangements as follows:

- (4) Advocacy arrangements are arrangements made by a person for making persons available —
 - (a) to represent the views and wishes of relevant older people in Wales;
 - (b) to provide relevant older people in Wales with advice and support of a prescribed kind.

The kind of advice support covered by section 5(4)(b) is prescribed in regulation 3 of The Commissioner for Older People in Wales Regulations 2007, namely:

- (a) the provision of advice and support to relevant older people in Wales which is intended to enable and assist them to express their views and wishes orally or using any other means of communication, and
- (b) the provision of advice (including information) to relevant older people about their rights and welfare.

These provisions together therefore provide the statutory scope of the Commissioner's powers to review advocacy arrangements.

3. Statutory basis

As stated above, this review is conducted under Section 5 of the Older People (Wales) Act 2016.

Under that section, the Commissioner has the power to review arrangements for advocacy, and the operation of such arrangements for the purpose of ascertaining whether, and to what extent, the arrangements are effective in safeguarding and promoting the interests of relevant older people in Wales.

The Commissioner may also assess the effect on relevant older people in Wales of a person's failure to make any such arrangements.

The phrase "Relevant older people in Wales" is defined in section 5 of that Act to mean older people who are in receipt of certain specific services (which include, but are not limited to, health services and social services) from specific service providers.

Obtaining information

Under Regulation 4 of the Commissioner for Older People in Wales Regulations 2007 the Commissioner can require certain people to provide information which she considers is necessary or expedient to have for the purposes of the review.

The review does not investigate individual complaints or conduct operational safeguarding investigations.

4. Purpose of the Review

The purpose of the review is to examine whether independent advocacy arrangements provided in Wales by local authorities and health boards effectively support older people to be heard, protected and treated fairly, including when safeguarding concerns arise. It will also examine the involvement of the Welsh Government and Regional Safeguarding Boards in arrangements for independent advocacy in the context of safeguarding and promoting the interests of relevant older people in Wales.

5. Scope of the review

The review will consider independent advocacy arrangements for older people aged 60 and over across Wales who are in receipt of health and local authority services. The review will pay particular attention to (but will not be limited to) how advocacy operates in safeguarding contexts.

The issues covered will include (but not necessarily be limited to) access to advocacy, advocacy within safeguarding processes, independence and role clarity, responsiveness to diverse needs, commissioning and consistency, reporting and oversight, and effectiveness and outcomes for older people. It will also explore the practical arrangements put in place to ensure that advocacy operates effectively, including maintaining the confidentiality of the advocate/client relationship and the dignity of the client.

The review will not examine individual safeguarding cases, assess the appropriateness of specific safeguarding decisions, replace statutory safeguarding reviews, or assess individual advocate performance.

6. Approach of the Review

Information will be requested from local authorities and health boards in Wales on the availability, accessibility, and scope of advocacy for older people, particularly in safeguarding contexts. This will include how advocacy is commissioned, delivered, recorded, and monitored, including compliance with statutory duties, equality and language considerations (notably Welsh language access). Consistency of practice, training, practitioner awareness, referral processes, and governance arrangements for advocacy are also areas of the review.

Information will also be requested from Welsh Ministers and the Regional Safeguarding Boards regarding their role in the advocacy arrangements of Local Health Boards and Local Authorities, oversight and reports, and the general discharge of their responsibilities in relation to advocacy and older people.

7. Outputs and outcomes

The Commissioner may prepare a report with findings and recommendations. This will be published and made available in formats which are accessible to older people.

8. Timescale

16 July 2026	Request for information under Section 5 of the Older People (Wales) Act 2016 to local authorities, health boards, Welsh Government and Regional Safeguarding Boards.
28 September 2026	Deadline for receipt of responses.
27 January 2027	Publication of report and recommendations
31 March 2027	Deadline for responses from local authorities, local health boards and Welsh Ministers to provide details so that the Commissioner can determine whether they have complied with the recommendation or will be so complying, or an explanation why they have not or will not.

ⁱ <https://mcrcmetropolis.uk/wp-content/uploads/2025/04/APR-Wales-Main-Report-March-2025-main-link.pdf>

ⁱⁱ https://olderpeople.wales/library/Making_Voices_Heard.pdf

ⁱⁱⁱ <https://olderpeople.wales/wp-content/uploads/2022/05/Voice-Choice-and-Control.pdf>