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Advocacy, Social Justice and Children's Rights

Jane Boylan and Jane Dalrymple

The emergence of independent advocacy services for children and young people has had an impact on promoting the rights of children and young people. Historically, advocacy has been considered an important social work skill underpinned by principles of human rights and social justice. However, the development of independent advocacy and changes in the delivery of health and social care services have had an impact on how far social workers now feel able to directly advocate for service users. This paper interrogates the tensions faced by social workers in managing their advocacy role through a discussion of advocacy in relation to children and young people. By examining the concepts of 'best interests' and the welfare of the child the paper considers dilemmas for social workers committed to advocating for children and young people. It argues that if principles of social justice are to be upheld practitioners need to actively consider ways to reclaim a culture of advocacy.

Keywords: advocacy; social justice; children's rights

Introduction

Child advocacy has emerged in the context of children's rights protagonists challenging attitudes and assumptions about children and young people and campaigning for children's political, social and civil rights. Principles of advocacy, social justice and children's rights are therefore interrelated and embodied in definitions of advocacy and in advocacy practice. The central philosophy underpinning the concept of advocacy is the belief that children and young people should be accorded rights, recognised as citizens and be treated as equals.

Within the United Kingdom, independent advocacy has generally become an accepted and important way of working with children and young people. Advocacy aims to raise the status of children's rights and to break down some of the barriers that obstruct their ability to achieve social justice and engage in meaningful participation in decision-making (Boylan and Dalrymple 2009; Percy-Smith and Thomas 2009). Advocacy also has a key role in the promotion and

monitoring of policies and practices conducive to children and young people's rights. In the past decade, policy and legislation reflect increasing recognition that looked after children, children involved in the child protection process, children wishing to make complaints, care leavers or disabled children may need access to independent advocacy. In this context, independent advocacy has an important part to play in challenging some children's experiences of disempowerment and in promoting and influencing debates about children's rights and advocacy.

However, despite the both legislative mandates for independent advocacy such as the Adoption and Children Act 2002 and the Children (Leaving Care) Act 2004, and growth in the provision of independent advocacy services, the landscape of children's rights and advocacy agendas remains contested. While there is now greater recognition of the expertise that children and young people bring to decision-making and of their status as rights holders, some children and young people continue to feel marginalised, excluded from decision-making and without representation (Boylan and Dalrymple 2009; Oliver and Dalrymple 2008). Furthermore, advocacy provision is fragmented and the availability of advocacy for some children remains limited (Boylan and Braye 2006). There is therefore a need to critically reflect on advocacy provision and practice.

Advocacy is also a key social work skill and for most professions working with children and young people there is an expectation that advocacy is part of their role. The difficulty, however, is that there are inherent tensions for social work practitioners undertaking an advocacy role while at the same time having to manage and work within an environment underpinned by competing and sometimes contradictory values. In both health and social care practice, changes in the delivery of services have had an impact on how far practitioners feel able to directly advocate for service users. Social work practitioners currently operate within a context of bureaucracy and marketisation that has become increasingly regulated and controlled by central government. This paper interrogates the tensions for both social work advocacy and independent advocacy through a discussion of advocacy in relation to children and young people. By examining the concepts of best interests and the welfare of the child which underpin social work decision-making and practice, we consider some of the dilemmas for social workers committed to advocating for children and young people in this context.

Understanding Advocacy

Advocacy is a regular feature of human interactions in which anyone may either need advocacy support or act as an advocate. However, understanding the concept of advocacy within the context of welfare depends on a range of factors, including personal and professional experience, values and policy agendas. In their research about advocacy for looked-after children, Oliver, Knight, and Candappa (2006) were mindful of the significance of examining definitions of advocacy, recognising that varying perceptions of advocacy are likely to influence

both advocates and the responses of child welfare professionals to it. They found, for example, that while advocates, young people, parents and carers had generally similar views about advocacy, the views of social care professionals were more divided. It is useful, therefore, to examine some of these understandings in order to analyse the process of advocacy in social work practice.

While definitions of advocacy are contested they are broadly synonymous with the struggle for fairness, empowerment and social justice. Independent advocacy originates from service users and their feelings of powerlessness in various situations (Advocacy in Action 1990; Boylan and Ing 2005). In this context, advocacy can act as an important mechanism to counter some of the disempowering experiences and negative outcomes children encounter. The oppression of marginalised children and young people in society and the impact this has on their capacity to control their own lives, indicates why the concept of empowerment is a key element to understanding advocacy in the context of children's services. Many children and young people in society are disempowered by systems that have a significant effect on almost every aspect of their lives. It is therefore perhaps unsurprising that children and young people are not generally viewed as citizens and suggests 'that advocacy should go beyond the practical task of enabling voice and agency to promoting active citizenship' (Boylan and Dalrymple 2009, 84). While the United Nations Convention on the Rights of the Child (UNCRC), 1989, does provide a framework for a model of citizenship that includes children, Roche (1999) questions whether the acquisition of voice is sufficient to ensure their active citizenship. He cautions against complacency in relation to the languages of participation and empowerment and argues for a more critical approach to the circumstances of inclusion. In this respect, advocacy in relation to children and young people needs to be understood alongside the discourses of childhood, children's rights, participation, voice and social justice. This in turn lends meaning to the following account which states that advocacy aims to:

Raise the status of children and increase the responsiveness and accountability of the institutions affecting them. Advocacy consists of social action on behalf of children whether to increase their self-determination or to enhance the social, educational and medical resources to which they are entitled. Because it involves attempts to redistribute power to reallocate resources child advocacy is inherently political. (Melton 1987, 357)

Both the Children Act 1989 (and similar legislation within the four nations of the United Kingdom) and the United Nations Convention on the Rights of the Child, 1989, celebrating its twentieth anniversary in 2009, sought to advance children's social, civil, political and participatory rights. They send out a strong message to social welfare practitioners and policy makers about the need to recognise these rights. However, governments in the United Kingdom have shown some reluctance in meeting the requirements laid down in the Convention. Many of the issues raised are longstanding and there are concerns that in recent years the United Kingdom 'has moved further away from having a culture that enjoys,

respects and values children' (CRAE 2009) with many fundamental structural and ideological barriers largely undisturbed (Boylan 2008).

Advocacy and Social Work

Advocacy has traditionally been considered as part of a social worker's role (Bateman 2000; Payne 2000; Trevithick 2000). Arguably this has been enhanced as progressive thinking about children's welfare and their rights has led to changes in policy and legislation that have had a major impact on practice. Central to government policy in all four nations of the United Kingdom is the requirement for children and young people to be involved in decisions affecting their lives, with the role of advocacy identified as an important element of participatory practice (Stein 2009). Part of the requirements for social work education require qualified social workers to empower service users (including children and young people) to participate in decision-making and to ensure that they have access to advocacy services if they need support to represent their views (Topss UK Partnership 2002).

In many ways definitions of advocacy are synonymous with definitions of social work, which are also located within a tradition of social justice. Historically, social work has been regarded as having a role in promoting change and developing good practice. This can be seen in the following internationally accepted definition of social work, which states that the aims of social work are to promote:

... social change, problem solving in human relationships and the empowerment and liberation of people to enhance well-being. Utilising theories of human behaviour and social systems, social work intervenes at the points where people interact with their environments. Principles of human rights and social justice are fundamental to social work. (International Association of Schools of Social Work (IASSW) and International Federation of Social Workers 2001)

However, despite the policy mandates promoting participatory practice there is less scope for social workers to translate the concept into action and their advocacy role tends to be limited to actions with an individual service user (case advocacy). Charting the history of professional social work we can see that the roles and tasks of social workers have undergone changes since the early 1990s – for example, with the NHS and Community Care Act 1991 generally and the Children Act 1989 in relation to children and young people – marking a different relationship between social workers and service users. As a consequence, it has become increasingly complicated for social workers to act as advocates and to adhere to Herbert and Mould's (1992, 119) vision of advocacy involving:

The constant vigilance of social workers regarding whether policies and practices, (within their own organisation and within other Child-serving organisations and agencies) are meeting the needs of children on their caseloads.

During the last decade as a response to more recent child death tragedies, the UK Children's Workforce has instigated a major process of government-assisted change. All professional disciplines are now expected to work within an integrated model of service delivery rather than working in traditional 'silos'. The aim of such an approach is to enable faster information sharing, more coordinated support plans and a multi-agency approach to service delivery based in the communities where people live such as Children's Centres and schools (Building Brighter Futures: Next steps for the children's workforce, April 2008).

Arguably there is an imperative here for social workers to familiarise themselves with the roles of independent advocacy within this culture of joint-working and shared responsibility, recognising advocacy services as 'partner' agencies who will also need to maintain their independence. For example, in child protection conferences children and young people are unlikely to ask for help to participate unless a service is pro-actively offered (Boylan 2008). The starting point then is for the professionals involved to facilitate this process through working with independent advocates to enable children and young people to contribute to an understanding about the difficulties they are facing, and how they might manage those difficulties.

Children and young people who work with an advocate find that this helps them to overcome some of the barriers that exist which limit opportunities for meaningful participation and the expression of their views and interests. The contribution of advocates to integrated working therefore has the potential to help children and young people to understand what their rights are and contribute to the issues being raised by the professionals involved.

Best Interests

Joint working however can be compromised by understanding and misunderstanding about the concept of 'best interests'. Emphasis on the importance of empowerment practice with children can be complicated by the fact that professionals work to ensure that the 'best interests' of a child is a key consideration in any decisions that they make. This is exacerbated by policy and practice which has strengthened the authority of parents and other family members when decisions are being made about the care and well-being of children and young people (Oliver and Dalrymple 2008, 16). In addition, concerns about safeguarding children and young people have had an impact on how far professionals feel able to directly advocate for them (Parton 2006). It is worth noting that one of the recommendations of the United Nations Committee to the UK Government in 2002 called for 'Children to have stronger rights to be heard and taken seriously when, for example, parents separate' (CRAE 2009, 2).

The Children Act 1948 placed a responsibility on local authorities when making decisions to further the 'best interests of the child'. Since then the principle of 'best interests' has been subject to considerable academic and professional practice debate. While the principle of best interests is clearly established in law

and practice, it continues to be challenging for lawyers and child care professionals as they seek to reconcile the meaning of children's rights with the concept of 'best interests of the child': is a child or young person an autonomous decision maker who can direct his or her representation or is the child in need of a representative who would 'discover' and then advocate for what is best for them? (Spinak 2007).

The importance of the 'best interest' principle is recognised in Article 3 of the United Nations Convention on the Rights of the Child which states that 'the best interests of the child shall be the primary consideration' in all actions concerning a child, with the 'best interest' standard brought into the Convention a further eight times. However, it is important to note that, as Freeman (2007) points out, the 'best interest' standard is preceded in Article 2 by a requirement to respect and ensure the rights of the child. Freeman argues that while the application of the provisions of the Convention require that the 'best interest' principle is always considered, 'we cannot escape the conclusion that this cannot be done without reference to the rights of the child recognised in the Convention' (2007, 9).

Consideration of the term in relation to someone who cannot make a decision for themselves within the terms of the Mental Capacity Act 2005 is useful in thinking about the issues for children and young people. While 'best interest' is not defined in the Act some elements of the guidance about the principle can be transferred to thinking about the moral and ethical dilemmas in child care practice. In particular, the principle of equal consideration in Section 4 of the Mental Capacity Act reminds practitioners that they must not make unjustified assumptions about what the best interests of a person might be on the basis of their age, appearance, condition or behaviour. For professionals working with children and young people, the key here is to ensure that children and young people are not discriminated against in decision-making processes. This means avoiding assumptions about their ability to contribute to decision-making in their best interests.

It can be argued that the 'best interests' principle is a check to ensure that professional decision makers carry out their responsibilities for the benefit of the child. The work of Goldstein, Freud and Solnit published between 1973 and 1986 in three volumes and republished as a single text *The Best Interests of the Child* in 1996 has been influential in informing both these debates and the development of child welfare policy in the United Kingdom and further afield. The debates centre on the fact that a decision that appears to be in the best interests of the child and a decision that the child desires may be in conflict. Recognition of the importance of child-centred practice (Parton 2006) has clearly influenced decision-making and Spinak's analysis of the texts of Goldstein and his colleagues is interesting:

Goldstein et al called on legislators and courts to ask continuously: 'Does the law reflect the current state of knowledge' to minimize harm when the state intervenes in the lives of families? I believe they would recognize today that the current state of knowledge about lawyers for children indicates that only child-directed representation is most likely to achieve that result'. (Spinak 2007, 11)

Nevertheless, research indicates that tensions remain between children's welfare and children's rights, with young people feeling that when decisions are

taken on the basis of what is perceived to be in their best interests invariably they are not included in the decision-making process. An advocate in Oliver's research clearly indicated the difficulty, stating that 'Often, "best interests" doesn't involve the child, or they are not listened to' (Elsa, advocate, in Oliver 2008), but went on to reflect that unless the child is involved in the process it is unlikely that the plan will work.

Timms (1995) points out that the 'best interests' model may in fact produce a more punitive form of care than one that is organised around children's rights, pointing out that while local authorities do have their statutory responsibilities there is also a need for professionals to treat the concept with caution since:

It may not always be that the local authority view and the best interests of the child are one and the same thing, although there is a prevailing fantasy to that effect which manifests itself in the assertion that any contradiction of the local authority view is, by definition, failing to give consideration to the welfare of the child. (Timms 1995, 425)

Such arguments contribute to the antagonism that can occur between social workers and independent advocates and contributes to an understanding that it is increasingly unlikely that social workers themselves can act as an advocate. Another advocate in Oliver's research identifies the difficulties that may arise:

Our youngest referral is 5 to 6 years old, and our biggest issue is allocating an advocate. We find roadblocks. We are told that we can't talk to them, that 'we (social workers) have their best interests at heart', especially when a child is put up for adoption. Social services have said we don't want you visiting them'. (Mary, Advocate in Oliver 2008)

Social work is a complex process and clearly, in thinking about 'best interests', there may well be conflicting views between young people and adults involved in decision-making. For example, disabled young people particularly value access to talking to someone in confidence. However, while the principle of confidentiality is accepted by the adults in their lives, its relevance to disabled young people has been questioned. This could be because the adults concerned believe there is a lack of understanding on the part of the young person or a perceived need for them to be protected (Knight and Oliver 2007).

Inevitably the concept of best interests may make it difficult on occasions for social workers to advocate for children and young people. Nevertheless, the development of advocacy and participatory practice have had a positive impact on social work and provide an opportunity for practitioners to actively consider ways of reclaiming social work advocacy.

Reclaiming Social Work Advocacy

Within Children's Services, social workers have a central role in listening to, understanding and responding to the views of children and young people they are

working with and promoting their involvement in decision-making processes. However, there are limitations to their capacity to act as advocates (Boylan and Boylan 1998; Boylan and Dalrymple 2009; Dalrymple 1995; Pithouse et al. 2005). They are faced with ethical dilemmas when their independence is compromised by their role as the provider of services. For example, they may come under pressure from managers to allocate scarce resources in a particular way, determined by available resources rather than underpinned by a needs-led assessment.

As discussed above, social workers also share with other child welfare professionals the dilemmas of working within the 'best interests' principle that underpins their decision-making and practice. Holding powerful positions in relation to children, their capacity to advocate on behalf of children they are working with is invariably limited (Barford and Wattam 1991). While inclusion via information is an important part of the social work role in areas of work such as child protection, inevitably young people are only likely to view the social worker with suspicion and see the 'authority hat' (Dalrymple and Horan 2008, 73).

However, examination of definitions of advocacy indicates that the distinctive characteristics of advocacy relationships focus on creating the space to listen and put forward the views of young people. Arguably the social worker is in a prime position to facilitate this and should be reclaiming their advocacy role. Consideration of the dialogical 'social learning' model of participation (Percy-Smith 2006) is a useful tool to facilitate reflection on this possibility. Rather than a process prescribed by adult professionals this democratic model is based on communication between all participants. Percy-Smith identifies a key element of the process as a *communicative action space* in which adults are co-enquirers or interpretive learners with the young person rather than acting in their 'best interests'. Fundamental to the model is recognition that the power relations existing between the various actors involved as a result of social and organisational relationships – children and young people, advocates, key adults in the lives of the children and young people and professionals – are central to enabling learning. Power, he notes, is negotiated rather than being given or taken away. Flexibility, mutual respect and reciprocity are therefore essential aspects of the process of participation:

The assumption underlying reciprocity in communicative action spaces is that through dialogue and exchange, those involved are able to develop creative answers to the challenges at hand that are meaningful to the different parties involved. (Percy-Smith 2006, 169)

This model identifies the need to consider the type of spaces in which children and young people can participate and to be prepared to allow for learning between all those involved in the decision-making processes concerning children and young people. It alerts us to the importance of taking account of the social, organisational and systemic contexts, which children and young people are participating within. Young people's definitions of advocacy include an understanding that the advocacy role extends to more actively fighting their corner (Morgan 2008). Such elements of advocacy cannot easily be undertaken by

professionals working with children and young people and therefore support the case for independent advocacy. However, working within a culture of advocacy can enable this to happen. The following case example from Stein (2009, 105) indicates how everyone can work together to facilitate a more positive outcome for the child. In this instance, while the social worker was not acting as the advocate, there was a working relationship between all parties where, in some way, the social worker was also working within a culture of advocacy:

I wanted help because I was struggling at school because the relationship with my foster carer was failing (There were) lots of arguments about contact with my real Mum (the advocate) was there to encourage me, help me say what I needed to say and support me. Sometimes she spoke out. The social worker listened to what me and the advocate had to say and sorted out proper routine contact with Mum, no arguments. Mum wasn't really happy because contact had got less, but she was happy the arguments had stopped, because we knew where we stood. (Noreen, 14 years)

The organisational culture of a local authority has been identified as a key factor in supporting or limiting the potentially positive impact of advocacy for children and young people (Boylan and Dalrymple 2009). For example, the policy drive towards Integrated Youth Support Services (IYSS) offers significant opportunities to embed advocacy within a 'joined up' service delivery framework. It enables practitioners with a strong traditional advocacy role to work with and share ideas with other colleagues who have not traditionally had an advocacy role, or whose capacity to advocate may have been marginalised by their existence within a performance-driven culture that may limit advocacy. For us this indicates that a culture of advocacy, supported by a participation strategy, is likely to make it easier for social workers to reclaim their advocacy role.

Concluding Thoughts

There is increasing recognition of the challenges and dilemmas social workers face 'doing' advocacy and having their advocacy role recognised. We have indicated in this paper that in some situations the managerialist, target-driven culture in which social work operates exacerbates this dilemma. Alongside this there is an awareness of the findings of a succession of enquiry reports (Levy and Kahan 1991; Utting 1991, 1997; Waterhouse 2000) that have led to an acknowledgement that particular groups of children and young people should have access to independent forms of advocacy, in order to further their participatory rights in a range of decision-making contexts. It is essential that social work practitioners recognise the value and importance of advocacy in promoting young people's rights to citizenship. Children have a right to participation and that right is conducive to their rights to protection. These rights are not mutually exclusive; they are both sides of the same coin. While independent advocacy is not a panacea, it endeavours to enable children and

young people to know what their rights are and access the support they need. Advocacy goes some way to overcome the possible conflicts of interest that can arise through being part of the system of services for children and young people.

However, research indicates a level of ambivalence in relation to the involvement of independent advocates (Pithouse and Parry 2005; Oliver, Knight, and Candappa 2006; Boylan and Dalrymple 2009) suggesting that, despite policy, legislation and guidance there is still some way to go:

There are lots of different social work teams in the area and they are all quite different. The relationship is down to the perception of the social worker and how positively they view advocacy. Also, some specific cases can be challenging, especially about individual practice. (Linda, advocacy service manager in Oliver 2008, 35)

Although social workers are expected to have the skills and knowledge required to advocate on behalf of service users, both as newly qualified and experienced practitioners, they are often in a position which makes it difficult if not impossible for them to represent the wishes of children and young people. We would argue therefore that a wider culture of advocacy is also needed that utilises social work advocacy and at the same time recognises how and when to access independent advocacy support. What the future holds for advocacy is difficult to predict. Recent changes in the UK government have already led to large spending cuts in services for children and families. The Coalition has set up a review of the Children's Commissioner role and function in England which has inevitably led to concerns about the future of advocacy. However, an understanding that children and young people should continue to have a strong independent advocate to champion their interests and views and to promote their rights is still current within government rhetoric. Perhaps now it is apposite for social workers to reclaim their advocacy role and to support independent advocacy in order to ensure that a culture of advocacy underpins the delivery of services in the future.

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