

SIAA Response

Establishing a statutory Appropriate Adult service in Scotland

June 2018

1. We propose to use the definition of vulnerable person as set out at section 42 of the Criminal Justice (Scotland) Act 2016, but extended to cover victims and witnesses. Do you agree?

Yes

No

If no, please tell us how you would define vulnerability for this purpose?

Unsure

We welcome this opportunity to respond to this consultation on establishing a statutory Appropriate Adult service in Scotland. The Scottish Independent Advocacy Alliance (SIAA) is Scotland's national membership body for advocacy organisations. The SIAA promotes, supports and defends independent advocacy in Scotland. It aims to ensure that independent advocacy is available to any person who needs it in Scotland.

We believe that people can be vulnerable for a range of different reasons including the situation they find themselves in and that this needs to be considered in the context of the definition of vulnerable. The definition of vulnerable person should also include people with acquired brain injuries and alcohol related brain damage. We are aware that the inclusion of people with Learning Disabilities and Autism within the Mental Health (Care & Treatment) (Scotland) Act 2003 is being reviewed and this needs to be considered in any definition of vulnerable person. Ideally, we would like there to be no need for a formal diagnosis in order for as many people as possible who are vulnerable for a variety of reasons to be entitled to an Appropriate Adult.

Additionally, we would like further clarity around what is meant by 'those who have a temporary condition affecting their ability to communicate due to, for example, drugs or alcohol' and how this will be measured.

We would also like to see the definition extended to include victims, witnesses and

persons in police custody.

2. We propose to use the definition of the type of support to be made available as set out at section 42 of the Criminal Justice (Scotland) Act 2016. Do you agree?

Yes

No

If no, please tell us how you would define the type of support to be made available?

Unsure

We would like further clarity about how the service will be provided and request a clear, consistent and accessible approach.

We believe this to be quite a narrow definition and that there are other stages within the criminal justice system (e.g. in court) when people may need support. We would like this to be considered.

3. We propose the duty on local authorities for ensuring that people are available to provide Appropriate Adult support, do you agree?

Yes

No

If no, who do you think this duty should be placed on?

Unsure

We have no particular view on which organisation the duty is placed on so long as there are no conflicts of interest.

We also acknowledge that it is good to have provision across all local authority areas in Scotland as currently provision varies significantly across different areas.

However this is delivered, we believe it is vital that funding is ring-fenced.

4. We propose to keep details of the statutory duty at a high level but develop more detailed guidance to sit below this and to which those responsible for delivery must have regard, do you agree with this approach?

Yes

No

If no i) why do you disagree?

ii) are there any specific details you think should be in legislation?

Unsure

We believe it is important to do as much as possible to ensure a high level of service across Scotland. In order for guidance to be effective it is essential that the Scottish Government consults and works with local authorities, Police Scotland, third sector organisations and those with lived experience of the conditions covered by the definition of 'vulnerable person'.

5. We propose to place a duty on local authorities to deliver training to Appropriate Adults. Do you agree with this?

Yes

No

Unsure

If no, who do you think this duty should be placed on?

We have no particular opinion on which organisation the duty to deliver training is placed on.

We would like to see a universal training programme across Scotland which involves professionals across various sectors such as third sector organisations with specialist knowledge as well as speech and language therapy colleagues and input from people with lived experience. We believe it is vital that condition-specific training is built into the national training framework and that this is delivered by organisations with specialist knowledge e.g. The National Autistic Society, SOLD, Headway etc.

We believe that in any training delivered there is a need for recognition that Appropriate Adults are experts in communication and safeguarding and that they have an understanding of peoples' rights in the criminal justice system. We also think there needs to be clarity around the skills and qualifications which people need to have to be an effective Appropriate Adult.

We think it is important that training should be free to attend to ensure that no one is put off from training to be an Appropriate Adult.

We also believe that it is important that training covers conflicts of interests as it may not always be appropriate for individuals who already have a role in an individual's life such as social workers, GPs etc. to take on another role in that individuals life as an Appropriate Adult.

We think it would be beneficial for any training to include training around the different identification cards which highlight conditions which people may have.

Finally, as well as training for Appropriate Adults we think it is vital that organisations such as Police Scotland, local authorities and legal professionals also undertake training on the Appropriate Adult scheme and how to identify when there is a need for an Appropriate Adult.

6. We propose to place a duty on the Care Inspectorate to carry out a quality assessment role in relation to the provision of Appropriate Adult services, do you agree?

Yes

No

If not, who do you think should be responsible?

Unsure

We would like further clarity on the role of the Care Inspectorate in this scheme.

7. How might we best engage with service users to understand their experience?

As mentioned, it would be really beneficial to involve those with lived experience in the development of the guidance and we would also like to see involvement of the voluntary sector.

We are aware that there has been little research carried out around the experience of service users so believe it would be really useful to undertake some research on this, for example through exit questionnaires.

8. We propose to place a duty on the Mental Welfare Commission to have oversight of how Appropriate Adults services are provided across Scotland, do you agree?

Yes

No

If no, who do you think should be responsible?

Unsure

9. Do you agree with the proposed functions of oversight role?

Yes

If yes, are there any other functions you think this role should incorporate?

No

If no, what functions do you think this role should incorporate?

Unsure

10. Please use this space to provide any additional comments you may have.

We believe that it would be beneficial for the Scottish Government to engage with third sector providers and other local organisations that work in rural areas in order to identify and tackle the challenges that arise in accessing the Appropriate Adult scheme so that those that are entitled are able to access it.

There needs to be clarity about the role of an Appropriate Adult and how it differs from other roles such as Independent Advocate, guardian, attorney, Named Person etc.

We would like to see the role of an Appropriate Adult become a full time paid role for people rather than something which is taken up by volunteers, social workers etc. We believe that when the role is taken on by these people there is a risk of it not being seen as a priority as well as the different roles requiring different skills and experience.

We would also like to see the length of time which people have with their Appropriate Adult prior to their interview extended to allow the Appropriate Adult to fully understand the individual's communication needs.

We believe there are other stages throughout the criminal justice process where individuals could benefit from having an Appropriate Adult present, for example, in court. We would like to see jurisdiction for Appropriate Adults to work in court. We would also like it to be made clear that Appropriate Adults cannot be called as witnesses as this would ensure that anything said between that individual and their Appropriate Adult is held in confidence.

We believe that in many situations it could be beneficial for Independent Advocates to be present to carry out a listening role rather than to participate in any discussions in addition to an Appropriate Adult being present. We believe that for many vulnerable people this could be helpful for them to help remember what was discussed and as a reference point for any future discussions between the Independent Advocate and the individual.

As mentioned throughout this response, we believe it is crucial that people with lived experiences are fully involved in the development of the Appropriate Adult scheme.

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