



## SIAA Response

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### **SNAP2: Proposal for Scotland's second National Action Plan for Human Rights | December 2019**

The Scottish Independent Advocacy Alliance (SIAA) is a membership organisation that has the overall aim of ensuring that independent advocacy is available to any vulnerable person in Scotland. Independent advocacy safeguards people who are marginalised and discriminated against or whom services find difficult to serve, empowering people who need a stronger voice by enabling them to express their own needs and make their own decisions.

Independent advocates are human rights defenders, supporting vulnerable people and groups and standing up to injustice. We strongly support an explicit focus on human rights and are keen to see a rights-based approach underpinning a wide range of policy and practice so that all our citizens can live with dignity.

SIAA welcomes this opportunity to comment on 'SNAP 2: Proposal for Scotland's second National Action Plan for Human Rights'. This response draws on the experiences of our members and their expertise in supporting vulnerable people to have their voices heard and realise their rights.

#### **1 Do you broadly support the idea of SNAP 2 and the contents of this draft proposal?**

Yes, SIAA welcomes the idea of SNAP 2 and broadly supports the contents of the draft proposal.

We are pleased to note that independent advocacy is mentioned at various points in the document. However, we feel that the proposal could be strengthened further by including a more comprehensive description of the role of independent advocacy in relation to human rights, including:

- a clear articulation of all the existing legislation that gives people the *right* to access independent advocacy in certain contexts (even though there are multiple barriers in place to their actually accessing this support)
- an explicit recognition of the valuable role that independent advocacy plays in supporting people to understand and realise their other rights. Independent advocacy is a key mechanism for ensuring that human rights are meaningful to *all* of Scotland's

citizens - it is a tool that must be placed at the heart of the human rights roadmap if we are to ensure that Scotland's most vulnerable and marginalised people are not left behind in their ability to understand and exercise their rights.

In addition, SIAA would welcome a reference to the PANEL principles - which clearly and accessibly demonstrate what a human rights approach could look like in practice – within SNAP 2. It would be helpful to understand how the SNAP 2 proposals map onto the PANEL approach, as well as a useful opportunity to make clear the links between the PANEL principles and independent advocacy.

## **2. How do you think you or your community could support SNAP 2 in the future?**

There are a number of ways in which SIAA and our members could support SNAP 2 in the future:

- SIAA can raise awareness amongst our members of the SNAP 2 and its role in supporting independent advocates in their work as human rights defenders
- As noted above, our members play an invaluable role in supporting people in Scotland to understand and enact their human rights and, in doing so, will help to bring the content of SNAP 2 to life
- SIAA and our members can provide a useful source of evidence about where people are encountering particular problems or issues in relation to their human rights, which can be used to campaign for evidence-based change
- Specific areas of focus in SIAA's work-plan for 2020-2021 chime with many of the issues and actions in SNAP 2 – e.g. contributions to the Scottish Government's review of forensic mental health legislation and work around the links between independent advocacy and supported decision-making – providing clear scope for collaborative working.

## **3. Have any of the issues set out changed, or does anything need updated?**

## **4. Is there something else you think SNAP 2 could or should do?**

## **5. What could your community do to support these actions?**

Overall, looking at the SNAP 2 'Issues' and 'Actions' as a whole, SIAA does not think it is always clear how the actions have flowed from the issues - the document could be improved by making these links more explicit. In addition, we think SNAP 2 could be strengthened by embedding throughout an approach which reflects:

- the PANEL principles (which are currently not referenced at all)
- an intersectional approach (currently referenced sporadically)
- a human rights budgeting framework (currently referenced only once).

Given the key role that independent advocacy plays in relation to human rights – both as a rights issue itself in terms of people's access to independent advocacy as well as a means of

helping people secure all their other rights – SIAA would welcome a clear and explicit statement of all the current areas in which people have a legal right to access independent advocacy.

Our answers to questions 3, 4 and 5 are detailed below theme by theme.

### Theme 1: Children and Young People’s Rights

SIAA thinks SNAP 2 would be strengthened by a commitment within the ‘Actions’ section to:

- Undertaking proactive action to educate and raise-awareness - amongst both rights-holders and duty-bearers - of the existing legislation that gives some children a right to access independent advocacy
- Supporting and contributing to wider ongoing action to campaign for all children and young people to have a legal right to independent advocacy to support them to participate in decisions that affect them, supported by clear and transparent detail around budgeting for the provision of independent advocacy across Scotland at adequate and sustainable levels.

### Theme 2: Cultural Rights – Rights of Gypsy/Travellers

The fourth bullet point in the ‘Issues’ section focuses on participation and the need to ensure that Gypsy/Traveller communities are involved in and listened to in policy and decision-making processes that affect them e.g. housing, planning and education. There is a clear role for independent advocacy to play here and we would welcome this being explicitly recognised and stated. This is absolutely pivotal, as ensuring good participation by Gypsy/Traveller communities will have a knock-on positive impact on all the other rights detailed in this section.

### Theme 3: D/deaf and Disabled People’s Rights

The first bullet-point in the ‘Actions’ section talks about supporting the Scottish Government to monitor the implementation of the new social security system to assess its impact on D/deaf and disabled people’s rights.

The Social Security (Scotland) Act 2018 gives anyone who requires support from an advocate owing to a disability the statutory right to access independent advocacy for support engaging with the new system. In addition to those claimants who identify as having a disability, there will be a significant number of claimants who do not identify as having a disability and who might not therefore recognise that they have a statutory right to independent advocacy including, amongst others, Deaf people. Many of them will, nonetheless, be marginalised and vulnerable and would benefit significantly from independent advocacy to support them to understand and navigate complex social security systems.

SIAA thinks this part of the SNAP 2 could be strengthened by an explicit recognition of the existing legal right for Deaf people to access independent advocacy in relation to social security, and the key role it will play in helping them to realise their rights in this area.

#### Theme 4: Equality and Freedom from Discrimination

In the 'Actions' section, SIAA would welcome an additional commitment in SNAP 2 to proactively working to raise public awareness about hate crimes – what they are and how you can report them to Third Party Reporting Centres – in order to strengthen this section on human rights relating to equality and freedom from discrimination.

#### Theme 5: Freedom of Expression

The first bullet point in the 'Actions' section mentions developing a rights-based approach to communications surveillance. SIAA believes this would be strengthened by a specific and explicit action around supporting initiatives to train and educate teachers/youth workers about the UK Government's Prevent Strategy.

#### Theme 6: Freedom of Faith and Belief

Many of the issues identified have a huge impact on the lives of different religious communities. We would like to draw attention to the specific experience of Muslims in the context of the rise in Islamophobia across Scotland. The Scotland Against Criminalising Communities (SACC) report into [Islamophobia in Edinburgh](#) schools highlights the prevalence of Islamophobia and the lack of consistent policy to deal with it within schools.

The Scottish Parliament Cross Party Group on Islamophobia announced an enquiry into the experiences of Muslims of Islamophobia because they believe this is a growing issue. Consequently, SIAA would like to see a specific action that addresses the issue of Islamophobia.

#### Theme 7: Freedom from Violence, Abuse and Neglect

Many of the issues detailed under this theme describe situations in which people already have a legal right to access independent advocacy (e.g. via mental health legislation or children's hearings) but, because of various structural barriers, they are not able to realise this right and get the support they need in these acute situations.

Consequently, SIAA believes the mapping activity described in the 'Actions' section would be enhanced by an explicit focus on detailing the disparity between policy and practice in relation to independent advocacy and its role in securing human rights. Evidence from our members indicates that there is a significant gap between the rhetoric around independent advocacy and the reality experienced by advocacy providers and users. For instance, anyone with a mental

disorder has a statutory right to access independent advocacy under the Mental Health (Care and Treatment) (Scotland) Act 2003. However, reductions in funding and increasingly complex case-loads mean that, on the ground, independent advocacy organisations frequently do not have the capacity to meet demand. As a result, people with “mental disorders” are not able to uphold their rights. This situation is particularly acute for children and young people with “mental disorders”.

### Theme 8: Justice – Access to Justice, Policing and Criminal Justice

As noted above in relation to Theme 7, there are issues under this theme relating to people involved in the justice system being able to access the independent advocacy to which they have a legal right.

### Theme 9: Mental Health

SIAA welcomes the explicit reference to the lack of access to freely available independent advocacy services highlighted in this theme. This is an issue consistently raised by our members.

Although anyone with a ‘mental disorder’ has a statutory right to access independent advocacy under the Mental Health (Care and Treatment) (Scotland) Act 2003, reductions in funding and increasingly complex case-loads mean that, in reality, independent advocacy organisations frequently do not have the capacity to meet demand. As a result, people with ‘mental disorders’ are not able to uphold their rights. This situation is particularly acute for children and young people with ‘mental disorders’. This is an absolutely critical issue, as ensuring access to independent advocacy for people with mental health problems would have a knock-on positive impact for all of the other issues detailed under this theme.

The Mental Health (Care and Treatment) (Scotland) Act 2003 was one of a number of policy areas recently highlighted by our members<sup>1</sup> where vulnerable groups are experiencing significant barriers in accessing their rights. For instance, they highlighted the fact that there is no provision in Scotland for specialist women-only services, meaning that women requiring these services are required to travel to England, often hundreds of miles away from home and the support of friends and family. In addition, members report of issues around people not being able to realise their right to a private life when they are living in supported accommodation which only offers single beds. These issues are compounded by the fact that, as noted above, independent advocacy organisations are not consistently or adequately funded to work with people affected by these policy failings, to support them to have their rights upheld.

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<sup>1</sup> Information gathered as part of evidence SIAA gathered to respond to the Equality and Human Rights Committee’s scrutiny of the 2020-21 budget, in relation to the delivery of national equalities and human rights priorities.

## Theme 10: Older People's Rights

Many of the other policy areas identified by members where people are struggling to access their rights related to older people, including health and social care integration, self-directed support and adults with incapacity. Again, many of these people should have a right to independent advocacy via various pieces of legislation. SIAA thinks that the SNAP 2 document would be strengthened by an explicit statement of the current mechanisms through which older people have a right to independent advocacy, as well as a recognition of the barriers that exist to their actually accessing it, thus creating a gap between policy and practice.

We are concerned about the low numbers of older people who are able to access SDS and would like to see disaggregated data about the people accessing SDS packages including monitoring information. This would be useful to understand gaps, geographical spread and identify groups not accessing SDS.

## Theme 11: Personal Choice and Autonomy

SIAA was surprised that there was no mention of independent advocacy within this theme of SNAP 2, as ensuring greater personal choice and autonomy lies at the very heart of the independent advocacy movement and influences its values and practice. We would welcome an explicit statement of the pivotal role that independent advocacy plays in ensuring that people know about their rights, as well as supporting them to enact their rights and hold duty-bearers to account and seek redress if they are violated.

We welcome the issue relating to supported decision-making under this theme, particularly as this has recently been highlighted by members as a priority area in which they want SIAA to develop our work. As we progress this throughout 2020/21 - developing guidance around supported decision-making in the context of independent advocacy – we would be keen to work collaboratively with SNAP 2.

## Theme 12: Right to Adequate Standard of Living

SIAA believes that many of the issues and actions highlighted under this theme would be strengthened by a recognition of the role that group/collective independent advocacy could play in promoting and enforcing people's right to an adequate standard of living. Collective independent advocacy is particularly relevant in the context of housing rights because violations of rights often result in a group of people with shared experiences who face a common problem.

We note, for instance, the success of the SHRC's 'Housing rights in practice' project in Leith which supported local residents to hold the local authority to account for poor housing conditions, resulting in significant improvements being made. Although this project was not specifically delivered around an independent advocacy model, it shared many features with group independent advocacy and highlights how useful collective action can be in this context.

### Theme 13: Right to Education

The Education (Additional Support for Learning) (Scotland) Act 2004 gives some children and young people the right to access independent advocacy in some educational contexts. However, we know from our members that this provision is very poorly funded with demand far outstripping supply.

Again, we think SNAP 2 could be strengthened by an explicit statement of the existing right to advocacy under this theme, as well as a recognition that it is so poorly resourced that there is a significant gap between the rhetoric and reality.

### Theme 14: Right to Employment/Workers' Rights

SIAA has no specific comments under this theme.

### Theme 15: Right to Housing

As noted above in relation to theme 12, SIAA would welcome a recognition of the role that group/collective independent advocacy has to play in driving forward housing rights, including the Right to Housing itself.

We know that SHRC has worked with groups of tenants in Edinburgh to help raise their issues. SIAA is working with a group of people with lived experience of homelessness who have come together to influence policy at a city-wide level in Edinburgh. This is an excellent example of using the mechanism of group/collective advocacy to ensure that people with lived experience are at the forefront of instigating change.

### Theme 16: Right to Participation

SIAA welcomes the mention of advocacy in the third bullet point in the 'Issue' section, but would welcome a clarification that this refers specifically to independent advocacy (i.e. advocacy carried out by a trained independent advocate working for an organisation that delivers no other services) rather than general advocacy (i.e. advocacy services that could be delivered by someone with no advocacy training, or by an advocate working for an agency that delivers other services). We know from our members how critical the concept of 'independence' is to people using their services and how it helps positively shape attitudes towards and engagement with independent advocacy services.

SIAA was surprised that there was not more mention of independent advocacy within this theme, as the right to participation is such a fundamental tenet of the independent advocacy movement, underpinning all its work. Consequently, we would welcome a more explicit

recognition of the pivotal role of independent advocacy in supporting greater participation. We also note that the first of the five PANEL principles relates specifically to 'Participation' and feel that a theme focused on the right to participation would be enhanced by both mentioning this and making explicit the links between the PANEL principles and SNAP 2 approach.

#### Theme 17: Right to Participation in Democratic Process/Voting

SIAA has no specific comments under this theme.

#### Theme 18: Right to Physical Health

SIAA welcomes the seventh bullet point in the 'Issues' section, which highlights inadequate participation in decision-making by people accessing services as well as the lack of access to independent advocacy. We note that there will be groups of people for whom this issue is particularly acute – such as BME people, children and young people and people for whom English is not their first language - because there are more barriers (or perceived barriers) in place preventing them from participating fully in the decisions that affect them. As a starting point, SIAA would welcome action to tackle the existing gaps in data collection by ensuring that NHS services are exercising their duties and routinely collecting monitoring data. With accurate data, services would be better equipped to plan and deliver for - and meet the needs of - marginalised groups.

SIAA welcomes the action around carrying out a human rights budget analysis of health and social care budgets related to physical health.

#### Theme 19: Right to Private and Family Life

As noted previously under Theme 9, members have highlighted examples where people are not able to realise their right to a private life when they are living, for instance, in supported accommodation which only offers single beds. Similarly, women requiring specialist mental health services that are not available in Scotland have to live in England, miles away from home, denying them their right to a family life. At a recent focus group on forensic mental health services, SIAA members reported that many prisoners choose not to have their children visit them because they do not want them to be searched. We agree with the actions identified but would like to see further actions that reflect the wider right to private and family life issues as highlighted above.

#### Theme 20: Right to Social Security

SIAA welcomes the mention in the third bullet point of independent advocacy in the context of ensuring that people who use social security are enabled and supported to participate actively in Scotland's social security system. We think, however, this could be enhanced by an explicit

statement of who has been afforded the right to access independent advocacy via the Social Security (Scotland) Act 2018 i.e. people who, because of their disability, need the support of an independent advocate to engage with the Scottish social security system. It would also be an excellent opportunity to recognise concerns with access to independent advocacy being dependent on people self-defining as having a disability. Evidence shows that it is quite common that people with mental health conditions, learning disabilities or sensory impairments do not think of or define themselves as disabled. This could present a significant barrier to engagement with independent advocacy, effectively stopping people getting the support they need in order to fulfil their right to social security.

### Theme 21: Rights of LGBTQI People

SIAA finds it jarring that this theme is not looked at through the lens of specific rights, unlike the themes relating to other minority groups. We think that this would be helpful both in terms of consistency of approach, but also because it would shine a light on potential areas of concern e.g. LGBTQI people have higher rates of poor mental health, yet are less likely to access the support available.

### Theme 22: Rights of People from Black and Minority Ethnic Groups

Given the list of specific rights which are singled out under this theme, SIAA is not sure why the right to mental health, right to physical health and right to social security have not been included. This seems like an obvious and unhelpful omission to us, given the evidence indicating that people from black and minority ethnic groups have poorer health outcomes and are more likely to be living in poverty.

We support the mention of an intersectional approach in the 'Actions' section and would be keen to see this approach embedded throughout the rest of the SNAP 2 document.

### Theme 23: Rights of Refugees and People Seeking Asylum

SIAA has no specific comments under this theme.

### Theme 24: Social Care and Right to Independent Living

The Social Care (Self-directed Support) (Scotland) Act 2013 was one of a number of policy areas recently highlighted by our members<sup>2</sup> where vulnerable groups are experiencing significant

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<sup>2</sup> Information gathered as part of evidence SIAA gathered to respond to the Equality and Human Rights Committee's scrutiny of the 2020-21 budget, in relation to the delivery of national equalities and human rights priorities.

barriers in accessing their rights. For instance, they highlighted the fact that although the integration of health and social care was developed with an explicit human-rights based focus, this is not successfully translating into practice, meaning that vulnerable people are not able to have their basic rights to health and an adequate standard of living realised.

SIAA would support the inclusion in the 'Actions' section of campaigning for the collection of disaggregated data by protected characteristics about who accesses social care, in order to provide a more meaningful picture of who is – and who isn't – realising their right to independent living. This would then allow better and more targeted work to support the most vulnerable and marginalised to realise this right.

### Theme 25: Women's Rights

As noted earlier, SIAA would welcome a more intersectional approach embedded throughout SNAP 2. Consequently, we support the point in the 'Actions' section relating to a review of disabled women's access to reproductive, sexual and maternal health services. However, given the data demonstrating higher birth mortality rates for BME women, we would welcome an expansion of this action to include also a review of these services for women from black and minority ethnic groups.

## **6. What do you think about the proposed delivery, governance and resources model for SNAP 2?**

We would welcome explanation in the SNAP 2 about how it has addressed some of the key delivery and governance challenges highlighted in the independent evaluation of the first SNAP. This includes, for instance, the fact that civil society and government representatives displayed very different levels of caution and risk in their approach to transformative change. In addition, the review noted that commitment and support from the Scottish Government was inconsistent and reduced over the course of the SNAP's lifetime. Support from the Scottish Government is so critical to the success of SNAP 2, that SIAA is keen to hear how these issues have been addressed.

## **7. How do you think SNAP 2 should connect with the Scottish Government's National Task Force on Human Rights Leadership?**

The ideal situation is one where there is neither significant overlap nor significant gaps in terms of human rights work. In order to achieve this, there will need to be productive working relationships and very efficient communication between SNAP 2 and the Scottish Government's National Task Force on Human Rights Leadership, with a strong and explicit focus on collaborative working where areas of shared priorities emerge.

## **8. How do you think SNAP 2 should engage with the Scottish Parliament?**

SIAA would suggest a range of different approaches and activities for SNAP 2 to engage effectively with the Scottish Parliament, including a launch and reception, a debate about SNAP 2 and wider human rights work in Scotland, and linking in with work being done by the Parliament's Equalities and Human Rights Committee. It would also be helpful if SNAP 2 could engage with a range of relevant committees to drive forward the message around the value of human rights budgeting, using the enquiry conducted by the Equalities and Human Rights Committee as a model.