



SIAA Submission of Evidence - The impact of the COVID-19 pandemic on equalities and human rights

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Scottish
Independent
Advocacy
Alliance

Introduction

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 submit evidence to the Scottish Parliament's Equalities and Human Rights Committee.

How have groups of people been affected by the virus?

During the course of lockdown, SIAA has been hosting regular, fortnightly video calls with our member organisations about the repercussions of Covid-19. In addition to providing a safe space for peer support, these calls also ensure that SIAA has up-to-date oversight, at a national level, of the issues facing independent advocacy organisations and the people that they support.

The impact of the pandemic - and the measures taken by both the Scottish and UK Governments to address it - on human rights has consistently been one of the key concerns raised by members over the last few months. The manager of

one member organisation described the current situation as, 'A human rights crisis as much as a health crisis'. Managers and independent advocacy workers have cited evidence of a range of human rights issues, including:

- Reduction in participation by advocacy partners in forums where critical decisions are being made about their care and treatment. A member organisation reported that, as Mental Health Tribunals moved from face-to-face to remote provision, they saw a drop in attendance by their advocacy partners from 95% to 15%. Other members report of guardianship applications being fast-tracked through the courts, becoming 'simply a process with no participation'. In other cases, such as during children and families meetings, members reported of 'gatekeeping' of access to participation, so that parts of the meeting were taking place without the person involved (or their independent advocate) present
- Reductions in access to social care, with no indication of when a return to a normal level of service provision could be expected
- Issues with access to food and medicine, including parents with children home from school that they cannot afford to feed, as well as people in the 'shielding' category who do not know how to access food or urgent medication
- Families not being able to have face-to-face contact with Looked After Children
- Digital exclusion, particularly for certain groups of people e.g. people with learning disabilities, or people in hospital who are reliant on ward staff to mediate access to phones/laptops etc. Connectivity is also a key concern in rural areas of Scotland.

- A move from ‘supported decision making’ to ‘substituted decision making’, as vulnerable people’s views and preferences are increasingly side-lined or ignored
- Problems accessing solicitors in certain areas for mental health tribunals
- Increased workload to check that the emergency powers are being used correctly – as a last resort and not a first resort – and that cognisance is still being taken of people’s views and preferences
- Concerns that vulnerable people are being pressured into signing DNRs without fully understanding the implications.

In addition to this evidence of the current, ongoing erosion of human rights, SIAA members are also very concerned that this ‘rolling back’ of human rights in a time of crisis becomes the new normal, such that hard-won human rights are subsequently not reinstated as they were pre-pandemic.

Which groups have been disproportionately affected by the virus and the response to it?

The current pandemic is hugely concerning for everyone - but it is increasingly clear that both the virus itself and the policies and practices put in place to mitigate its impact are experienced differently by different people. Although everyone has been significantly affected by many of the Scottish and UK Governments' new measures, people belonging to certain groups are disproportionately affected and at increased risk of having their human rights compromised.

SIAA members have reported particular concerns about the following groups:

- Children – for instance, the huge impact of school closures on education, contact with peers and mental health, as well as the loss of free school meals and, for many children, school as a space that provides safety and stability
- Older people – for instance, in relationship to reduced participation in decision-making about guardianships and problems accessing food, medication and social contact
- Disabled people – for instance, in relation to reduced access to social care, and discrimination in terms of equality of access to health care
- BAME people – for instance, being significantly more likely to be admitted to intensive care or die as a result of Covid-19
- Women – for instance, due to the rise in domestic abuse resulting from lockdown restrictions and being more likely to have lost their jobs or been furloughed than men
- Carers – for instance, because of an increase in terms of caring load accompanied by a decrease in respite support
- People living with mental illness – for instance, because of the impact of restricted movement and lack of contact with support networks, as well as the potential impact of increasingly restrictive government measures
- People living in poverty – for instance, in relation to multiple, overlapping vulnerabilities in relation to access to food, insecure housing and insecure employment
- People who are digitally excluded – for instance, in relation to people's abilities to participate meaningfully in decisions that are being made about their care or treatment, because they cannot afford to access technology, do not have the skills/capacity to access technology, live in rural areas with poor connectivity or because they are fearful of technology.

In reality, of course, many people will belong to multiple 'at risk' groups and the government must make it an explicit focus to research and understand these 'intersectional' impacts and then to take targeted, bespoke action to protect those most at risk.

What do the Scottish Government and public authorities (e.g. local authorities, health boards etc.) need to change or improve as a matter of urgency?

SIAA acknowledges that these are complex times presenting unprecedented challenges. Consequently, we recognised the need for the introduction of legislation to ensure certain safeguards to protect the right to life (Article 2 of the Human Rights Act). However, the emergency legislation is also having a negative impact on a number of other human rights which, during a time of crisis, are more important than ever and must be consciously protected, promoted and realised. Two key issues which the Scottish Government and public authorities must address as a matter of urgency relate to compliance and monitoring, evaluation & scrutiny.

Compliance

- At a minimum, new measures and restrictions must be compliant with existing human rights legislation, including the Human Rights Act 1998 and all the international human rights treaties which apply to the UK.
- They must also comply with other relevant legislation, such as the Equality Act 2010 (and, in particular, the Public Sector Equality Duty), the Adult Support and Protection (Scotland) Act 2007 and the Children (Scotland) Act 1995.

Monitoring, evaluation and scrutiny

- International human rights frameworks make clear that any new powers introduced during a national emergency must fulfil certain criteria, including being legal, necessary and proportionate. Ensuring that this is the case will require a significant amount of ongoing work to monitor, evaluate and scrutinise the impacts of the new measures, openly and transparently.
- Underpinning this work is a requirement for the Scottish and UK Governments to capture equalities data disaggregated by protected characteristic, to allow for a detailed analysis of the impact of the measures on different groups of people. In this way, if policies and practices are having a disproportionate impact on people who share protected characteristics, this can be recognised and responded to, so the impact is mitigated.
- SIAA supports the SHRC's call for all forms of scrutiny of the emergency powers to be conducted by relevant, independent bodies.

What do the Scottish Government and public authorities need to change or improve in the medium to long term?

The pandemic presents an opportunity for the Scottish Government and public authorities to go beyond 'compliance' and design explicitly human-rights based policy and supports – including both legislative and non-legislative activities – that will protect human rights for all and ensure that already marginalised people and groups are not left further behind. In the medium and long-term, SIAA would welcome an explicit focus on human rights budgeting and human rights impact assessments.

Human rights budgeting

The Scottish Government should adopt a human-rights budgeting approach, which “asserts that there are values, goals and objectives which extend beyond purely economic ideas that budgets must be pressed to serve” . This will ensure that human rights are explicitly considered when resources are allocated.

It is also incumbent upon the Scottish Government to demonstrate that new measures and restrictions which may restrict human rights have not been taken for budgetary reasons alone.

Human rights impact assessments

Governments are required by Section 19 of the Human Rights Act to publish a human rights compatibility statement alongside all legislation. In order for an impact assessments to be meaningful, it must be comprehensive, evidence-based and provide robust scrutiny. We note, as an example of good practice, the ‘Independent Children’s Rights Impact Assessment on the Response to Covid-19 in Scotland’ , commissioned by the Children and Young People’s Commissioner Scotland, “In the absence of a comprehensive approach to ensuring human rights compliance by the Scottish Government”

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