



Scottish Mental Health Law Review: Response to call for evidence

May 2020



Scottish
**Independent
Advocacy**
Alliance

Introduction

The Scottish Independent Advocacy Alliance (SIAA) advocates for independent advocacy. We are the national intermediary organisation for independent advocacy in Scotland. SIAA promote, support, and defend the principles and practice of independent advocacy. Our aim is to raise awareness about the [value and impact of independent advocacy](#), and influence decision makers ultimately with a view to widen access to independent advocacy for all who need it in Scotland. Read more about [how SIAA advocates for independent advocacy](#).

The Scottish Independent Advocacy Alliance response is informed by engaging and consulting with members. As the only national organisation with a remit to promote, support and defend independent advocacy we have been tracking the provision, quality, availability, and accessibility of independent advocacy for many years. Our response to this review primarily focuses on the right to access independent advocacy and how we believe this right could be strengthened to help enhance the rights of people using mental health services. Independent advocacy is an important mechanism to defend the human rights of people using mental health services and independent advocates are often referred to as human rights defenders.

The Mental Health (Care & Treatment) (Scotland) Act 2003 was the first piece of legislation that gave people a right of access to independent advocacy. It placed a duty on NHS Boards and local authorities (LA) to ensure the availability of independent advocacy.

Independent advocacy happens either individually or collectively. To understand how independent advocacy, both individual and collective, works in practice please visit the [‘Independent advocacy in practice’](#) page.

SIAA and our members responded to the Independent Review of Learning Disabilities and Autism in the Mental Health Act (IRMHA) and would like this review to consider the recommendations made regarding independent advocacy, in the final report IRMHA made, which we support, including ‘A right

to independent advocacy on an opt-out basis’.

In our consultation with member organisation, we asked them to consider a number of issues including;

- How can we improve the right to access independent advocacy?
- How can the role of independent advocacy be strengthened? E.g. duty to refer to independent advocacy.
- How can we strengthen the recognition and role of collective advocacy?
- Should there be a specific reference to the role of independent advocacy in Supported Decision Making?
- How can we strengthen the recognition and role of non-instructed advocacy?
- Recognition of the preventative role of independent advocacy.

Improving access – members agreed that there are many more people covered by mental health legislation who would benefit from support from independent advocacy but who, for a number of reasons, do not know about independent advocacy and are not referred to an organisation. We are particularly concerned about people with learning disabilities, dementia and children and young people. We know that people with learning disabilities often do not know about independent advocacy and people with dementia are often unable to access independent advocacy without considerable help.

Also, due to limitations on funding advocacy organisations must prioritize people who are in dire situations including being in danger of losing their liberty, their children or face destitution. In these situations, independent advocacy has become an emergency service and is not as effective had a referral for the person been made prior to the crisis taking place.

Recommendation - Increased funding for advocacy organisations would help them to support more people and better meet the needs of people who need more intensive support.

Our regular research for [The Advocacy Map](#) shows there are significant gaps in the provision of independent advocacy across Scotland, including:

- children and young people
- people with dementia
- people with learning disabilities
- people with autism
- people within the prison system

Recommendation – gaps in the provision of independent advocacy need to address as a matter of urgency

Members agreed there should be a duty on several different professionals to refer individuals to IA, currently there appears to be confusion about who should make a referral and in which situation. Our members believe that anyone with a mental health issue should be told about independent advocacy and how to access it. People who are in receipt of care and support in the community or hospital should be referred to their local independent advocacy organisation.

Recommendation – create a duty to refer to independent advocacy

The SG has plans to produce guidance on Supported Decision Making, we would urge the SG to recognise the role independent advocacy organisations play in supporting people to make decisions.

Recommendation – include independent advocates as playing an important role in Supported Decision Making.

The Millan Committee recognised collective advocacy as an important mechanism for people with lived experience of using the mental health system to come together, share their experiences, lobby, and campaign to influence policy, practice, and legislation.

Recommendation – better investment into the growth and development of collective independent advocacy.

Strategic planning

- What else needs to change to strengthen strategic planning for independent advocacy?
- How would you improve the procurement and commissioning of independent advocacy in relation to mental health legislation?
- Currently most independent advocacy organisations are funded locally through NHS, LA or IJB funding, what conflicts of interest does this create?
- Should independent advocacy be commissioned locally or nationally?
- Are there other funding models we should consider?

We know from our research and work undertaken by the MWC since the MHA 2015 there is not enough strategic planning being undertaken in local areas. Currently most independent advocacy organisations are funded locally through NHS, LA or IJB funding with widely varying arrangements and the potential for conflicts of interest to arise. We know of member organisations who have used legitimate mechanisms to hold services to account and not had contracts renewed.

Recommendation – review funding arrangements of independent advocacy organisations and consider a national model for funding.

Monitoring, evaluation & regulation of IA

There currently is not any independent way of ensuring the quality of the independent advocacy being accessed by people across Scotland. Having independent infrastructure for the monitoring, evaluation and regulation of independent advocacy would better safeguard the people who access independent advocacy.

Recommendation – create a national mechanism for monitoring, evaluating, and regulating independent advocacy.

In England and Wales, the advocacy sector has a qualification for independent advocates working within the mental health and mental capacity legislation with the aim of ensuring the quality, skills and knowledge of individuals providing independent advocacy. Currently in Scotland, SIAA members are committed to using the [Principles, Standards & Code of Best Practice \(2019\)](#), in order to help maintain a consistency in practice across local areas. However, there is no national mandated quality mark to ensure that organisations are delivering advocacy to a recognised standard.

Recommendation – the SG should consider supporting the roll out of the advocacy Professional Practice Award developed by The Advocacy Project and Napier University.

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