



National Care Service (Scotland) Bill | December 2022

SIAA Response to Health, Social Care and Sport Committee

Introduction

The Scottish Independent Advocacy Alliance (SIAA) advocates for independent advocacy. As the only national organisation with a remit to promote, support and advocate for independent advocacy we have been following the provision, quality, availability, and accessibility of independent advocacy for over two decades. Our aim is to raise awareness about the [value and impact of independent advocacy](#), and influence decision makers with the aim of widening access to independent advocacy for all who need it in Scotland.

Independent advocacy is an important mechanism to defend the human rights of people. Independent advocates and collective advocacy groups are often referred to as human rights defenders. Independent advocacy happens either individually or collectively. To understand how independent advocacy, both individual and collective, works in practice please visit '[Independent advocacy in practice](#)'.

SIAA is a membership organisation that has members providing independent advocacy across Scotland. [SIAA members](#) are a diverse range of organisations and groups that provide independent advocacy to different groups and in a variety of settings including:

- individual independent advocacy in the communities, hospitals, and prison settings,
- organisations specialising in citizen advocacy,
- carers advocacy organisations,
- collective advocacy groups based in hospitals, care homes and the community, and
- organisations providing independent advocacy to remote and rural communities.

Each SIAA member works to the [Independent Advocacy Principles Standards and Code of Best Practice](#), which is the foundational document for independent advocacy in Scotland.

Response to questions from the Committee

SIAA welcome the explicit inclusion of independent advocacy in section 13 of the National Care Service Bill. The Bill is a vital opportunity to build the foundation of a coherent, consolidated and consistent approach to providing quality independent advocacy that is accessible to everyone that would use the National Care Service. With some key amendments to the Bill, which are outlined below, independent advocacy could help to uphold the Principles of the National Care Service Bill, enable the right to participation, and support an effective complaints process and routes to remedy.

Advocacy and complaints

Questions from Committee

- Is more detail about independent advocacy required in the Bill?
- Which legislation would be the most appropriate basis for providing independent advocacy services to people using NCS services? (for example: the Mental Health 2003 Act, the Social Security Act or the Patient Rights Act?)

Definition of independent advocacy

SIAA very much welcome the inclusion of independent advocacy within the Bill, particularly the inclusion of the term 'independent'. We would welcome an amendment to this terminology so that the Bill references an explicit definition of independent advocacy. This is an opportunity to provide a clear definition of independent advocacy in primary legislation, reducing confusion about what the term means and ensuring more consistent delivery of services. If a clear definition is not provided in primary legislation, Scotland is likely to see continued inconsistent delivery of independent advocacy – leading ongoing problems with varied delivery of services across different care boards and areas.

A definition agreed by SIAA and our members can be found in the Principles, Standards and Code of Best Practice, which is the foundational document for independent advocacy in Scotland. The definition states that independent advocacy should:

- Have structural, financial and psychological independence from others
- Provide no other services, has no other interests, ties or links other than the delivery, promotion, support and defence of independent advocacy.

This goes far beyond semantics - SIAA knows from our members how important the concept of independence is to people using independent advocacy and how critical the use of the word 'independent' is in positively shaping their perceptions of and engagement with

independent advocacy. If people feel the advocacy is related to or attached in any way to another system or service they also use, this can erode the ability to build trust.

Right of access to independent advocacy

The Feeley Report noted that “advocacy arrangements need to be improved, so that people with incapacity and others who are accessing supports and services have their needs, rights and preferences properly represented.”, in order to see this achieved SIAA would recommend several changes to the Bill to ensure that provision is strengthened and provided consistently across Scotland.

Independent advocacy is framed as part of Scots law and policy in a number of different ways, Appendix 1 gives example of this. The patchwork of independent advocacy found in legislation has created an inconsistent picture of independent advocacy across Scotland. SIAA members, who provide independent advocacy across Scotland, have consistently told us that the right of access alongside the duty to provide advocacy services placed on health boards in the Mental Health (Care & Treatment) (Scotland) Act 2003, provides the best access to independent advocacy for people. Where independent advocacy is mentioned in secondary legislation provision is less consistent and referral routes are unclear and less regularly used. Leaving independent advocacy detail to secondary legislation would set the course to create further confusion over independent advocacy access, provision and funding. Ultimately, this would mean people’s rights are not upheld and views not consistently considered in provision of their social care.

SIAA strongly recommend that independent advocacy is clearly defined and robust rights are created to access it within this primary legislation.

Independent advocacy and advice

SIAA would like to take this opportunity to highlight that independent advocacy and advice are mutually supportive, but distinct, avenues of assistance. Independent advocacy and advice are not interchangeable - they fulfil different functions and provide different levels of support. In addition, it is a fundamental tenet of independent advocacy that people accessing it are “protected from undue pressure, advice or others’ agendas” (SIAA Principles, 2019). Independent advocacy does not give advice but supports people or groups to access information so they can make their own informed decision.

Including independent advocacy in strategic planning

Sections 6 (Strategic planning by Scottish Ministers) and Section 7 (Strategic planning by care boards) should also include commitments to including the provision of independent advocacy services within strategic planning. Such action will enable the consistent implementation of these important services across Scotland, ensure that independent advocacy services are fully independent, and be a key part in the delivery of human rights based approaches. Independent advocacy organisations are rooted in their local communities and frequently led and influenced by local people and those with lived and

living experience of social care. Both strategic planning for independent advocacy and involving independent advocacy in the planning allows independent advocacy to meet the needs of specific communities, gaps in provision are addressed and planning is increasingly meeting the needs and upholding the rights of local people and their communities.

Transitions and self-directed support

Questions from Committee

- What changes would you like to see made to the Bill to strengthen the focus of the proposed national care service on prevention and early intervention?

SIAA would like to reiterate to the Committee that independent advocacy is essential for prevention and early intervention. Independent advocacy at its very heart enables people to participate. Without independent advocacy support, many, many people would simply be unable to participate in decisions that impact their lives. The earlier in social care decision making processes that independent advocacy can be involved the less likely it is that situations evolve to crisis point. By providing information and understanding, emotional and practical support, directly speaking up and being by the side of rights holders at the decision-making table, independent advocates directly enable the right to participate to be fulfilled.

It is important to note that the role of independent advocates in enabling participation not only helps the individual or group of rights-holders – it is very much a resource that enables duty bearers to meet their obligations around participation, meet goals around early intervention and prevention, enables best practice, and most of all makes for better, more efficient and more effective decision-making.

Transitions is often a key time in which independent advocacy can support people to consider their choices and plan for their futures, identifying this as a key point that requires independent advocacy would be useful for planning provision.

We would therefore suggest that changes made to the Bill as outlined above would support a focus on prevention and early intervention. Leaving detail on independent advocacy within the scope of secondary legislation would be a missed opportunity to create real tools to uphold the Principles within the Bill through consistent and quality independent advocacy.

Appendix 1 - Right to Independent advocacy in Scots law and policy

Independent advocacy is framed as part of Scots law and policy in a number of different ways:

- A right to (independent) advocacy for particular groups, e.g. for those with a mental disorder as set out in the Mental Health (Care & Treatment) (Scotland) Act 2003; for a disabled person accessing social security entitlements as set out in section 10 of the Social Security (Scotland) Act 2018
- A duty to provide advocacy services e.g. duty on health boards and local authorities to secure availability of advocacy services for those with a mental disorder as set out in Mental Health (Care & Treatment) (Scotland) Act 2003
- A duty on councils to consider the importance of independent advocacy services e.g. for adults at risk from harm as set out in the Adult Support and Protection (Scotland) Act 2007
- A duty to provide information about available advocacy services e.g. as set out in Social Care (Self-directed Support) (Scotland) Act 2013 where it specifically notes *independent* advocacy services; to children referred to a Children's Hearings as set out in the Children's Hearings (Scotland) Act 2011
- A duty to ensure that people can access the advocacy service e.g. in Mental Health (Care & Treatment) (Scotland) Act 2003
- The right for views expressed by advocates to be taken account of in decision-making e.g. Adults with Incapacity Act 2000
- A duty on Scottish Ministers to develop and publish service standards around provision of advocacy e.g. in the Social Security (Scotland) Act 2018
- A duty to allow advocates to take part in discussions or make representations on an individual's request e.g. Education (Additional Support for Learning) (Scotland) Act 2004
- A duty to ensure that advocacy support is available and free of charge when someone is going to a Tribunal or Hearing e.g. in the Education (Additional Support for Learning) (Scotland) Act 2009 or Children's Hearings (Scotland) Act 2011

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