



Independent Review of Inspection, Scrutiny and Regulation | December 2022

SIAA Response to Independent Review of Inspection, Scrutiny and Regulation

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 question

How can we ensure that people with lived and living experience of care and support services are able/supported to contribute to inspection, scrutiny, and regulation processes?

Currently some people have the right to access independent advocacy through Scots Law and Policy (see appendix 1). The proposed National Care Service Bill highlights the inclusion of a potential right to Independent Advocacy in Section 13 of the Bill. It highlights that Scottish Ministers may *‘by regulations make provision about the provision of independent advocacy services in connection with the services that the National Care Service provides’*.

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, this would include supporting people accessing care services participating and contributing to inspection, scrutiny, and regulation. This would support a human rights-based approach (using the PANEL principles – please see Appendix 2 for information on how independent advocacy supports the PANEL principles) and enable those using care services to hold others to account when they need to raise issues about their care and support to improve their outcomes. This approach would also enable people who are seldom heard to participate in the regulation, development, and improvement of care services.

Response to question

Do you feel there are services that are not currently subject to inspection, scrutiny and regulation that should be?

The National Care Service may include care and support services for people who experience mental ill health and their carers. The Mental Health Law Review recommended that a body come together to scrutinise mental health services including *“Healthcare Improvement Scotland, the Care Inspectorate, Audit Scotland, the Mental Welfare Commission, the Office of the Public Guardian, Public Health Scotland, the Scottish Public Services Ombudsman, and collective advocacy organisations”*. SIAA support the inclusion of collective advocacy to be fully involved in the scrutiny and support improvement of mental health services and outcomes for groups and individuals.

The Mental Health Law Review recommended that there was ongoing monitoring and continuing development of independent individual advocacy. There was a suggestion that a new or existing organisation is set up to monitor and support development of independent advocacy. Some members highlighted SIAA as the preferred organisation, other members highlighted a human rights regulation body or the Mental Welfare Commission.

SIAA believes that independent advocacy should be delivered consistently and to the highest possible standard. For this reason, the SIAA Principles, Standards and Codes of Best Practice were created by SIAA's membership to safeguard quality assurance across Scotland.

SIAA is keen to continue this line of work by engaging with the membership to further develop and implement a quality assurance framework which is linked to SIAA membership, that is regularly reviewed.

It is important SIAA, people with lived expertise and independent advocacy groups work together to develop an appropriate evaluation framework that demonstrates good practice and areas for improvements, in turn supporting high quality independent advocacy practice. There has already been significant past work in the development of the [SIAA Evaluation Framework](#) with SIAA membership. SIAA continue to develop and implement this work with members to create a quality assurance framework.

Response to question

How can we ensure that regulation and inspection processes are underpinned by a commitment to improving services?

Learning from peoples lived and living expertise of care services is vitally important to ensure actual improvements and desired outcomes for people using care services and their carers. The UN [Convention on the Rights of Persons with Disabilities](#) (CRPD) highlights one of the eight guiding principles is the full and effective participation and inclusion of people with disabilities in society. This includes equal and full participation in the improvement and development of care services. Collective advocacy and individual independent advocacy are ways that can support equal and full participation and enable service scrutiny and improvement to be led by people. SIAA would therefore like to see local independent advocacy funded to support regulation and inspection processes

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 scrutiny and improvement of services.

Independent advocacy can also support people and groups to raise their concerns earlier. This preventative approach means it is less likely 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 also 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 effective care and support.

Definition of independent advocacy

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. “This 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.”

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 shaping positively 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.

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

Independent advocacy is framed as part of Scots law and policy in several 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

Appendix 2 - Independent advocacy and the human rights PANEL principles

The internationally recognised PANEL Principles are of fundamental importance in applying a human rights-based approach in the practice of independent advocacy. They are a practical tool for describing what a human rights-based approach looks like in practice

Summary of the five PANEL principles and how independent advocacy links to them:

Participation

Everyone has the right to participate in decisions which affect their human rights. Participation must be active, free, meaningful and give attention to issues of accessibility, including access to information in a form and a language which can be understood.

The provision of independent advocacy is fundamentally about enabling people who may require help in speaking for themselves to participate in decisions that affect them, whether they be about healthcare, social activities, or legal processes.

Accountability

Accountability requires effective monitoring of human rights standards as well as effective remedies for human rights breaches. For accountability to be effective there must be appropriate laws, policies, institutions, administrative procedures, and mechanisms of redress in order to secure human rights.

Independent advocacy helps people to access a wide range of accountability mechanisms such as complaints processes, courts, and tribunals.

Non-discrimination and equality

A human rights-based approach means that all forms of discrimination in the realisation of rights must be prohibited, prevented, and eliminated. It also requires the prioritisation of those in the most marginalised situations who face the biggest barriers to realising their rights.

There are times when those in need of independent advocacy can be amongst some of the most vulnerable and marginalised people in our society – a human rights-based approach means we must pay particular attention to the protection and realisation of their rights. Sometimes, because of their support needs, people are discriminated against in access to services or in opportunities to express their views. People also have different identities based on their gender, ethnicity, religion, and many other grounds. Each of these identities should be respected when receiving any services, including independent advocacy.

Empowerment

A human rights-based approach means that individuals and communities should know their rights. It also means that they should be fully supported to participate in the development of policy and practices which affect their lives and to claim rights where necessary.

Independent advocacy plays an essential role in helping people to know and understand their rights, participate in legal processes, and hold decision makers to account.

Legality

A human rights-based approach requires the recognition of rights as legally enforceable entitlements and is linked in with national and international human rights law.

All public bodies in Scotland must be sure that their practices and procedures are grounded in human rights thinking. Under the law they must not breach the human rights of anyone. The situations which independent advocacy supports people are grounded in legally enforceable human rights, such as the right to private and family life, the right to liberty and the right to a fair trial. They are also grounded in non-legally enforceable, but internationally agreed human rights such as the right to health, the right to education and the right to an adequate standard of living. Making the explicit connection to human rights helps back up representations made on behalf of people.

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