



Independent advocacy and the Human Rights Bill

January 2023



Scottish
Independent
Advocacy
Alliance



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As we move into 2023 the Scottish Government's commitment to introduce a new human rights framework for Scotland is progressing. The framework will incorporate four international human rights treaties and the right to a healthy environment. Bringing our international human rights closer to home will drive a human rights culture and empower individuals and communities, this is the next step in Scotland's progressive human rights journey. Civil society has worked behind the scenes for years to create the context for change in Scotland. This culminated in March 2021 with the National Taskforce on Human Rights Leadership recommendations for a new Scottish Human Rights Incorporation Bill, and we hope to see the public consultation on this Bill in 2023.

For the Human Rights Bill to be effective in bringing about the realisation of human rights for people across Scotland, independent advocacy must be included to enable rights to participation, access to justice and enable everyone to have their voices heard.

Without clear mechanisms and tools built into the Human Rights Bill to make rights real for people, the Bill will not be effective. Independent advocacy is ready made to bring human rights to life. When properly resourced independent advocacy can create the context for people to be heard, services to meet their needs and justice to be realised.

Scottish Independent Advocacy Alliance

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.

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. To understand how independent advocacy, both individual and collective, works in practice please visit '[Independent advocacy in practice](#)'.

Definition of Independent Advocacy

Independent advocacy is about speaking up for, and standing alongside individuals or groups, and not being influenced by the views of others. Fundamentally it is about everyone having the right to a voice: addressing barriers and imbalances of power, and ensuring that an individual's human rights are recognised, respected, and secured. Independent advocacy supports people to navigate systems and acts as a catalyst for change in a situation.

Independent advocacy can have a preventative role and stop situations from escalating, and it can help individuals and groups being supported to develop the skills, confidence and understanding to advocate for themselves.

Why is 'Independence' so Important?

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.

Independent advocacy groups ensure by.

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

What is independent advocacy?

There are two types of independent advocacy – individual and collective.

Individual or one-to-one independent advocacy

This includes i) professional or issue-based independent advocacy, in which an advocate supports an individual to represent their own interests or represents the views of an individual if the person is unable to do so ii) citizen independent advocacy, in which an ordinary citizen is encouraged to become involved with a person who might need support in the community, in a voluntary capacity and iii) peer independent advocacy, in which a peer independent advocate has life experiences they share (for example, they may share age,

gender, ethnicity, diagnosis or issues) which they use to understand and have empathy, increasing self-awareness, confidence and assertiveness so that the individual can speak out for themselves.

Collective independent advocacy

Collective independent advocacy creates spaces for people to get together, support each other to explore shared issues and find common ground. It supports people to speak up about their experiences, values, and expectations. It enables people to find a stronger voice, to campaign and influence the agendas and decisions that shape and affect their lives.

Collective independent advocacy can help planners, commissioners, service providers and researchers to know what is working well, where gaps are in services and how best to target resources. It helps legislators and policy makers to create opportunities for people to challenge discrimination and inequality and helps people learn to become more active citizens. Collective independent advocacy groups can use a human rights-based approach to get change.

Role of independent advocacy

Independent advocacy is an important mechanism to defend the human rights of people; in other words, independent advocates and collective advocacy groups are 'human rights defenders'.

In our [briefing with Human Rights Consortium Scotland \(HRCS\)](#) from 2021 we discussed how independent advocacy protects human rights by;

- **Enabling a better understanding of rights;** a recurring theme of engagement around human rights is that people just do not know that they have rights. Independent advocates are an important source of education and information about rights, central to their role is informing people of their rights.
- **Enables routes to remedy and access to justice;** Article 8 of the Universal Declaration on Human Rights states that there must be effective remedy for when there has been denial of rights, and that this requires the remedy to be accessible to all. Independent advocates provide all of the information and support that someone needs to navigate the systems and processes of remedy.
- **Enables the right to participation;** 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 this 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 service that enables duty bearers to meet their obligations around participation, enables best practice, and most of all makes for better, more efficient and more effective decision-making.
- **Empowers rights-holders;** Human rights are all about power, and the sharing of that power between those impacted (rights holders) and those who are in a position to make decisions (duty bearers). Independent advocates work alongside

marginalised people and groups, supporting them to be empowered to take part in decision-making about their lives, and about policy and law making, on an equal basis.

Examples of independent advocacy upholding human rights

Independent advocates across Scotland work in a range of situations to support people to understand and realise their economic, social, and cultural rights. For example:

- The right to health – providing independent advocacy to an individual with substance use, supporting them to connect with addiction and mental health services.
- The right to education – providing independent advocacy to a young person requiring additional support, supporting them to access education that best meets their needs.
- The right to housing – a collective group of tenants coming together to clarify and understand their rights and communicate with their housing provider to address issues of concern.
- The right to social protection and social security – providing independent advocacy to a family from the Gypsy Traveller community, supporting them to access their entitlement to free school meals for their children.
- The right to take part in cultural life – providing independent advocacy to a woman with an intellectual disability, supporting her to challenge a local drama group which had excluded her from joining, without providing a justifiable reason.

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.

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.

Right to independent advocacy in Scots Law and policy

Independent advocacy is framed as part of Scots law and policy in several different ways. 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 adults. In [The Right to Advocacy Report \(2018\)](#) The Mental Welfare Commission highlighted the current access to independent advocacy is variable across the country for children and young people, resulting in children and young people not being able to access mental health advocacy support unless they are detained under the 2003 Act, or they meet other criteria.

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.

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
- A duty to inform people of independent advocacy services should they wish support in their journey through services e.g., Medication Assisted Treatment (MAT) Standards (8). Evidence based standards to enable the consistent delivery of safe, accessible, high-quality drug treatment across Scotland.

Independent advocacy for the future

Several independent reviews have made strong recommendations around strengthening independent advocacy in Scotland. Including the [Independent Review of Adult Social Care](#), the [Independent Review of learning disability and autism in the mental health act](#), and most recently the [Independent Review of the mental health legislative framework](#).

Recommendations include:

- opt out access to independent advocacy for certain groups at risk of their rights not being met.
- greater resource and right to access collective advocacy.
- individual and collective advocacy groups should have an explicit right to raise a court action for human right breaches.
- increased access to independent advocacy for infants, children, and young people.
- increased independent advocacy for carers.
- independent individual and collective advocacy are sustainably funded.
- culturally appropriate independent individual and collective advocacy provision.
- developing a national training programme for independent individual advocates.
- an existing or new organisation should have responsibility for monitoring and continuing development of independent individual advocacy.
- align legislation and policy to ensure consistency regarding the definition of Independent Advocacy.

Conclusion

Independent advocacy has a crucial role in supporting people and groups know, understand, and realise their everyday economic, social, and cultural rights. The recommendations for the further development of independent advocacy in Scotland is welcomed. However, to enable this to happen, sufficient resources need to be made available so those who require independent advocacy can access support as early as possible. Placing independent advocacy at the heart of the new human rights statutory framework will support participation and access to justice for those at the most risk of their rights not being met.

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