

Legal definition and components
of independent advocacy
SIAA Briefing

April 2024



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Background

SIAA are clear that in order for independent advocacy to work well and be resourced effectively it needs to be clearly defined in law and policy. For example, the strongest provision of independent advocacy comes under the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#) which has the most robust definition of independent advocacy in Scottish legislation to date. The Act defines advocacy as ‘services of support and representation made available for the purpose of enabling the person to whom they are available to have as much control of, or capacity to influence, that person’s care and welfare as is, in the circumstances appropriate’. It also lists who may not provide independent advocacy and therefore highlights the importance of the independent element of advocacy provision. Subsequent Acts which refer back to the 2003 Act for their definition of independent advocacy provide clarity and consistency for commissioners, independent advocacy organisations and advocacy partners.

[A Good Practice Guidance document from the Mental Welfare Commission](#) (p3-4) expands on the definition of independent advocacy under the Act as follows:

“The act also stipulates that advocacy must be independent ‘because it is vital that the role of the independent advocate is not compromised in any way’. It is now widely understood that for advocacy to be effective, there must be no conflict of interest that might jeopardise an advocate’s freedom to act. To be able to effectively advocate for a person, advocates have to be structurally and psychologically independent of the service system. An advocacy organisation should not

provide any service other than independent advocacy, so there are no barriers to the advocate being wholly able to represent the person's views."

SIAA believe expanding access to quality, grassroots independent advocacy for all those who need it can be achieved, in part, through strengthening the definition of independent advocacy in upcoming law and policy. A clear definition shapes the types of procurement and contracts that are created to provide independent advocacy, independent advocacy organisations themselves, independent advocacy practice and, most importantly, shapes the experience of advocacy partners and groups accessing independent advocacy to address injustices and human rights issues. The definition in the 2003 Mental Health Act is a starting point but can be improved upon. SIAA have been working for several years to influence decision makers to include the definition of independent advocacy in law and policy that is as close as possible to the definition in the [Independent Advocacy Principles, Standards and Code of Best Practice](#). The definition included in the 'Principles' document was shaped and agreed upon by SIAA members themselves and therefore provides the most robust and widely used definition of independent advocacy in practice.

The areas SIAA are seeking to influence around the definition of independent advocacy include, upcoming Bills (e.g. primary legislation for example the National Care Service Bill, Human Rights Bill and Learning Disability, Autism and Neurodivergence Bill), as well as further clarification and detail that will be covered in regulations, guidance and standards documents linked to Acts and other policy areas (e.g. UNCRC, Dementia, Mental Health, Substance Use and beyond).

Definition building blocks

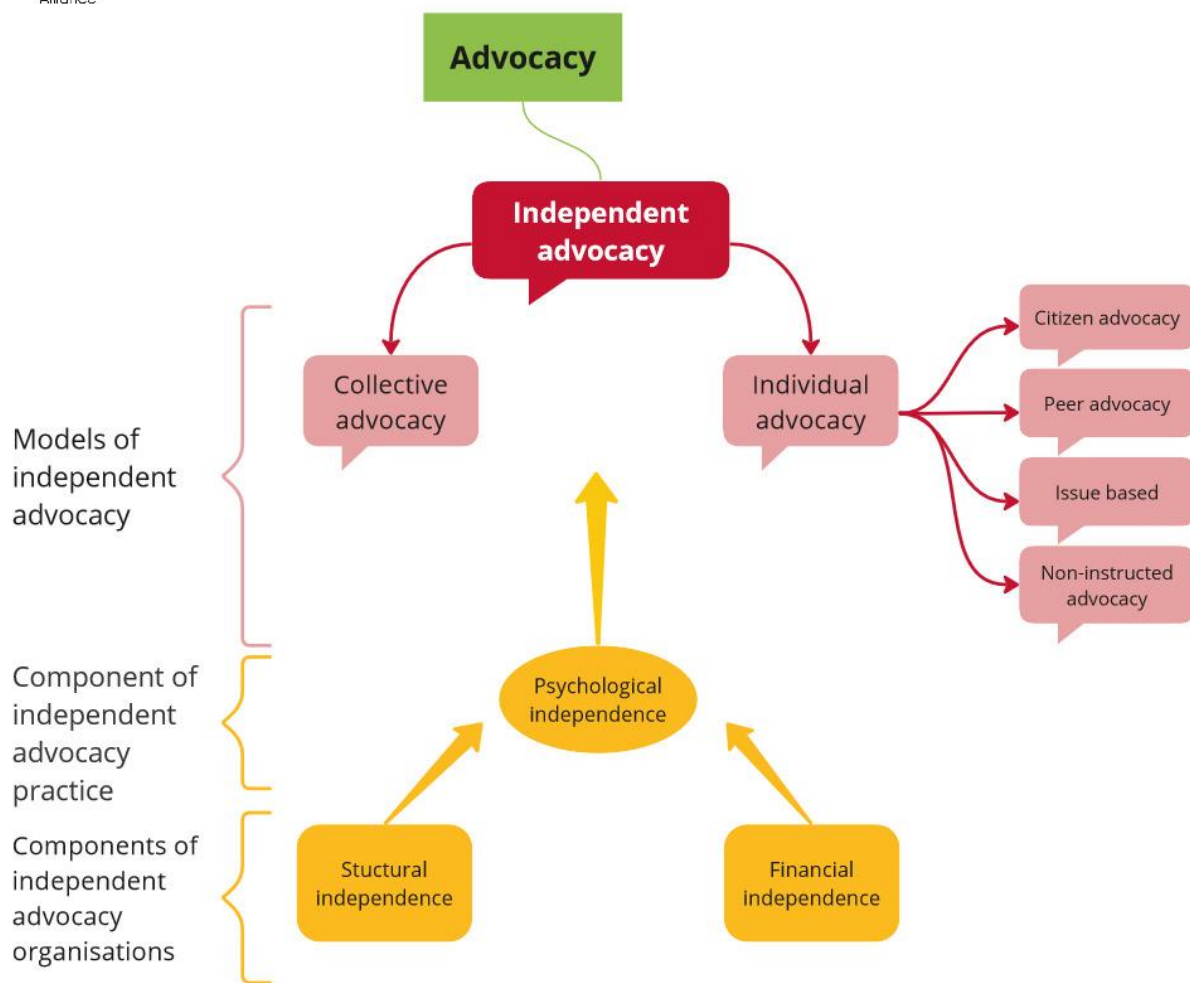
As expressed above, SIAA are clear that the components of independent advocacy identified by SIAA members through their collaboration on the [Independent Advocacy Principles, Standards and Code of Best Practice](#), should be the basis upon which our proposed definition is built. This definition has been agreed by membership and has been successfully reproduced once in policy in the [MAT Standards](#). This definition comprises of 'structural, financial and psychological independence' being the key components of independent advocacy. Structural and financial independence are fundamental to establishing and maintaining the independence of the organisation providing independent advocacy. Psychological independence is part of the practice of independent advocacy, enabling trust to be built with advocacy partners, as well as speaking to the

quality of independent advocacy provision. Additionally, psychological independence influences the organisational culture and values necessary for independent advocacy organisations.

The diagram below aims to illustrate the key components of independent advocacy described above.



Independent advocacy models and components



Independent advocacy definition proposals

In order for the definition of independent advocacy to be as robust as possible in law, SIAA are proposing that two of the three components of independent advocacy are outlined in primary legislation e.g. in Bills and Acts of the Scottish Parliament. The third component of independent advocacy is difficult to define in law and therefore SIAA propose that psychological independence is

included and expanded upon in regulations or standards that support the law and guidance documents that provide more detail on implementation. The definition is entirely derived from the definitions and foundational work that was completed with members for the 'Principles' document so maintains the agreed definition and components of independent advocacy.

Primary legislation

“Independent advocacy organisations or groups providing support and representation must have structural and financial independence from other organisations and services. An organisation providing independent advocacy must have structural and financial independence.

- **Structural independence** means an independent advocacy organisation or group is a separate organisation in its own right. For example, it is registered as a charity or company and has its own Management Committee of Board of Directors. An independent advocacy organisation only provides independent advocacy. The organisation must provide no other services, have no other interests, ties or links other than the delivery, promotion and support of independent advocacy.
- **Financial independence** means an independent advocacy organisation or group has its own source of funding that does not cause any conflict of interest and does not compromise the work it does.”

Guidance and Secondary legislation e.g. Regulations

In order to practice effective independent advocacy, an independent advocacy organisation or group must be structurally, financially and psychologically independent. Structural and financial independence are outlined in the Act.

The independent advocacy organisation or group should provide no other services, have no other interests, ties or links other than the delivery, promotion, support and defence of independent advocacy. Structural and financial independence support psychological independence. Independent advocates must have psychological independence through acting in the absence of undue influence and minimising conflict of interests. Psychological independence is fundamental to the practice of independent advocacy, meaning the primary loyalty and accountability of an independent advocate is to the advocacy partner and enables the independent advocate to better support a person to express their views. Psychological independence builds trust with an advocacy partner or group and shapes the nature of the advocacy being provided.