



National Care Service Stage 2 Call
for Views
SIAA Response

September 2024



Scottish
Independent
Advocacy
Alliance

SIAA Response | September 2024

In brief – why should independent advocacy be defined and strengthened in the NCS Bill?

Independent advocates are human rights defenders. For the National Care Service (NCS) Bill to be effective in bringing about positive change for people accessing social care and support, independent advocacy must be included to enable participation and increase accountability.

Without clarity about the definition of independent advocacy and the resources available to provide independent advocacy to people using NCS, the Bill will not be effective.

Independent advocacy is ready made to bring human rights to life. When sustainably resourced, independent advocacy expands understanding of human rights, enables accountability mechanisms and embeds participation creating the context for services to uphold right, understand peoples' views and feel truly listened to.

SIAA have a specific recommendation around draft amendment PCO103 and keeping the full term 'independent advocacy' in the Bill. SIAA also share further views below on strengthening independent advocacy within the Bill including a right of access to and a clear definition of independent advocacy.

What is 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 public services/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.

What is your view of the initial draft of the National Care Service Charter?

SIAA welcome the inclusion of independent advocacy within the National Care Service Charter and are pleased that it lays out the role of independent advocacy and the instances where it could help someone have their voice heard in relation to the National Care Service.

On page 7 of the draft Charter SIAA note that the Charter explains “a citizen advocate is someone that is not trained”. Although some citizen advocacy explains its approach by saying there is no formal training it is explained this way to distinguish it from independent advocacy workers who are employed to provide issue-based or collective advocacy. The wording in the Charter would not accurately reflect current provision. A citizen advocate is trained by the independent advocacy organisation, therefore it is more accurate to say that “a citizen advocate is a volunteer that uses their skills and talents to provide independent advocacy”. Several of our independent advocacy member organisations provide citizen advocacy and can provide more information about how citizen advocacy works if helpful. Similarly, peer advocates will have undergone training or learning in independent advocacy.

SIAA believe the section on independent advocacy could be strengthened with a clearer link to independent advocates being human rights defenders and supporting people to understand their choices. For example, it could be added to the sentence on page 7 (addition in bold) “understand your rights and any information about your support **including what choices you have**”.

SIAA are keen to support with further signposting that the document has a placeholder for in due course.

Do you have any other comments on the Scottish Government’s proposed draft Stage 2 amendments to the National Care Service Bill?

SIAA and member organisations’ involvement in NCS

SIAA welcomes the Committee giving people and organisations an opportunity to comment on the Scottish Government’s draft Stage 2 amendments through the Call for Views.

SIAA and our member organisations have worked for several years to influence the Bill around independent advocacy, for example we have;

- Responded to Stage 1 of the National Care Service Bill by providing [a written response](#) and [oral evidence to the Health, Social Care and Sport Committee](#)
- Information sharing with SIAA members about how to get involved in [co-design events](#) and the [stakeholder register](#)
- Coordinated with Scottish Government’s National Care Service Team to [hold cross government meeting with SIAA members to discuss independent advocacy and share views](#)
- [Supported Scottish Government to invite key stakeholders to meetings on different models of independent advocacy](#)
- [Attended nine meetings of the Expert Legislative Advisory Group \(ELAG\) representing independent advocacy](#)

Through all our work we have consistently highlighted the importance of independence to advocacy provision, sustainable resourcing for the sector, supporting local and grassroots providers of independent advocacy, the value of using different models of independent advocacy and the link that independent advocacy has in upholding human rights.

Views on draft amendments

SIAA have consistently been supportive of independent advocacy being included within the Bill. Section 13 of the Bill as first introduced was specifically about independent advocacy.

Unfortunately, the draft amendments published by the Scottish Government diluted the original wording around independent advocacy with amendment PCO103. The section of the Bill now includes independent advice and information. Whilst SIAA are fully supportive of the Bill including advice and information the amendment PCO103 removes the term ‘independent advocacy’ from the Bill which SIAA and our member organisations would strongly advise against.

The [letter from the Minister giving context for the draft amendments](#) highlights on pages 10 and 14 that the asks and contributions of SIAA and member organisations have been heard: “Members [of ELAG] were pleased to see independent advocacy included in the Bill. However, some members were concerned that current funding is not enough and to make meaningful improvements will need more resources. Some members suggested there is a lack of clarity on what regulations could be brought forward. They expressed their desire for an explicit right to independent advocacy. They also said there should be a duty requiring Scottish Ministers to make provision about independent advocacy to be included in primary legislation.” However, this has not been reflected in the draft amendments.

SIAA are hopeful that the draft amendment PCO103 can be easily rectified by including 'independent' before 'advocacy' i.e.

"Independent advice, information and independent advocacy

The Scottish Ministers may by regulations make provision about the provision of independent advice, information and independent advocacy services in connection with the services that the National Care Service provides."

Which would therefore change the wording in PCO103 to in section 13, page 7, line 18, after <independent> insert <advice, information and independent>.

This redrafting would emphasise the importance of independent provision of advocacy whilst also delineating between independent advocacy and advice. Whilst some independent advice providers may at times provide some advocacy during their work, independent advocacy would never provide 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. This distinction is crucial when considering how independent advice and independent advocacy are set out in law.

Additional amendment – definition of independent advocacy

SIAA are making several further recommendations around independent advocacy's inclusion in the NCS Bill.

SIAA is clear that for independent advocacy to work well and be resourced effectively it needs to be clearly defined in law and policy and understood by funders and commissioners as well as the advocacy partners it is available to¹. 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 to the 2003 Act for their definition of independent advocacy provide clarity

¹ [Legal definition and components of independent advocacy, SIAA briefing, 2024](#)

and consistency for commissioners, independent advocacy organisations and advocacy partners.

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, it can erode the ability to build trust.

As the Scottish Government is currently pursuing a longer-term Mental Health Law Reform programme which will likely introduce new legislation on Mental Health, SIAA would recommend that the National Care Service Bill includes its own definition of independent advocacy.

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.

In order for the definition of independent advocacy to be as robust as possible in law, SIAA propose that two of the three components of independent advocacy are outlined in primary legislation. The third component of independent advocacy is challenging to define in law as it is about the practice, values and culture of independent advocacy. SIAA therefore 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. Below is SIAA's recommendation of what should be included in the Bill to define independent advocacy.

"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.”

Additional amendments – right of access to independent advocacy

SIAA understand that the Bill is intended to be a framework Bill, and the Scottish Government are therefore intending to leave detail to regulations. However, several factors identified in the Feeley review² and elsewhere would support including a clear way for accountability to be built into the everyday practice of the NCS. We know that there is an aging population with increasing care and support needs, there is a huge impact that inefficient and inadequate social care and support has on the NHS, and poor experiences of care that people have to date mean that the NCS must tackle people’s ongoing frustration and poor experiences of a system that they feel doesn’t listen to them. Including a right of access to independent advocacy in primary legislation for the NCS would create the everyday accountability for people using care and support services that is so desperately needed.

Furthermore, several groups of people that would use the NCS will already have a right of access to independent advocacy under the Mental Health (Care and Treatment) Scotland Act 2003. The Act covers people with mental ill health, people with learning disabilities, people with dementia and autistic people who have a broad right of access to independent advocacy under the 2003 Act that does not necessarily need to link to mental health services or treatment. It would level the playing field for those using the NCS that do not fall under the 2003 Act to provide a right of access to independent advocacy in the Bill. Including this right would also create the context for increased supported decision-making, which is a key component of independent living that the Scottish Government is seeking to enable through the NCS.

Information about your organisation

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 examining the provision, quality, availability, and accessibility of independent advocacy for over two decades. Our aim is to raise awareness

² [Independent review adult social care Scotland, Derek Feeley, 2021](#)

about the value and impact of independent advocacy, and influence decision makers with the aim of widening access to quality 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 people and groups in a variety of settings including:

- individual independent advocacy in the communities, hospitals, forensic mental health, 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 Practice³, which is the foundational document for independent advocacy in Scotland. The Principles and Standards are provided in Appendix 3. We will provide more detail on how independent advocacy, both individual and collective, works in practice in our response. The Independent Advocacy Principles Standards and Code of Best Practice are intrinsically linked to the principles of Participation, Accountability, Non-discrimination and equality, Empowerment and Legality (PANEL). Independent advocacy groups have a human rights-based approach that support individuals and groups to consider how human rights laws may apply to their specific circumstances.

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³ [Independent Advocacy Principles, Standards & Code of Best Practice, SIAA, 2019](#)