



Children's hearings redesign  
consultation  
SIAA Response

October 2024



Scottish  
Independent  
Advocacy  
Alliance

# SIAA Consultation Response | October 2024

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## Introduction

Independent advocates are human rights defenders. For the redesign of Scotland's children's hearings system to be successful in protecting and upholding the human rights of children and families, independent advocacy must be strengthened. The Scottish Government outline their first three policy aims in the consultation paper as;

- To ensure that the children's hearings system meets the needs, and respects the rights, of all the children and families it serves.
- To ensure that the processes of the children's hearings system support children and families to properly participate and engage - with the referred child always at the centre.
- To minimise the obligations and expectations on children and families to prepare for, and to attend proceedings - while preserving essential rights and participation protections.<sup>1</sup>

Independent advocacy is ready made to support the realisation of these aims. 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 children and families' views and for people to feel truly listened to and included.

SIAA welcome the mention of advocacy in the consultation under 5.5 The offer of advocacy to the child.<sup>2</sup> However we are disappointed that 'independent advocacy' has not been named or defined. This is concerning as we know from our members who deliver independent advocacy within children's hearings system that the Scottish Government has enabled high quality funding, collaboration and delivery of independent advocacy. SIAA call on the Scottish Government to implement SIAA's specific recommendations, namely:

1. Include an explicit right of access to independent advocacy for children within legislative change
2. Use guidance to adopt an 'opt-out' signposting pathway for independent advocacy provided in connection with children's hearings

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<sup>1</sup> [Children's Hearings Redesign Consultation, Scottish Government, p7](#)

<sup>2</sup> [Children's Hearings Redesign Consultation, Scottish Government, p19](#)



3. Adopt the definition of independent advocacy agreed by SIAA members and include it in redesign guidance and any future legislation connected with children's hearings
4. Increase understanding of independent advocacy as a supported decision-making tool, particularly for very young children and babies.
5. Sustainably increase provision of and resourcing for independent advocacy organisations.

### 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

SIAA and our members are experts in independent advocacy, we therefore do not hold particular views on many elements of the proposals for redesign and focus specifically on independent advocacy's role within the children's hearing system in our response.

### Part 4. The Principles of a Redesigned Children's Hearings System

**Question: What principles should underpin a redesigned children's hearings system and why?**

SIAA welcome the Scottish Government consulting on the principles that underpin a redesigned children's hearings system. SIAA believe the principles should include clear reference to children's rights, particularly Article 12 of the United Nations Convention on the Rights of the Child (UNCRC). Article 12 gives children the right to express their views and

be heard in matters that affect them<sup>3</sup>. This would support creating a system that centres gathering views from children and their families as well as encouraging and enabling participation. As described in the ‘Hearings for Children’ report adopting an inquisitorial approach for children’s hearings necessitates children and young people’s actively participating in discussions and contributing to decision-making processes<sup>4</sup>.

The Hearings for Children report further states that ‘There must be a clear understanding at all levels of a redesigned Children’s Hearings System about what children and families’ rights are and how they should be accessed and upheld—not least by children and families themselves. This includes ensuring that there are structures and frameworks in place to let children and families know about their entitlements to legal aid, legal representation, and advocacy.’<sup>5</sup>

One of the most effective ways to ensure that children’s voices are heard and taken seriously is increasing access to and understanding of independent advocacy. Independent advocates are human rights defenders. The role is unique in that it does not work in best interests and actively minimises conflicts of interest and undue influence. An independent advocacy worker supports people to have their voice heard and specific views taken seriously. SIAA member organisations that have provided independent advocacy for children’s hearings have frequently shared how valuable the independent aspect of independent advocacy is to children interacting with the hearings system.

SIAA do not hold a particular view on whether legislation should be brought forward, although we stress that in the case that a Bill is developed independent advocacy must be included in that primary legislation. We will go into more detail later in our response about the importance of the right of access to independent advocacy.

Scotland is very fortunate that independent advocacy is already well established across many local areas and has worked successfully for decades to enable participation in decision-making for those with access. We will go into more detail in our response to subsequent questions about the value of increasing access to independent advocacy so it

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<sup>3</sup> [UNCRC simplified articles, Children and Young People’s Commissioner Scotland](#)

<sup>4</sup> [Redesign Report, Redesign Report \(thepromise.scot\)](#)

<sup>5</sup> [Redesign Report, Redesign Report \(thepromise.scot\)](#)

can make a redesigned hearings system that is inquisitorial and centres children's views a reality.

## Part 5. Before a Children's Hearing

**Question: What elements of language in the existing referral criteria need to be updated, if any?**

- 'control'?
- 'treatment'?
- other?

SIAA support changing the language in existing referral criteria particularly to remove 'control' which is not in the spirit of upholding rights and enabling participation in decision-making. SIAA encourage the Scottish Government to use the language established through human rights wherever there is opportunity to, particularly in light of UNCRC incorporation into Scots law.

### Part 5.3. Participation and Attendance

**Question: What steps could be taken to support the child's participation and protect their rights, if they choose not to attend their hearing?**

SIAA suggest that where a child chooses not to attend their hearing and they have an independent advocacy worker, an option for the child to feed in their views via the independent advocacy should be offered. An independent advocate can, when instructed by their advocacy partner attend meetings in their place to feed in their views. This would only be the case if the child has clearly expressed this as their wish and there has been sufficient time for the independent advocacy worker to gather the child's views and consent to share them.

## Part 5.4. Voices of very young children

**Do you agree that particular arrangements should be made to capture and share the voices and experiences of very young children in a redesigned children's hearings system?**

**o If so, what should those arrangements be?**

SIAA suggest that non-instructed advocacy for very young children and babies should be made available. Several of SIAA's member have been developing best practice and training on non-instructed advocacy for very young children and babies over the last few years. This is a growing area of expertise that aligns with UNCRC implementation. SIAA believe the Scottish Government should support the organisations working in this area. It is important that professionals working within the children's hearings system and referrers to it, understand the importance of independent advocacy for very young children and babies. Especially why the independent aspect of the role is so crucial. We go into detail in the next section about the various key aspects of independent advocacy that contribute to its value.

## Part 5.5 The offer of advocacy to the child

**Question: Should the focus and wording of section 122 of the 2011 Act be reformed to reflect an earlier, more agile and flexible approach to the offer of advocacy to the child?**

SIAA support an earlier, more agile and flexible approach to the offer of advocacy to the child. SIAA encourage the Scottish Government to go further than this and make a strong commitment to supporting a child's views to be heard by enshrining the right to independent advocacy in any future legislation for children's hearings.

SIAA have 5 key steps we would recommend ensuring a redesign hearings system is rights focussed. Many of these calls are supported by recommendations from independent reviews in various policy areas including the Scottish Mental Health Law Review (SMHLR), which proposed consolidating and aligning policy and legislation to ensure consistency regarding the definition of independent advocacy, the right to access this and how it is

commissioned and funded.<sup>6</sup> SIAA's asks centre around strengthening independent advocacy to enable Article 12 of the UNCRC to be realised for children, they are:

1. Include an explicit right of access to independent advocacy for children within legislative change
2. Use guidance to adopt an 'opt-out' signposting pathway for independent advocacy provided in connection with children's hearings
3. Adopt the definition of independent advocacy agreed by SIAA members and include it in redesign guidance and any future legislation connected with children's hearings
4. Increase understanding of independent advocacy as a supported decision-making tool, particularly for very young children and babies.
5. Sustainably increase provision of and resourcing for independent advocacy organisations.

For SIAA and our member organisations - 'the strongest protection against and remedy for rights infringements is independent advocacy'.<sup>7</sup> The unique elements of the independent advocacy role described below help to make the case for including a right of access to independent advocacy in future primary legislation for the children's hearings system and supporting guidance.

### **Independent advocacy, risk and 'best interests'**

Independent advocacy does not work in a person's 'best interests'. People often think that independent advocacy is about working in the best interests of individuals. In fact, sometimes independent advocacy is about supporting people to explore, understand and express something that is not in their own best interests, that may be risky, but is nonetheless what they want. Often professionals and organisations make decisions that are in the best interests of an individual because they have a duty to do so and must consider the risk for the person. Independent advocacy does not have such a legal duty. An effective

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<sup>6</sup> [Scottish Mental Health Law Review, p137](#)

<sup>7</sup> [Scottish Government Moving On from Care into Adulthood Consultation Response, Who Cares? Scotland, p8](#)



independent advocate needs to challenge, question and hold professionals to account when best interests are given as a reason for decisions made about their advocacy partner.

### **Independent advocacy and conflicts of interest**

It states in the Independent Advocacy Principles, Standards and Code of Best Practice that independent advocacy is as free as possible from conflicts of interest, being completely separate from service providers and funders and with the organisation involved providing no services other than advocacy. It is structurally, financially and psychologically free from interests such as being a provider of services, a gatekeeper of services, a funder of services, a statutory body or family and friends.<sup>8</sup>

### **Independent advocates do not provide advice**

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 and policy.

### **‘Independence’ of independent advocacy**

Independence for ‘independent advocacy’ has three components - structural, financial and psychological. 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

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<sup>8</sup> [Independent Advocacy Principles, Standards & Code of Best Practice, p16](#)

advocacy provided. Additionally, psychological independence influences the organisational culture and values necessary for independent advocacy organisations. 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. We go into more detail later in this response about why it is important to include a clear definition of independence in legislation and guidance.

### The unique role of independent advocacy

These foundational elements of the independent advocacy role that allow the focus to be on supporting the person to have their voice heard - enables it to be a mechanism for empowering individuals and groups to make decisions for themselves.

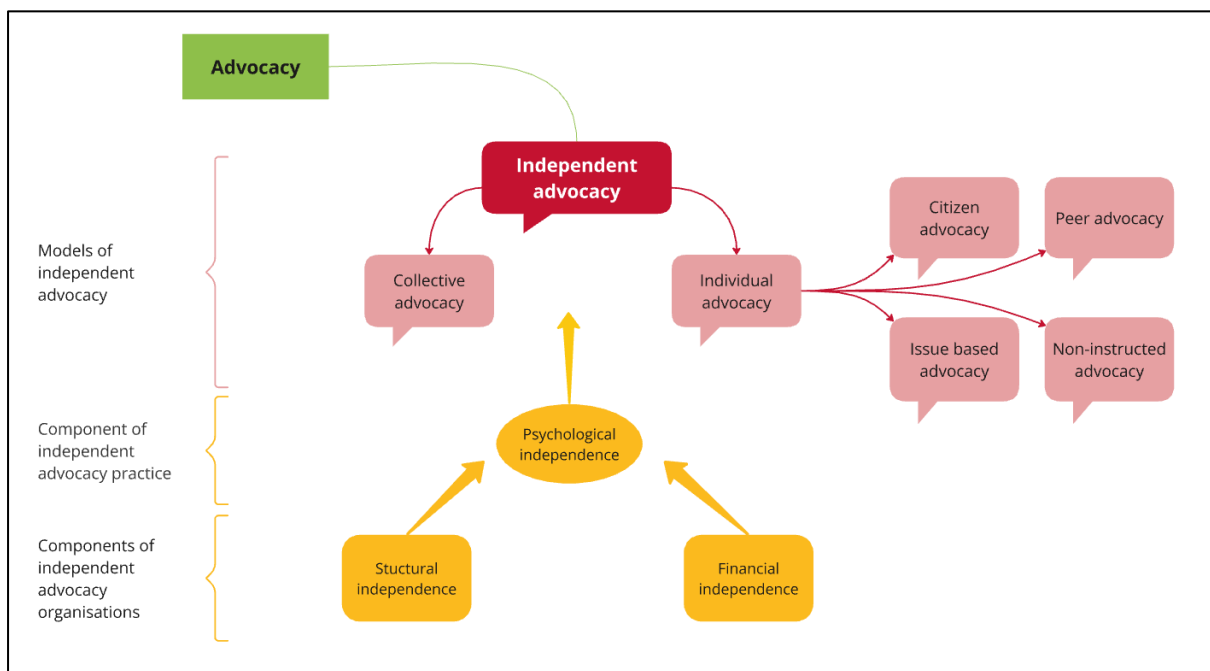
SIAA suggest that learning can be drawn from supported decision-making practices for adults and some applied to enabling participation for children interacting with the hearings system. The SMHLR points to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) Committee's General Comment Number 1 in which it sets out informal and formal means by which supported decision-making can practically be provided. These include:

- Support from one or more trusted persons, peer support and independent advocacy
- Assistance with communication as appropriate to the needs of the individual, particularly for those who use non-verbal forms of communication to express their will and preferences
- Advance care planning – including providing support to a person to complete an advance planning process.
- Specialist support in legal and administrative proceedings

- Communities and support (collective advocacy)<sup>9</sup>

Apart from ‘specialist support in legal and administrative proceedings’, independent advocacy is part of or can support everything listed above. Independent advocates support people in court processes or when speaking to legal professionals but would not provide advice, including legal advice. SIAA member organisations who deliver independent advocacy regularly support people with advanced care planning or advanced statements. Independent advocates often undertake specialist training in communication, for example Talking Mats, to ensure that they can gather views effectively. Different models of independent advocacy are also mentioned above e.g. collective advocacy.

### Models of independent advocacy



Above is a diagram of independent advocacy components and models

<sup>9</sup> [Chapter Six: From provisions to practice: implementing the Convention – Legal capacity and supported decision-making, UN](#)

**Question. How should the rights and the views of children and young people of all ages, including very young children, be better represented in the children’s hearings decision making?**

Independent advocacy is already provided in the children’s hearings system to great success. SIAA suggest that to better represent the rights and views of children in decision-making understanding of and access to independent advocacy should be increased.

Independent advocacy itself has been developed in Scotland for over three decades with the expertise of independent advocacy organisations, SIAA and advocacy partners and groups. The children’s hearings system redesign is an important opportunity for the Scottish Government to commit to practically realise human rights by increasing people’s access to independent advocacy. A right of access in primary legislation would help guarantee this.

**1. Include an explicit right of access to independent advocacy for children within legislative change**

SIAA recommend that children within the hearings system should have a right of access to independent advocacy. This would ensure that in cases where there are conflicts of interest, capacity or communication barriers an independent advocacy worker, in some cases working in a non-instructed manner, would enable the child’s views to be heard.

Currently, only some people have the right to access independent advocacy in Scots law. The Mental Health (Care and Treatment) (Scotland) Act 2003 gave people the most significant access to independent advocacy. Under Section 259 of the Mental Health (Care & Treatment) (Scotland) Act 2003 there is a legal right to access independent advocacy for everyone with a ‘mental disorder’ (as defined by the Act) as per s328 of the Act<sup>10</sup>. However, as highlighted by the Mental Welfare Commission in their 2018 report *The Right to Advocacy*, the way the funding has been distributed in Scotland often means people subject to statutory processes under this legislation are prioritised when accessing independent

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<sup>10</sup> [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003, section 259](#)

advocacy<sup>11</sup>. This means people not subject to compulsory treatment may have to wait or may not have access to independent advocacy at all.

The way independent advocacy was written into various laws and policies, and has subsequently been resourced, has meant both a widening of access to independent advocacy but also a funnelling of independent advocacy provision, linking it to statutory processes (e.g. a Mental Health Tribunal) in the minds of both advocacy partners and public services. This has meant independent advocacy cannot fulfil its potential in the context of early intervention and prevention or enable participation and supported decision making to the extent it could. The gaps in provision and barriers to accessing independent advocacy, despite the right in law was noted in the Independent Review of Learning Disabilities and Autism in the Mental Health Act which highlighted that although autistic people and those with an intellectual disability have the right to access independent advocacy under the 2003 Act, the reality is that people do not have equal access<sup>12</sup>. The SMHLR subsequently identified that only around 5% of people who have a right to independent advocacy actually access it.<sup>13</sup> It is important to note that the right of access in the 2003 Act includes children. SIAA research for The Advocacy Map shows there are significant gaps in the provision of independent advocacy across Scotland, including:

- children and young people
- people with dementia
- people with learning disabilities
- autistic people
- people within the prison system
- unpaid carers<sup>14</sup>

Despite these gaps, we know from our member organisations local commissioning that the Mental Health Act has consistently remained the area that has the best provision due to the right of access and duty to provide on Health and Social Care Partnerships that exists in law. Provision under other pieces of legislation that only mention independent advocacy is even

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<sup>11</sup> [The Right to Advocacy, MWC, p5](#)

<sup>12</sup> [Independent Review of Learning Disability and Autism in the Mental Health Act](#)

<sup>13</sup> [Scottish Mental Health Law Review, p136](#)

<sup>14</sup> [SIAA Advocacy Map: Sustainability of Independent Advocacy in Scotland, p14](#)



poorer. **For this reason, SIAA urge the Scottish Government to include a right of access to independent advocacy in any future legislation for the children’s hearings system.**

Additionally, SIAA recommend that independent advocacy involvement should be a key marker for monitoring where a child’s views have been gathered and shared. And therefore, where their Article 12 rights have been upheld. In order to use independent advocacy as a key monitoring tool for understanding if views are being heard and taken seriously, people must know that the independent advocacy they receive is of high quality. SIAA and its member organisations have recently begun work on understanding what quality independent advocacy entails and would welcome further discussion with the Scottish Government around this.

**2. Use guidance to adopt an ‘opt-out’ signposting pathway for independent advocacy provided in connection with children’s hearings**

SIAA recommend that a system of opt-out provision is developed in guidance for children’s hearings, and this is sustainably resourced so grassroots independent advocacy organisations can consistently provide independent advocacy to those under the Act.

**3. Adopt the definition of independent advocacy agreed by SIAA members and include it in redesign guidance and any future legislation connected with children’s hearings**

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 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

comprises of 'structural, financial and psychological independence' being the key components of independent advocacy, as described earlier in our response.

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. 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 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.

### **Terminology**

Following on from our comments above on defining independent advocacy to promote quality, as a comment on independent advocacy as a whole, we urge the Scottish Government and other stakeholders to discuss ‘independent advocacy’ rather than ‘advocacy’. We know that there is a need for increased understanding around what independent advocacy is. A shared and clear definition of independent advocacy is vital for progressing this work (which SIAA and our members are keen to support given the extensive work we have done in this area). Part of clarifying what independent advocacy is entails consistently using the term ‘independent advocacy’ instead of just advocacy. This helps to differentiate it from other types of advocacy that are not independent or provide different functions, for example advocacy work relevant to national campaigning or the law. SIAA fully recognise the value of advocacy in its different forms but suggest the value of different forms of advocacy cannot be recognised without being clear about what is being discussed.

#### **4. Increase understanding of independent advocacy as a supported decision-making tool, particularly for very young children and babies.**

Non-instructed advocacy is a model particularly relevant to the children’s hearings system, especially for some disabled children and very young children and babies as it helps someone that cannot instruct an independent advocate have their rights upheld. Non-instructed advocacy for adults is well established in Scotland and happens when there are

issues with a person's capacity perhaps due to dementia, or limited communication due to a physical disability or a learning disability. In such situations a non-instructed advocate seeks to uphold their advocacy partner's rights and ensure that decisions are taken with full consideration of their unique preferences, rights and perspectives.<sup>15</sup> Independent advocates working in the non-instructed model of independent advocacy use the SIAA Non-instructed Advocacy Guidelines<sup>16</sup> as well as the Adults with Incapacity Resource Hub<sup>17</sup> written by independent advisor and ex Public Guardian Sandra McDonald specifically for independent advocacy use. As noted in our answer to a previous question SIAA member organisations are developing new non-instructed best practice learning materials for providing non-instructed advocacy to very young children and babies. SIAA recommend that expertise in non-instructed advocacy from SIAA and its member organisations is sought by the Scottish Government as practice is developed and redesign is implemented.

When the Scottish Government is developing its understanding of supported-decision making, consideration should be given to the extra time and resource required for non-instructed advocacy practice. The SIAA Non-instructed Advocacy Guidelines say non-instructed advocacy is about:

- Where possible, spending time getting to know the advocacy partner, observing how the partner interacts with others and their environment and building a picture of the partner's life, likes and dislikes.
- Trying different methods of communicating with the partner.
- Gathering information from the advocacy partner through a variety of measures. This may include identifying 'past wishes' or any Advanced Statement made.
- Speaking to the significant others in the partner's life.
- Ensuring that the partner's rights are respected.
- Ensuring that account is taken of the partner's likes and dislikes when decisions are being made and that the partner is enabled to make choices as far as is possible.
- Ensuring that all options are considered, and no particular agenda is followed.

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<sup>15</sup> [Independent Advocacy Principles, p17](#)

<sup>16</sup> Available to SIAA member organisations

<sup>17</sup> Available to SIAA member organisations

Not all of the activities are appropriate or relevant for very young children or babies, but these help to illustrate the extra time and expertise that is required of independent advocacy in these instances.

#### 5. Sustainably increase provision of and resourcing for independent advocacy organisations.

SIAA research for The Advocacy Map found that 71% of respondents (all independent advocacy organisations) identified groups with an unmet need for independent advocacy through approaches to their resource from people who don't meet their existing criteria for access. In addition, 64% identified other provision that was lacking.<sup>18</sup> As detailed earlier in our response to this question few people with the right to access independent advocacy have that right realised. This reality is coupled with independent advocacy organisations being under increasing financial pressure in recent years, operating long waiting lists and supporting advocacy partners experiencing increasingly complex barriers to accessing their rights. In order for independent advocacy to fulfil its potential to enable supported decision-making it must have increased resources and clearer commissioning and funding practices.

SIAA member organisations that deliver Children's Hearings independent advocacy have consistently noted how well the national Scottish Government funding works for independent advocacy organisations as well as the children accessing independent advocacy. The independent advocacy is delivered by local independent advocacy organisations with the local organisations coming together regularly to develop best practice guidance and share experiences to develop the work locally and nationally. SIAA members that provide Children's Hearings independent advocacy have regularly told us how valuable the Children's Hearings Advocacy Expert Reference Group (ERG) is. The ERG is chaired by Scottish Government and brought together providers, SIAA, Children's Hearings Scotland (CHS), Scottish Children's Reporter Administration (SCRA) and key stakeholders including Social Work Scotland, the Law Society of Scotland, Centre for Children's Care and Protection (CELCIS), Centre for Youth and Criminal Justice (CYCJ), Clan Childlaw, and Scottish Child Law Centre. Together this group was able to identify local issues and work together to

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<sup>18</sup> [SIAA Advocacy Map: Sustainability of Independent Advocacy in Scotland, p14](#)



develop a National Practice Model, develop learning and troubleshoot rights infringements to increase consistency of high-quality provision across the country. The improvement for children going through the Children's Hearings system and receiving independent advocacy in having their rights upheld is reflected in the Hearings System Working Group's Redesign Report from independent chair Sheriff Mackie, 'this provision is positive, and [we] recognise its significance for children'<sup>19</sup>

SIAA recommend that Scottish Government continue with this approach as it fosters shared best practice and enables rights to be realised.

As noted earlier in our response, SIAA also suggest that providing independent advocacy to those within the children's hearings system could become a monitoring tool for understanding where Article 12 is being upheld. Due to its unique and clear role independent advocacy provision could be monitored nationally to see where children's views are being heard and therefore where Article 12 of the UNCRC is being realised for children. This monitoring would be more straightforward if a national funding model for local provision of independent advocacy is continued. It would also be a useful measurement for a Human Rights monitoring tool that civil society organisations and rights holders hope to see developed in Scotland. SIAA suggest that as independent advocacy is a clear way to monitor whether Article 12 of the UNCRC and UNCRPD is being realised, the independent advocacy must be consistently high quality. SIAA have recently embarked on two projects; a national learning platform for independent advocacy and a quality project to explore what quality independent advocacy means and how this can be championed. SIAA are keen to develop these pieces of work to support our members to continue and increase provision of high-quality independent advocacy.

In summary, the rights and the views of children and young people of all ages, including very young children, could be better represented by increasing access to independent advocacy.

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<sup>19</sup> [Hearings System Working Group's Redesign Report, p32.](#)

**Question: Should there be a statutory obligation to support the sharing of information to advocacy workers, and other people who can help children and families to understand their rights?**

SIAA is supportive of this suggestion. With the child's explicit permission, independent advocates should be able to access information that is relevant to their role in a timely manner. This will enable children with support from their independent advocate to understand relevant information which will enable their participation and views to be central to the children's hearings. Where independent advocacy is non instructed, and the child cannot give explicit permissions; independent advocates should have access to the information relevant to their role to enable the child's participation, supported decision making and ensure the views of the child are heard, understood and taken into account. At present children share their information with their independent advocate. This means that independent advocates may not have time to digest and understand what is written prior to meeting with the child to discuss for example the ground for referral. There could be other barriers in place that means a child may not be able to share their information timeously with their independent advocate, which may reduce their rights by not enabling full participation and access to justice through the children hearing system. Having the information sharing process part of the statutory obligation would enable children's rights to be central enabling the practical outworking of Article 12 within the UNCRC.

### Part 5.6 Amplifying children's voices throughout the process

**Question: Do you support the creation of a statutory process, undertaken by the children's reporter, to record the capturing of children's views and participation preferences?**

SIAA strongly support the creation of a statutory process to record the capturing of children's views and participation preferences. Independent advocacy is already a feature of the system that supports children and young people to share their views and participate in hearings and decision-making. It is vital that independent advocacy is included in the statutory processes, with the monitoring of the opt-out offer of independent advocacy part of the process.

## Part 6.4 Children's views within Reporter investigation and decision making – a post-referral discussion?

### **Question: Who else, if anyone, should attend a post-referral discussion?**

SIAA do not hold a particular view on whether a post-referral discussion should be offered. However, if this does become part of practice and child or family's independent advocacy worker should be allowed to attend the post-referral discussion. This should only be if it is the express wish of the child or family for this to happen. It is important to note that the child would have a separate independent advocacy worker than the adult family member, where the adult has an independent advocate. Conflicts of interest should be minimised around this, so the use of the primary and alternate provider in each local authority area should be considered.

## Appendix 1: Scottish Independent Advocacy Alliance (SIAA) and our members

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 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 Practice, which is the foundational document for independent advocacy in Scotland. The Principles and Standards are provided in Appendix 2. 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.

## Appendix 2 – Principles and standards of independent advocacy

**Principle 1: Independent advocacy is loyal to the people it supports and stands by their views and wishes.**

- Standard 1a: Independent advocacy follows the agenda of the people supported regardless of the views, interests, and agendas of others.
- Standard 1b: Independent advocacy must be able to evidence and demonstrate its structural, financial, and psychological independence from others.
- Standard 1c: Independent advocacy provides no other services, has no other interests, ties, or links other than the delivery, promotion, support, and defense of independent advocacy.

**Principle 2: Independent advocacy ensures people’s voices are listened to and their views are taken into account.**

- Standard 2a: Independent advocacy recognises and safeguards everyone’s right to be heard.
- Standard 2b: Independent advocacy reduces the barriers people face in having their voice heard because of communication, or capacity, or the political, social, economic, and personal interests of others.

**Principle 3: Independent advocacy stands up to injustice, discrimination, and disempowerment.**

- Standard 3a: Independent advocacy recognises power imbalances or barriers people face and takes steps to address these.
- Standard 3b: Independent advocacy enables people to have more agency, greater control, and influence.
- Standard 3c: Independent advocacy challenges discrimination and promotes equality and human rights. Find out more about independent advocacy and how it works in Scotland from the Independent Advocacy Principles, Standards and Code of Best Practice.



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