



# 'Moving on' from Care into Adulthood: Consultation SIAA Response

October 2024







## SIAA Response | October 2024

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# Scottish Government Moving on from Care into Adulthood Consultation

In brief - why should independent advocacy be strengthened for those 'moving on' from care into adulthood?

Independent advocates are human rights defenders. To Keep the Promise by 2030 independent advocacy must be improved for care experienced people to enable rights to participation, access to justice and increase accountability.

The Scottish Government's aim in this area is for all people with care experience to get the information and support they need during the transition out of care and into adulthood. Without clarity about the definition of independent advocacy and the resources available to provide independent advocacy for people 'moving on' from care into adulthood, the Scottish Government will not be successful in this aim.

### About 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.

## Accessing information, services and support

**Question 3. How can we ensure young people receive the right support and guidance to build the life skills they need for adulthood before they move on from care? Please provide suggestions.**

SIAA recommend that 'opt out' provision of independent advocacy is provided for care experienced people. This would support a human rights-based approach to moving on from care.

SIAA support Who Cares? Scotland's view that 'the strongest protection against and remedy for rights infringements is independent advocacy' and share their concern that policy should not rely on the idea of every young person having a 'trusted adult'. A 'trusted adult' cannot fulfil the role of independent advocacy. Some trusted adults would be able to advocate for a young person if that is the young person's preference however this is not independent and would have conflicts of interests, mixed understanding of rights and options and may stray into advice.

We are supportive of a range of options and supports being available for young people before they move on from care and after they have left care, for as long as is needed. Independent advocacy is essential within those options. Independent advocacy provision must be available across all local authorities, ensuring that young people in rural areas have the same opportunities as those in less remote and rural locations.

### **Independent advocacy's unique role**

The role of the independent advocate is unique in that it does not work in best interests and is as free as possible from conflicts of interest. The Independent Advocacy Principles Standards and Code of Best Practice state that: 'Independent advocates, whether paid or unpaid, are clear that their primary loyalty and accountability is to the people who need

them. To be on someone's side, advocates have to be structurally, financially and psychologically independent of the service system, agencies providing services and local or national government. Independent advocates stand in a different place and see things from a different perspective.<sup>1</sup> The trust that is built between an advocacy partner and their independent advocacy worker enables authentic views to be shared that are not influenced by professionals or friends and family. Although often good at advocating for care experienced people, other professionals, family and friends will often have more power and access to resources than the care experienced person, as well as inherent conflicts of interest that do not enable supported decision making and participation to the same extent as independent advocacy.

### **Gaps in current provision**

SIAA has evidence from our member organisations of many gaps in provision of independent advocacy. Unfortunately, these gaps in provision affect many with an existing right of access to independent advocacy in Scots law.

Gaps in current provision for care experienced people must be addressed, however we must emphasise that longer term planning to sustainably increase access to independent advocacy is essential to allow independent advocacy to be a preventative tool and allow people to navigate systems well from the outset. This approach would save money through utilising independent advocacy's enablement of supported decision making and participation. This stops situations from escalating to crisis point.

### **Referral routes and explaining independent advocacy**

SIAA recommend that policy makers look carefully at different roles within the system and early points in decision making processes that would be best placed to refer to independent advocacy. The role of an independent advocate is best explained by independent advocacy organisations and workers themselves. Enabling an independent advocacy worker to explain independent advocacy where possible should be resourced and supported within referral routes. SIAA also suggest that professionals in other roles should be upskilled in their understanding of independent advocacy and its role in providing information on rights and

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<sup>1</sup> <https://www.siaa.org.uk/wp-content/uploads/2021/02/SIAA-Principles-Final-2nd-print-run-with-ISBN.pdf>

helping people have their voices heard, as well as the principles of independent advocacy. In other words, the importance of structural, financial and psychological independence of advocacy provision, which is essential for enabling the trust of advocacy partners.

### **Resources and funding**

Resources and funding for independent advocacy provision should be considered in detail as we would expect to see increased provision of independent advocacy to support people more comprehensively than currently happens. This should include consideration of the following:

- Full cost recovery for independent advocacy workers
- Understanding the costs of different models of independent advocacy and what is best suited to different people e.g. citizen advocacy, collective advocacy and individual advocacy
- Costs associated with increased time needed for providing independent advocacy for some groups e.g. non instructed advocacy for those that have been assessed as lacking capacity for decision making
- Costs of updating learning as new policy and legislation comes into effect
- Costs of providing independent advocacy in remote and rural areas so there is equal access to independent advocacy

Some of these considerations would increase costs of provision, however SIAA are confident that if independent advocacy can be accessed at earlier points in someone's experience with systems this would make sizable savings in other areas. It cannot be understated how significant a difference a person truly feeling their voice has been heard makes to their feelings of autonomy and control over their own life.

### **Question 4. What services and support should be considered and provided to a care leaver who returns home to live with their birth family?**

SIAA support Who Cares? Scotland's view that the young person's voice must be at the centre of this decision. Independent advocacy is essential to ensure that a young person understands their rights and is supported to share their views. Please see our answer to question 3 for more detailed recommendations on increasing access to independent advocacy.

## Continuing Care

### Question 9. How do we ensure that young people, and their views, are heard during discussions on Continuing Care which impact them?

Young people should have opt-out access to independent advocacy to enable them to have their views heard during discussions on Continuing Care. As noted in our response to question 3 SIAA support well-resourced provision of quality independent advocacy. We know that independent advocacy enables human rights and is a clear way to enable views to be shared that is as free as possible from conflicts of interest.

#### **Definition of independent advocacy**

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 care experienced people it is available to.

Independent advocacy must have a clear definition in any policy or guidance in this area. That definition must align with the Independent Advocacy Principles, Standards and Code of Best Practice<sup>2</sup>. Where primary legislation is being brought forward financial and structural independence should be included, with psychological independence expanded upon in guidance<sup>3</sup>. Where there is no law to consider, policy should include all three components of independence. A suggested definition from the Principles is below:

“In order to practice effective independent advocacy, an independent advocacy organisation or group must be structurally, financially and psychologically independent. 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.

- 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

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<sup>2</sup> <https://www.siaa.org.uk/wp-content/uploads/2021/02/SIAA-Principles-Final-2nd-print-run-with-ISBN.pdf>

<sup>3</sup> <https://www.siaa.org.uk/information-hub/legal-definition-and-components-of-independent-advocacy-briefing-2/>

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.
- 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.“

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.

### **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.

## Lifelong Care

### Question 13. What do you think would be the best way to provide long term support and services to adults with care experience?

SIAA are supportive of Who Cares? Scotland's lifelong rights campaign calling for Care Experienced people of all ages to be seen and heard as a distinct group of rights holders.<sup>4</sup> The Lifelong Rights Campaign also calls for the right to independent, relationship-based, lifelong advocacy for every Care Experienced person in Scotland who needs it.

SIAA support the ten core principles outlined in the 'Scoping' report published by The Promise Scotland<sup>5</sup>:

#### **A national advocacy service should be:**

1. Independent
2. Cognisant of the unique and bespoke needs of care experienced children, adults and families
3. Rights-based
4. Accessible
5. Timely
6. Purposeful
7. Relational and holistic
8. Equitable, consistent and inclusive
9. High-quality
10. Sustainable

SIAA are encouraged to see independence, quality and sustainability recognised as principles, as we know these are longstanding areas of interest for SIAA member organisations. The 'independence' core principles is described as meaning 'independent advocacy is **distinctly different**' from other forms of advocacy and has 'developed in practice over the last thirty years in Scotland'. This phrase 'distinctly different' helps to frame independent advocacy separately from other forms of advocacy. The report highlights

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<sup>4</sup> [www.whocaresscotland.org/wp-content/uploads/2023/10/LRC-Report.pdf](http://www.whocaresscotland.org/wp-content/uploads/2023/10/LRC-Report.pdf)

<sup>5</sup> <https://thepromise.scot/the-promise-scotland/what-the-promise-scotland-does/change-projects/national-lifelong-advocacy-service/>



upcoming work that will be completed to agree on a definition of independent advocacy which SIAA and members hope to contribute their expertise to.

SIAA note that although the report discusses a 'national' lifelong advocacy service, it emphasises that this does not mean a single provider: 'but rather consideration of a national funding approach that would allow an enhanced offer of community-based advocacy support where advocacy providers are flexible to meet the needs of children, adults and families. This is where people live, work, socialise – independent advocacy provided needs to reflect the needs of the specific community.' SIAA believe this approach will support quality independent advocacy organisations that are rooted in their communities and have built up networks over many years

### **Independent advocacy provision issues to consider**

Only some people have the right to access independent advocacy dependent on the specific legislation. The Mental Health (Care and Treatment) (Scotland) Act 2003 gave people the most significant right to independent advocacy<sup>6</sup>. Under Section 259 of the Mental Health (Care & Treatment) (Scotland) Act 2003 there is a legal right to access independent advocacy for everyone with 'mental disorder' (as defined by the Act) as per s328 of the Act. However, as highlighted by the Mental Welfare Commission in The Right to Advocacy 2018 report<sup>7</sup>, the way the funding has been distributed in Scotland often means people subject to statutory processes under this legislation are prioritised in their access to independent advocacy. Meaning people not subject to compulsory treatment may have to wait or may not have their right of access to independent advocacy realised at all.

The way independent advocacy was written into the legislation, and has subsequently been resourced, has meant both a widening of access to independent advocacy but also a funnelling of independent advocacy provision. This means provision is often connected to statutory processes (e.g. a Mental Health Tribunal) in the minds of both advocacy partners and public services. This is despite the broad right of access, not linked to any setting of decision-making process, that exists within the 2003 Act. The current landscape for organisations means that independent advocacy cannot fulfil its potential in the context of

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<sup>6</sup> <https://www.legislation.gov.uk/asp/2003/13/part/17/chapter/2>

<sup>7</sup> [https://www.mwscot.org.uk/sites/default/files/2019-06/the\\_right\\_to\\_advocacy\\_march\\_2018.pdf](https://www.mwscot.org.uk/sites/default/files/2019-06/the_right_to_advocacy_march_2018.pdf)

early intervention and prevention, or enable participation and supported decision making to the fullest extent. In order to address this, a clear definition of independent advocacy should be included in guidance and be widely understood by commissioners and funders.

SIAA also recommend addressing the underutilization of different models of advocacy, specifically collective advocacy and citizen advocacy that may be of particular benefit to care experienced adults. More information about these models can be found on the SIAA website and information hub.<sup>8</sup>

SIAA research for The Advocacy Map<sup>9</sup> shows there are significant gaps in the provision of independent advocacy across Scotland, including:

- children and young people
- people with dementia
- neurodivergent people
- people with learning disabilities
- people within the prison system
- unpaid carers.

Care experienced adults may cross over with some of these groups at different points in their life and therefore it is important that independent advocacy is consistently offered to care experienced adults, and they do not fall into these gaps in provision.

## Support for unaccompanied asylum-seeking young people leaving care

### 20. What supports and/or improvements do you think could be implemented to ensure we meet the particular needs of unaccompanied asylum seeking young people transitioning out of care in Scotland?

SIAA support Who Cares? Scotland call for independent advocacy workers to undertake specialist training for this area and interpretation services to be available to unaccompanied

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<sup>88</sup> <https://www.siaa.org.uk/what-is-independent-advocacy/types-of-independent-advocacy/>

<sup>9</sup> <https://www.siaa.org.uk/information-hub/siaa-advocacy-map-sustainability-of-independent-advocacy-in-scotland/>

asylum-seeking young people in order to participate in decisions about their care, share their views and fully understand their rights and support available.

### **Interpretation/translation services**

In principle, it is the obligation of the public body that makes the referral to independent advocacy or is involved in the need for independent advocacy to arrange and pay for an interpretation service. This is due to the public body's human rights obligations in making reasonable accommodations to ensure the equality of access and enable participation.

Evidence from our member organisations suggests that advocacy partners struggle to access interpretation services and there are inconsistent processes across different areas of Scotland.<sup>10</sup> As well as a lack of clarity about who should pay for the service in some cases. Clear processes for accessing interpretation when independent advocacy is being provided should be made across Scotland.

## Support for disabled young people leaving care

**Question 22. What improvements do you think could be made to ensure disabled young people leaving care have the support they need when they make the transition to adulthood?**

SIAA recommend that policy makers explicitly embed a human rights-based approach, and specifically align with the United Nations Convention on Rights of Persons with Disabilities (UNCPRD)<sup>11</sup>. The UNCPRD imposes positive obligations on states to respect, protect and fulfil the human rights of disabled people. Work based on Article 12 of the of the UNCPRD should be central to this for disabled, care experienced people<sup>12</sup>. Article 12 focuses on equal recognition before the law for disabled people, in order to enact this right supported decision-making must be used where appropriate.

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<sup>10</sup> <https://www.siaa.org.uk/wp-content/uploads/2024/07/Accessing-interpretation-service-SIAA-members-experiences-1.pdf>

<sup>11</sup> <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>

<sup>12</sup> <https://www.un.org/development/desa/disabilities/resources/handbook-for-parliamentarians-on-the-convention-on-the-rights-of-persons-with-disabilities/chapter-six-from-provisions-to-practice-implementing-the-convention-5.html>

Supported decision-making is central to ensuring that disabled people can access the same rights as non-disabled people<sup>13</sup>. Supported decision-making, can be described as ensuring that a person's will, and preferences are discerned and given effect. As noted by Professor Jill Stavert Article 12(3) CRPD requires states parties to provide access by persons with disabilities to the support they may require in exercising their legal capacity. This is to ensure that the rights, will and preferences of persons with disabilities are enjoyed on an equal basis with others [Articles 12(1)(2) and (4) CRPD].

Substitute decision-making is most commonly practiced across services and systems in Scotland at present. The Committee on the Rights of Persons with Disabilities has made it clear that supported decision-making must replace substitute decision-making arrangements as these are discriminatory and deny equal enjoyment of the right to exercise of legal capacity for persons.<sup>14</sup> Independent advocacy enables supported decision-making and can support other forms of advanced planning when needed. Scottish policy is already carefully considering how to support services and systems to replace substitute with supported decision making. For example the Independent Review into Mental Health and Capacity Legislation Recommendations (Scott Review) which have been accepted by Scottish Government, as well as connected mental health law reform program, upcoming Adults with Incapacity Act Amendments<sup>15</sup>, proposed Learning Disability, Autism and Neurodivergence (LDAN) Bill, and Mental Health Strategy<sup>16</sup>.

It is vital that independent advocacy is utilized and resourced as a tool to help realise the substantive rights of UNCRPD for disabled, care experienced people. Not only to uphold rights for disabled care experienced people but also to ensure 'moving on from care' work is future proofed when support decision making is more widely practiced and becomes a requirement in years to come.

SIAA agree with Who Cares? Scotland's view that non-instructed advocacy is an important form of advocacy necessary for upholding rights of care experienced people who have been assessed as lacking capacity. The extra time needed to ensure high quality non-instructed

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<sup>13</sup> <https://www.mwscot.org.uk/sites/default/files/2021-02/Supported%20Decision%20Making%202021.pdf>

<sup>14</sup> <https://www.frontiersin.org/articles/10.3389/fpsy.2020.571005/full>

<sup>15</sup> <https://consult.gov.scot/mental-health-law/adults-with-incapacity/>

<sup>16</sup> <https://www.gov.scot/publications/mental-health-wellbeing-strategy/documents/>



advocacy is provided, which can include additional meetings and information gathered to ascertain any past views relevant to a decision-making process is essential. Resourcing for non-instructed advocacy should include consideration of the additional time needed to gather views as well as specialist training and ongoing learning for the role.

## 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 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.

SIAA is a Scottish Charitable Incorporated Organisation | Charity number SC033576

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