

Children (Care, Care Experience and Services Planning) (Scotland) Bill Call for Views SIAA Response

August 2025



SIAA Response | August 2025

Children (Care, Care Experience and Services Planning) (Scotland) Bill

Introduction

The Scottish Independent Advocacy Alliance (SIAA) welcomes the opportunity to respond to the Children (Care, Care Experience and Services Planning) (Scotland) Bill. As the national membership organisation promoting, supporting, and advocating for independent advocacy in Scotland, SIAA brings over two decades of expertise in ensuring that advocacy is structurally, financially, and psychologically independent.

This Bill presents a vital opportunity to embed a robust, rights-based framework for independent advocacy that reflects the lived experiences of care-experienced infants, children, young people, and adults. SIAA's response focuses specifically on the provisions relating to independent advocacy, drawing on the expertise of our 32 member organisations and the principles outlined in the Independent Advocacy Principles, Standards & Code of Best Practice.

We support the Bill's ambition to uphold the rights and wellbeing of care-experienced individuals and urge the Committee to ensure that the legislation

delivers meaningful, accessible, and lifelong independent advocacy support across Scotland.

Key Recommendations Summarised

1. Embed a Clear Definition of Independent Advocacy

- Align with the definition in the Mental Health (Care and Treatment) (Scotland) Act 2003.
- Ensure independent advocacy is structurally, financially, and psychologically independent.
- Prevent conflicts of interest by excluding service providers from delivering independent advocacy.

2. Recognise and Protect Collective Advocacy

- Include collective advocacy as a statutory right.
- Ensure sustainable funding and legal clarity to prevent defunding or misinterpretation.

3. Ensure Lifelong and Flexible Access

- Independent advocacy must be available across the lifespan, not limited by age or care type.
- Support diverse models including citizen advocacy and relationship-based approaches.

4. Avoid a Two-Tier System

- Do not differentiate rights based on length or type of care experience.

- Resource independent advocacy to meet both statutory and non-statutory needs.

5. Strengthen Training for Independent Advocates and Professionals

- Ground training for independent advocates in the National Practice Model and SIAA's Code of Best Practice.
- Ensure professionals understand and can explain the role of independent advocacy.

6. Support Non-Instructed Advocacy and Supported Decision-Making

- Embed supported decision-making in line with UNCRPD Article 12.
- Resource non-instructed advocacy with time and specialist training.

7. Improve Children's Hearings Participation

- Remove mandatory attendance requirements.
- Offer developmentally appropriate participation options.
- Introduce opt-out referral for legal advice and independent advocacy.

8. Ensure Adequate and Sustained Resources

- Revise uptake estimates in the Financial Memorandum (5–10%) to reflect actual demand (20%+).
- Set a target of 50% uptake to meet real-world need.
- Address unmet demand and waiting lists across Scotland.

9. Ensure UNCRC Compliance

- SIAA recommends that the Bill restate key rights as freestanding provisions within the Bill itself, rather than solely amending older legislation. This would ensure that children and young people can challenge breaches of their rights and that the Bill aligns with Scotland's commitment to a maximalist approach to UNCRC incorporation.

Scottish Independent Advocacy Alliance (SIAA) & 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. 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.

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.

Models of Independent Advocacy

Individual or one-to-one advocacy

This includes professional or issue-based advocacy. It can be provided by both paid and unpaid advocates. An independent advocate supports an individual to represent their own interests or represents the views of an individual if the person is unable to do so. Advocates provide support on specific issues and provide information, but not advice. This support can be short or long term.

Another model of individual advocacy is citizen advocacy. Citizen advocacy occurs when an ordinary citizen is encouraged to become involved with a person who might need support in the community. The citizen advocate is not paid. The relationship between the citizen advocate and the advocacy partner is on a one-to-one, long-term basis. It is based on trust between the partner and the citizen advocate and is supported, but not influenced, by the advocacy organisation. For many people their Citizen Advocate is the only person not paid to be in their life. Citizen Advocates provide essential support for local people at key times of vulnerability and need. A key part of many partnerships is the support citizen advocates provide, whether by ensuring their partner has the information they need to make choices, by sharing activities to widen opportunities and by ensuring their partner understands the legal processes they are part of.

Collective advocacy

Collective advocacy creates spaces for people to get together, support each other to explore shared issues and find common ground. Collective advocacy strengthens peer support by bringing people together to share experiences, build networks, and speak up for shared concerns. It supports people to speak up about their experiences, values, and

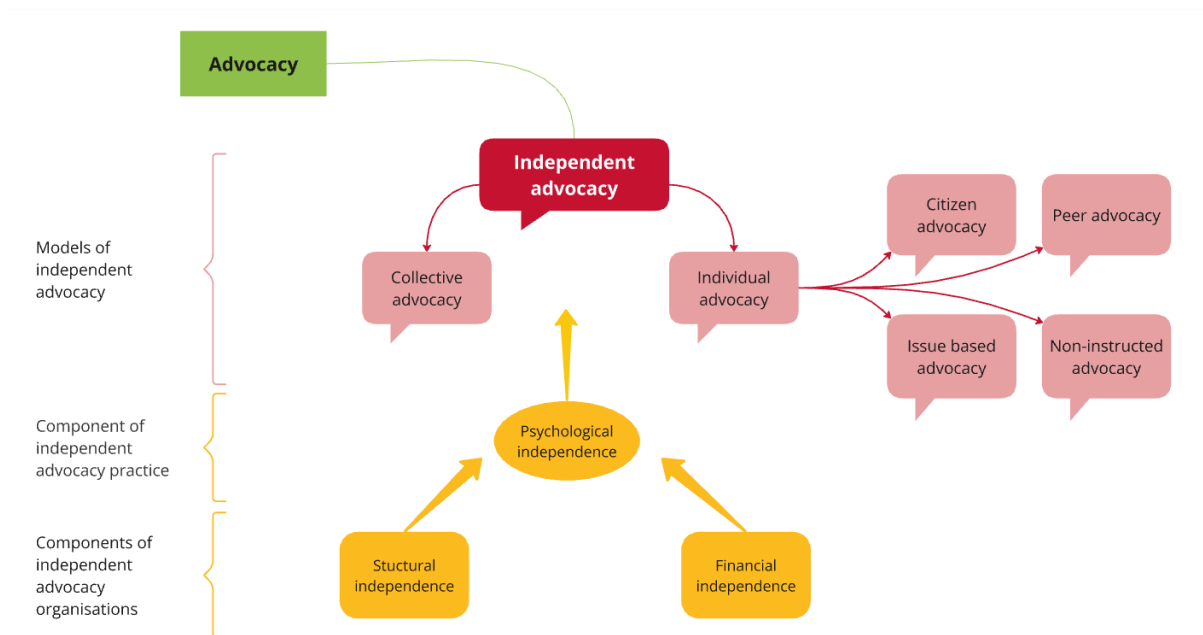
expectations. It enables people to find a stronger voice, to campaign and influence the agendas and decisions that shape and affect their lives. Collective advocacy also takes the onus off the individual to solely address a human rights issue, the collective voice means people do not have to continuously reshare difficult experiences to make change happen and improve systems.

Collective independent advocacy provides opportunities for people to have a meaningful voice in legislative processes, policy making and strategic planning, combating discrimination, inequality and enables people to take part as active citizens.

Collective advocacy can help planners, commissioners, service providers and researchers to know what is working well, where gaps are in services and how best to target resources. It helps legislators and policy makers to create opportunities for people to challenge discrimination and inequality. Collective advocacy groups benefit from skilled help from an independent advocacy organisation and with the support of resources. However, it is important to note that collective advocacy groups cannot be ‘mandated’ into existence, they must continue to emerge from the needs, wants and views of their potential members. Collective advocacy groups are run by their members, who set their own agendas.¹

The below diagram illustrates the models of independent advocacy and contributing components that enable independence.

¹ <https://webarchive.nrscotland.gov.uk/20230327160310/https://cms.mentalhealthlawreview.scot/wp-content/uploads/2022/09/SMHLR-FINAL-Report-.pdf>



Chapter 1, Question 3 – Advocacy Provision

Question 3: Do you agree with the proposal that Scottish Ministers should ensure that care experience advocacy services are available to the extent necessary for a right to advocacy to be exercised?

Yes, SIAA strongly supports this proposal. The Bill presents a vital opportunity to advance the core commitment of *The Promise*—to ensure that care-experienced infants, children, young people, and adults “grow up loved, safe and respected so that they realise their full potential.”

For the right to independent advocacy to be meaningful and effective, the legislation must guarantee that the advocacy provided is:

- Independent – free from conflicts of interest and delivered by organisations whose sole or primary function is advocacy
- Rights-based – grounded in the principles of empowerment, participation, and protection of individual rights

- Lifelong – available throughout the entire care experience, including transitions into adulthood and beyond
- Consistent across Scotland – ensuring equitable access regardless of geography or local authority boundaries
- Inclusive of collective advocacy – enabling groups of care-experienced people to come together to influence policy and practice
- Easily accessible – with clear pathways to support and proactive communication about the right to advocacy

Embedding these principles in legislation will ensure that the right to independent advocacy is not only recognised but fully realised in practice.

SIAA welcomes the ambition of the Children (Care, Care Experience and Services Planning) (Scotland) Bill to uphold the rights and wellbeing of care-experienced children and young people. However, we share the concerns raised by Together (Scottish Alliance for Children’s Rights) and Who Cares? Scotland that key provisions of the Bill fall outside the scope of the UNCRC (Incorporation) (Scotland) Act 2024, limiting children’s ability to seek remedy when their rights are not upheld.^{2 3}

This is particularly concerning in the context of independent advocacy, which plays a vital role in enabling children and young people to understand, claim, and defend their rights. The UNCRC recognises the importance of children’s participation in decisions affecting them (Article

² [cccesp_uncrc_scope_final.pdf](#)

³ [MSP-Briefing-Children-Care-Care-Experience-and-Services-Planning-Scotland-Bill.docx](#)

12), and independent advocacy. Both individual and collective advocacy are key mechanism for realising this right in practice.

Collective advocacy enables care-experienced children and young people to come together, share experiences, and influence policy and service design. It is a powerful tool for systemic change, ensuring that the voices of those with lived experience are not only heard but acted upon. However, without clear legislative definition and sustainable funding, collective advocacy risks being deprioritised or misunderstood as secondary to individual advocacy.

SIAA is concerned that the current drafting of the Bill does not go far enough to embed the right to all forms of independent advocacy, including collective models. This omission risks undermining the Scottish Government's commitment to *Keep the Promise* and to fully realise the rights enshrined in the UNCRC.

We therefore urge the Committee to:

- Ensure that the Bill explicitly recognises and protects collective advocacy as a core component of independent advocacy provision
- Align the Bill's provisions with the UNCRC (Incorporation) (Scotland) Act 2024 by avoiding amendments to pre-devolution UK legislation where possible⁴
- Support a rights-based, inclusive, and enforceable framework for independent advocacy that empowers care-experienced people to

⁴ [United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Act 2024](#)

participate meaningfully in shaping their lives and the systems that affect them

A Strong and Inclusive Right to Independent Advocacy

SIAA advocates for a robust and inclusive right to access independent advocacy for care experienced infants, children, young people and adults, ensuring that all individuals can receive support that is impartial, rights-based, and tailored to their needs. This right should be clearly embedded in the Bill and supported by adequate infrastructure to guarantee meaningful access across different life stages and circumstances.

Definition of Independent Advocacy

The Scottish Independent Advocacy Alliance (SIAA) welcomes the inclusion of advocacy within the Bill, which currently refers to ‘care experience advocacy services’ as ‘independent services of support and representation’. While we appreciate the reference to independence, the lack of a clear definition within the Bill itself creates ambiguity and could contribute to lack of consistency across Scotland, and poor-quality provision. Furthermore, the Bill’s current wording appears to adopt a narrower interpretation of independent advocacy, primarily focused on enabling access to care or assistance services.

This limited framing risks undermining the broader vision set out in *The Promise*, which states that:

“Care experienced children and adults must have the right and access to independent advocacy, at all stages of their experience of care and beyond.” ⁵

⁵[the-promise.pdf](#)

To align with this commitment, the Bill must go further by embedding a clear and comprehensive definition of independent advocacy on its face. This would provide essential legal clarity, reduce the risk of misinterpretation, and ensure that advocacy is genuinely independent, rights-based, and responsive to the full spectrum of care experience and beyond — not just access to care or assistance services.

To promote consistency across Scotland’s legislative framework, SIAA recommends that the Bill adopt a definition of independent advocacy aligned with the Mental Health (Care and Treatment) (Scotland) Act 2003 (MHCTA). Under this Act, advocacy is defined as:

“Services of support and representation made available for the purpose of enabling the person to whom they are provided to have as much control as possible over their own life.”

Sections 259 and 259A of the MHCTA further clarify that advocacy services are considered “independent” only if they are provided by individuals or organisations not listed under Section 259(5), which includes:

- Local authorities
- Health Boards
- NHS Trusts
- Any members of above
- Any person contracted to provide medical treatment, care, or other services to the adult ⁶

Additionally, the Acts Codes of Practice reinforce this definition by stating:

⁶ [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#)

“Independent advocacy should be provided by an organisation whose sole role is independent advocacy, or whose other functions either complement or do not conflict with the provision of independent advocacy. If the advocacy service or advocate has a conflict of interest, they should inform all relevant parties and withdraw from acting for the patient.”⁷

By adopting this established definition, the Bill would ensure coherence with existing legislation and safeguard the integrity and independence of advocacy provision across Scotland.

SIAA recommends that the Bill clearly define the key elements of *independent advocacy* to ensure consistency and safeguard against conflicts of interest. Advocacy should only be considered “independent” if it is provided by individuals or organisations that are **not**:

- A local authority
- A Health Board
- An NHS Trust
- A member of any of the above bodies

Furthermore, advocacy is **not independent** if the provider is contracted to deliver education, medical treatment, care, or other services to the person receiving advocacy. This provision is essential to maintain the integrity of independent advocacy by ensuring that those involved in planning or delivering care or support services cannot also act as independent advocates.

⁷ [Chapter 6: Patient Representation\(Part 17, Chapters 1 and 2\) - Mental Health \(care and treatment\) \(Scotland\) Act 2003: Code of Practice Volume 1 - gov.scot](#)

For children and young people, this means that organisations directly involved in their care, education, or support must not also provide their independent advocacy. This separation is critical to uphold the impartiality and trust required for effective 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 independence is understood by advocacy partners, policy makers, funders and commissioners. 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. Structural and financial independence enable independent advocacy workers to have psychological independence. Psychological independence is a part of the practice of independent advocacy, as well as speaking to the quality of independent advocacy provision.

Psychological independence enables:

- Trust to be built with advocacy partners.
- Awareness of and active minimisation of conflicts of interest.
- A person-centred practice that does not take a ‘best interests’ approach.
- A human-rights based approach.
- Independent advocacy to be an ‘everyday’ accountability tool.

The Scottish Government's Independent Advocacy Guide for Commissioners from 2013 identifies key factors that underpin good independent advocacy, including:

- advocacy groups should be firmly rooted in, supported by and accountable to a geographical community or a community of interest.
- advocacy groups and those involved as advocates should be constitutionally and psychologically independent of local and national government.
- advocacy groups should not be involved in the delivery of care services or the provision of other services to the individual who requires advocacy.
- different approaches to independent advocacy are needed; there is no best model
- advocacy groups should maintain a clear and coherent focus of effort
- advocacy groups should undergo regular independent evaluation of their work, and commissioners should provide financial support for this.⁸

These factors all represent different aspects of ensuring independence, which are crucial considerations for independent advocacy commissioners and funders. SIAA and its members emphasise the first factor as particularly vital to understanding how high- quality independent advocacy is delivered. Being grounded in and accountable to the local community or community of interest often necessitates in-person engagement as the default approach. This is especially important when

⁸ [Independent advocacy: guide for commissioners - gov.scot](#)

individuals have had their rights limited by decisions made by public services and may lack a clear understanding of the reasons behind these decisions. In such cases, independent advocacy serves to balance rights by capturing authentic views, facilitating participation, and functioning as a routine accountability mechanism for decision-makers.

The recent independent review of the Children's Hearing Advocacy Scheme highlighted the critical importance of advocacy being truly independent. Key stakeholders emphasised that:

“The independent role of the advocacy worker was seen as essential, with their *sole focus* on exploring the views and feelings of children and young people and supporting them to have their voice heard.”

This feedback reinforces the principle that independent advocacy must be free from conflicts of interest, and that advocates should be *solely* dedicated to representing the child or young person's perspective, without influence from other agencies or service providers involved in their care or legal proceedings.⁹

Embedding Independent Advocacy in Law

The *Children's Hearings System Working Group* and *The Promise* both highlight the vital role of independent advocacy in ensuring care-experienced children and adults can navigate complex systems, have their voices heard, and their rights upheld.¹⁰

⁹ [Final-Evaluation-Report-September-2024.pdf](#)

¹⁰ [Hearings for Children report: response - gov.scot](#)

The Scottish Mental Health Law Review (SMHLR) has identified significant disparities within existing mental health legislation and has issued clear, rights-based recommendations for reform.

- Independent advocacy must be suitably resourced to ensure all children and young people can exercise their rights.
- Independent advocacy plays a critical role in supported decision-making, aligning with the *UN Convention on the Rights of Persons with Disabilities (UNCRPD)*.
- Access to **both individual and collective advocacy** is essential, especially where systemic issues require a collective voice to influence policy and practice.
- Crucially for this Bill, SMHLR recommendation 4.6 states that ‘The Scottish Government should align legislation and policy to ensure consistency regarding the definition of Independent Advocacy, the right to access it and how it is commissioned and funded for adults. This should include consideration of an opt-out service of independent advocacy. An equivalent process should take place for children and young people.’ SIAA urge the committee to consider this recommendation around alignment carefully in its scrutiny at all stages.¹¹

Legislative Clarity

A recent proposal considered by a local Integrated Joint Board to defund collective advocacy, arguing that statutory obligations are met through individual advocacy alone is deeply concerning. This contradicts guidance

¹¹ [Scottish Mental Health Law Review](#)

from the *Mental Welfare Commission* and the *Codes of Practice*, which affirm that the MHCTA right to independent advocacy includes both individual and collective forms.

SIAA's position paper, [*Lang May Yer Voice Sound: Sustaining Collective and Citizen Advocacy Models \(2025\)*](#), highlights the urgent need for legislation to explicitly enshrine the right to all forms of independent advocacy. Clear statutory language is essential within the Bill to prevent narrow interpretations and ensure sufficient accountability at both local and national levels.

The *Children (Care, Care Experience and Services Planning) (Scotland) Bill*, introduced in June 2025, presents a timely opportunity to embed SMHLR recommendations into law. As part of the Scottish Government's commitment to *Keep the Promise*, the Bill must ensure that care-experienced infants, children, young people, and adults have:

- A clear and enforceable right to independent advocacy
- Choice in the type of independent advocacy they access

The Bill makes clear that its intention is not to duplicate or override existing bespoke entitlements to access independent advocacy. This is an important distinction, particularly given the interconnected nature of independent advocacy provision across various legislative and policy frameworks.

There are multiple, differing and distinct rights to independent advocacy in Scotland, including:

- **Mental Health (Care and Treatment) (Scotland) Act 2003**
Confers a **statutory right** to access independent advocacy for

anyone with a mental disorder. This includes the right to have access to advocacy at any time, not just during compulsory treatment.

- **Children (Scotland) Act 1995 and Children's Hearings (Scotland) Act 2011**

Under the Children's Hearings System Advocacy Scheme, children and young people involved in hearings have a **legally supported entitlement** to independent advocacy to help them understand and express their views.

- **Social Security (Scotland) Act 2018**

Provides a **statutory right** to independent advocacy for disabled people applying for benefits, ensuring they can fully participate in the process and understand their rights.

- **Adults with Incapacity (Scotland) Act 2000 and Adult Support and Protection (Scotland) Act 2007**

While not conferring a universal statutory right, these Acts **recognise the role of advocacy** in supporting adults who may be vulnerable or lack capacity, particularly in decision-making processes.

Despite existing statutory rights, provision remains insufficient across Scotland's legislative landscape. For example, under the MHCTA, all individuals diagnosed with a mental disorder, including children and young people, have a statutory right to access independent advocacy. Sections 259 and 259A place clear duties on NHS Boards and local authorities to ensure advocacy services are available. Crucially, this right is not *contingent* upon being subject to specific statutory processes such as detention.

In practice, SIAA and its members report inconsistent provision across Scotland. In many areas, children and young people who are not detained or under formal statutory measures have little or no access to independent advocacy. This is largely due to narrow interpretations of the law at the local level, which create significant barriers, particularly for care-experienced children facing complex mental health challenges.

Given the higher prevalence of mental ill health and neurodivergent conditions among care-experienced children and young people, it is essential that the Bill recognises and responds to their specific needs. Research from the University of Glasgow has found that:

“Care experienced children have a higher prevalence of mental health problems, even when compared to children born in the most deprived areas.” (University of Glasgow, 2022)¹²

This evidence underscores the importance of ensuring that independent advocacy is not only available, but accessible, appropriate, and responsive to the diverse experiences of care-experienced individuals.

SIAA urge the Scottish Government to carefully consider how people that will have rights of access to independent advocacy under different laws will be supported to have a choice in independent advocacy provision and work with local commissioners on strategic advocacy planning to ensure there are no gaps in provision.

Risk of a Two-Tier Independent Advocacy System for Care-Experienced People

The Bill discusses different levels of rights that might be conferred to care experienced individuals explaining within the explanatory notes ‘for

¹² [Children’s Health in Care in Scotland \(CHiCS\) Main findings from population-wide research](#)

example, provide for a person who was looked after for most of their childhood to have a more extensive right of access to care experience advocacy services, while someone who was looked after for a shorter period might have such a right in more limited circumstances’.¹³

SIAA has significant concerns about the practical accessibility of independent advocacy under the current wording of the Bill. As it stands, the Bill risks undermining the original ambition of The Promise, which called for strong, relationship-based advocacy to be available to all care-experienced individuals.

While some people may require time-sensitive access to independent advocacy, particularly in statutory decision-making contexts or when navigating complex systems like the Children’s Hearing System, others may seek independent advocacy support for non-statutory decision-making issues such as housing, education, or healthcare. Without sufficient resourcing to meet both types of demand, there is a real risk of creating a two-tier system: one where urgent statutory need are prioritised, and another where equally important but less time-critical concerns are underserved. SIAA and its members have observed this issue within the implementation of the Mental Health (Care and Treatment) (Scotland) Act (MHCTA). In its *Right to Advocacy* report (2018), the Mental Welfare Commission stated:

“The Commission is clear in its view that limiting advocacy provision to people subject to compulsory measures was never the policy intention when the right to advocacy was introduced in the 2003 Act. We would therefore expect the provision of services locally to be sufficient to ensure

¹³ [Explanatory Notes accessible](#)

that every person who has the right to access advocacy support is able to get support.”

This reinforces the expectation that independent advocacy should be available to all individuals entitled to them, not just those under statutory processes. It highlights the need for independent advocacy provision to be robust and inclusive within the Bill, ensuring that no one is excluded from accessing their right to independent advocacy.¹⁴

Rather than conferring different levels of rights to individuals, SIAA recommends the further development of diverse models of independent advocacy that can flexibly respond to varying needs, including:

- **Individual advocacy** for urgent statutory processes and non-statutory issues
- **Ongoing relationship-based advocacy** (e.g. citizen advocacy) for long-term support
- **Collective advocacy**, enabling care-experienced individuals to come together to influence policy and service design

A flexible, well-resourced independent advocacy system is essential to ensure that all care-experienced people, regardless of the nature or urgency of their needs can access meaningful, rights-based independent advocacy support.

The Preventative Power of Independent Advocacy: A Case Study

It is important to recognise the preventative value of independent advocacy. Early access to advocacy can help individuals resolve issues

¹⁴ https://www.mwcscot.org.uk/sites/default/files/2019-06/the_right_to_advocacy_march_2018.pdf

before they escalate, reducing the need for crisis intervention and improving long-term outcomes.¹⁵

The following case study illustrates the importance of timely, relationship-based independent advocacy in preventing escalation and supporting positive change.

Background:

Jamie, a care-experienced young adult, was struggling to access appropriate housing after leaving care. He had received conflicting information from different services and was unsure of his rights or how to challenge decisions. He also had concerns about his mental health but felt overwhelmed by the process of seeking support.

Role of Independent Advocacy:

Jamie was referred to an independent advocacy organisation. His independent advocate worked with him to:

- Understand his housing rights and options
- Prepare for meetings with housing officers
- Express his concerns clearly and confidently
- Navigate the referral process for mental health support
- Ensure his voice was heard in decisions affecting his future

Outcome:

With independent advocacy support, Jamie secured stable accommodation and was referred to appropriate mental health services. He reported feeling more confident, informed, and in control of his life.

¹⁵ [Why it's time to take Action on Advocacy - Health and Social Care Alliance Scotland](#)

Importantly, the independent advocacy support prevented escalation into crisis, avoiding homelessness and further deterioration in his wellbeing.

Ensuring Sustainable Independent Advocacy

The Bill acknowledges the complexity of estimating potential demand for advocacy among care-experienced individuals and notes that this challenge is recognised by stakeholders.

The Children's Hearing Advocacy Scheme initially anticipated that around 10% of children and young people attending hearings would access independent advocacy. However, demand quickly exceeded expectations, with uptake rising to 20% of all children going through the Children's Hearings system.¹⁶ This surge in demand reflects a clear need and desire for independent advocacy support among children and young people.

SIAA has received consistent feedback from its members indicating that demand for independent advocacy within the Children's Hearings Advocacy Scheme continues to exceed 20% uptake. However, the resources available are not sufficient to meet this growing demand. This mismatch between need and capacity raises serious concerns about the sustainability and accessibility of independent advocacy services for children and young people navigating the hearings system.

Evidence from Who Cares? Scotland further reinforces this trend. Their advocacy work consistently shows that when children and young people are informed about independent advocacy, they overwhelmingly choose to accept and engage with the support.

¹⁶ <https://www.whocaresscotland.org/get-support/advocacy/>

The evidence shows that demand exceeds initial projections. When independent advocacy is made available and actively promoted, children and young people choose to engage with it, demonstrating the importance of ensuring services are both accessible and well-funded.

The Financial Memorandum must acknowledge the current shortfall in independent advocacy provision for care-experienced individuals across Scotland's legislative landscape. Despite existing statutory rights, access remains inconsistent and insufficient. SIAA is particularly concerned about the projected uptake figures outlined in the Bill, 5% across all age groups, with a slightly higher 10% uptake for those aged 40 and under, and 5% for those aged 41 and above.¹⁷

These estimates appear significantly lower than actual demand observed in existing schemes. For example, the Children's Hearings Advocacy Scheme, which initially anticipated a 10% uptake, quickly saw engagement rise to around 20% of all children attending hearings.¹⁸

This surge reflects a clear and growing need for independent advocacy when it is made available and actively promoted.

Furthermore, [SIAA's Sustainability of Independent Advocacy in Scotland report](#) highlights that 71% of member organisations report unmet advocacy needs, with many now be operating waiting lists for the first time due to rising demand and increasingly complex cases.

¹⁷ [Financial Memorandum](#)

¹⁸ [Advocating for children and young people - gov.scot](#)

This underscores the urgency of ensuring that the Financial Memorandum provides adequate and sustained resourcing to meet real-world demand and uphold the rights of care-experienced individuals.

SIAA recommends that the Bill be supported by adequate and sustained resourcing to ensure that at least an ambitious take up rate of 50% of care-experienced individuals accessing independent advocacy. This target reflects both the scale of need, and the transformative impact independent advocacy can have on care-experienced people's ability to understand their rights, participate in decisions affecting them, and navigate complex systems.

Investing in independent advocacy at this scale is essential to uphold the rights of care-experienced individuals and to ensure that legislative commitments are matched by practical delivery capacity.

Evidence from the Independent Advocacy for Independent Lives programme, funded by the Henry Smith Charity and evaluated by Social Finance, underscores the profound impact of independent advocacy. Participants reported significant improvements in their understanding of rights, confidence, and ability to access services. Crucially, the financial analysis revealed that for every £1 invested in independent advocacy, £12 of benefits were generated; £7 in savings to the NHS and £5 to local authorities.¹⁹

These savings were attributed to reduced reliance on crisis services and more effective use of existing support systems.

¹⁹ [Independent-advocacy-for-independent-lives.pdf](#)

This evidence strongly supports the Bill’s emphasis on upstreaming support and ensuring that independent advocacy is available not only during care but throughout life. It also aligns with the principles of human rights budgeting, which the Scottish Human Rights Commission defines as the practice of allocating public resources in ways that uphold and advance human rights.²⁰

Human rights budgeting requires that legislation and spending decisions be scrutinised through a rights-based lens, ensuring that policies do not inadvertently undermine rights but instead promote dignity, equity, and inclusion.

As the Bill progresses, it is imperative that its implementation be guided by human rights budgeting principles. This means ensuring that funding for independent advocacy is not only legislated but sustainably resourced, and that budgetary decisions reflect the lived realities and rights of care-experienced individuals. Professor Aoife Nolan stated, “Budgets are a key sign of a government's values. If human rights are not in there, what's being said is that they are not a value worth counting”.

By embedding independent advocacy and human rights budgeting into the legislative framework, Scotland can take a decisive step toward realising *The Promise* and ensuring that care-experienced individuals are supported not just in policy, but in practice.

Flexible and Relationship-Based Independent Advocacy

Who Cares? Scotland emphasises that independent advocacy is most effective when it is relationship-based, free from conflicts of interest, and

²⁰ [Human Rights Budgeting | Scottish Human Rights Commission](#)

consistently available throughout a young person's care experience. Their findings reveal that many young people are unaware of their rights until these are explained by an advocate, and that advocacy often plays a vital role in helping them navigate complex decisions and express concerns they might otherwise keep to themselves.²¹

They further reinforce that independent, relationship-based advocacy is the most effective way to ensure care-experienced individuals have their rights upheld and their voices heard—not just during childhood, but throughout their lives. Their advocacy work highlights that care-experienced people are not a homogenous group, and that the challenges they face do not simply end at age 18 or 21. Therefore, independent advocacy must be adaptable and available across their lifetime.²²

SIAA urges the Committee to recognise the critical importance of flexibility in the provision of independent advocacy for care-experienced infants, children, young people, and adults. Independent advocacy must be responsive to individual needs, preferences, and circumstances. This includes enabling people to:

- Choose a specific local independent advocacy organisation they trust
- Access a specialist independent advocacy tailored to their experiences, needs and wishes

²¹ [MSP-Briefing-Children-Care-Care-Experience-and-Services-Planning-Scotland-Bill.docx](#)

²² <https://www.whocaresscotland.org/action-on-advocacy/>

- Maintain continuity by working with the same independent advocate across multiple issues, rather than being referred to different providers for each issue

This flexibility is essential to uphold the principles of relationship-based independent advocacy, which is strongly endorsed by *The Promise*. The Promise states that care-experienced children and adults must have the right to independent advocacy “at all stages of their experience of care and beyond,” and that independent advocacy must be relationship-led and not fragmented into silos based on funding or service criteria.²³

Training and Quality of Independent Advocacy

SIAA notes that the Bill includes provisions to establish regulations concerning training, qualifications, and referral pathways for independent advocacy. SIAA strongly welcomes the opportunity to contribute to the development of these regulations, drawing on the extensive expertise of its membership and the established principles of best practice in Scotland.

SIAA emphasises the importance of grounding these regulations in the Independent Advocacy Principles, Standards & Code of Best Practice, which outline the core values of independence, accountability, and accessibility.²⁴

These standards have been widely adopted across Scotland and are recognised as essential for ensuring high-quality, rights-based independent advocacy provision.

²³ [A national lifelong advocacy service](#)

²⁴ [Independent Advocacy Principles, Standards & Code of Best Practice - Scottish Independent Advocacy Alliance](#)

In shaping training, SIAA urges the Committee to learn from the Children's Hearings Advocacy Scheme, which successfully developed a National Practice Model. This model includes structured guidance on values, standards, outcomes, and indicators for independent advocacy practice, and has been supported by tailored training programmes for independent advocates.²⁵

SIAA has developed a dedicated learning platform alongside the membership to support consistent, high-quality learning. This platform is designed to deliver core learning to the entire advocacy workforce; including staff and volunteers; across SIAA's 32 member organisations. By providing accessible, standardised training resources, the platform aims to strengthen practice, uphold the principles of independent advocacy, and ensure that all independent advocates are equipped to meet the diverse needs of care-experienced individuals.

SIAA recommend that the Committee 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 recommends that professionals in other roles should be supported to better understand independent advocacy; what it is, how it helps people know their rights, and how it ensures their voices are heard. This includes learning about the core principles of independent advocacy, especially the need for it to be

²⁵ [Advocacy in the children's hearings system - national practice model: guidance - gov.scot](https://www.gov.scot/publications/advocacy-in-the-childrens-hearings-system-national-practice-model-guidance/pages/12.aspx)

structurally, financially, and psychologically independent. These forms of independence are vital for building trust with advocacy partners.

When professionals understand the role of independent advocates, it leads to more accurate referrals, and more effective independent advocacy overall. In short, when service providers know why independent advocates are there and what they do, everyone benefits.

Supported Decision Making and Non-Instructed Advocacy

SIAA recommends that the Committee explicitly embed a human rights-based approach and specifically align the Bill with the United Nations Convention on Rights of Persons with Disabilities (UNCRPD).²⁶ The UNCRPD imposes positive obligations on states to respect, protect and fulfil the human rights of disabled people. Work based on Article 12 of the UNCRPD should be central to this for disabled, care experienced people.²⁷ 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.

Supported decision-making is central to ensuring that disabled people can access the same rights as non-disabled people.²⁸ 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

²⁶ <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>

²⁷ <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>

²⁸ <https://www.mwscot.org.uk/sites/default/files/2021-02/Supported%20Decision%20Making%202021.pdf>

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.²⁹ 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 SMHLR recommendations which have been accepted by Scottish Government, as well as connected mental health law reform program, upcoming Adults with Incapacity Act Amendments, proposed Learning Disability, Autism and Neurodivergence (LDAN) Bill, and Mental Health Strategy.^{30 31}

It is vital that independent advocacy is utilised 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

²⁹ <https://www.frontiersin.org/articles/10.3389/fpsy.2020.571005/full>

³⁰ <https://consult.gov.scot/mental-health-law/adults-with-incapacity/>

³¹ <https://www.gov.scot/publications/mental-health-wellbeing-strategy/documents/>

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 independent 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 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.

Children's Hearings Independent Advocacy

SIAA welcomes the proposed expansion of the range of professionals who have a duty to **inform** children about the availability of independent advocacy services. Under the amendments introduced by Section 18 of the Bill, changes will be made to Sections 60, 61, and 64 of the Children's Hearings (Scotland) Act 2011.³²

These sections relate to the duties of local authorities, police constables, and health boards when referring a child to the Principal Reporter.

The amendment requires that, when these bodies pass information about a child to the Principal Reporter, they must also provide the child with:

- Information about what will happen next
- An explanation of how the children's hearing system works

³² [Children's Hearings \(Scotland\) Act 2011 - Explanatory Notes](#)

- Details about the availability of independent advocacy services to support and represent them

This change is intended to ensure that children are better informed and supported at the earliest stage of their involvement in the children's hearings system, helping them understand their rights and participate meaningfully in decisions affecting their lives.³³

However, these duties do not apply in cases where the child has not been informed that information is being passed to the Principal Reporter, an important caveat that may limit the reach of this provision.

SIAA strongly recommends that professionals tasked with informing children about independent advocacy receive appropriate training and guidance to ensure they understand the unique role of independent advocates.

SIAA supports Who Cares? Scotland's call to remove the obligation for children and young people to attend Children's Hearings and instead ensure that every child is proactively offered developmentally appropriate options for participation. This aligns with the principles of trauma-informed practice and rights-based decision-making.

We share concerns that compelling attendance, particularly in cases involving offence grounds or secure care placements may cause significant emotional distress and undermine trust in the system. Children must be supported to engage in ways that respect their agency and emotional wellbeing.

³³ [Advocacy+-+Expert+Reference+Group+-+Legislation+and+Regulations+-+Policy+Position+Paper+-+March+FINAL+2020.pdf](#)

SIAA also endorses the recommendation for an opt-out system of referral for independent legal advice and independent advocacy, ensuring that children's rights under UNCRC Article 12 (right to be heard) and Article 40 (fair trial) are upheld. Where a child chooses not to attend, their legal representative and independent advocate should be permitted to attend in their place, with no prejudice to their case.^{34 35}

We urge the Committee to amend Section 13 of the Bill to reflect these safeguards and ensure that participation is always offered, never imposed.

Conclusion

Independent advocacy is a cornerstone of rights-based support for care-experienced individuals. It empowers people to understand their rights, participate in decisions, and challenge inequalities. The Children (Care, Care Experience and Services Planning) (Scotland) Bill must go beyond ambition and ensure that independent advocacy is embedded in law, adequately resourced, and accessible to all who need it.

SIAA urges the Committee to adopt our recommendations to strengthen the Bill's provisions on independent advocacy. Doing so will help realise the commitments of The Promise, uphold Scotland's obligations under the UNCRC (Scotland) Act 2024 and UNCRPD, and ensure that care-experienced people are supported to live with dignity, autonomy, and respect.

³⁴ [UNCRC Article 40 - The Children and Young People's Commissioner Scotland](#)

³⁵ [UNCRC Article 12 - I have the right to be listened to and taken seriously - CYPSCS](#)

This response has been edited with the support of Microsoft Copilot, an AI-powered tool designed to assist with writing, research, and formatting. All content has been reviewed to ensure accuracy and appropriateness, and the final version reflects the author's intent and perspective.

SIAA is a Scottish Charitable Incorporated Organisation | Charity number SC033576

enquiry@siaa.org.uk | www.siaa.org.uk

The Melting Pot | 15 Carlton Road | Edinburgh | EH8 8DL