



The Reach of Rights: Independent Advocacy in Justice Settings

SIAA Evidence Paper

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Introduction

Independent advocacy is about speaking up for and standing alongside individuals or groups without being influenced by others' views. It addresses barriers and power imbalances, ensuring people's human rights are recognised, respected, and secured, especially when they are unheard or discriminated against due to limited support networks, trauma, or communication barriers.

Independent advocacy enables people to stay engaged with services struggling to meet their needs, prevents situations from escalating, and helps people develop skills to advocate for themselves. For those in the justice system, particularly people with learning disabilities and neurodivergent people, it can mean the difference between navigating complex processes alone and accessing fair treatment.

The Scottish Independent Advocacy Alliance (SIAA) advocates for independent advocacy. SIAA has been dedicated to promoting and supporting and advocating for independent advocacy in Scotland for over two decades. With a focus on provision, quality, and accessibility, we provide support to independent advocacy organisations throughout the country and maintain a national perspective that enables us to identify and promote good practices.

SIAA's 32 member organisations offer collective and individual advocacy in communities, hospitals, and prisons, working within the Independent Advocacy Principles, Standards and Code of Best Practice. This human rights-based approach, emphasising the PANEL principles (Participation, Accountability, Non-discrimination, Empowerment, and Legality), ensures rights are realised and voices heard across Scotland.

For this paper SIAA sought to provide insights into independent advocacy provision in justice systems and settings. SIAA staff analysed our membership data, informally

surveyed ten member organisations and had follow up conversations to understand how current structures enable or restrict independent advocacy provision in justice settings. The findings reveal that the infrastructure around independent advocacy, specifically how services are commissioned and funded, determines whether people can access support, not the level of need.

Beyond funding, recent conversations between SIAA and independent advocacy organisations reveal a key barrier to access. The relationships that independent advocacy organisations develop with staff in justice services, including leadership, dictate whether independent advocacy workers can effectively reach people in those settings. This access challenge is especially acute in Scottish prisons.

SIAA has identified significant variation in independent advocacy provision within justice settings. Justice-related referrals range from less than 1% to 20% of total organisational referrals. This is a disparity determined largely by contracted funding arrangements rather than demand or need.

To give additional context to these referral figures, SIAA member organisations have experienced rising referrals since before the 2020 pandemic. In 2023, 71% of SIAA members reported unmet need for independent advocacy. For the first time in recent history, many organisations are operating waiting lists. This surge is driven partly by [the increase in the number of guardianships](#) and [mental health-related detentions](#). There is also the broader increase in people [reporting a mental health condition](#) which is significant for independent advocacy.

Under the Mental Health (Care and Treatment) (Scotland) Act 2003, these groups have a legal right to independent advocacy. Yet the [Scottish Mental Health Law Review](#) found only 5% access it. It is clear that independent advocacy organisations have the willingness, skill, and commitment to provide more independent advocacy but they are curtailed by ongoing funding constraints. This is in large part because Health and Social Care Partnerships narrowly interpret their legal duty to ensure availability of independent advocacy for groups under the 2003 Act, which limits the funding that flows to independent advocacy. This, of course, has an impact on provision in justice systems and settings.

Prison-Based Independent Advocacy Coverage

The 11 prisons that independent advocacy organisations cover as part of their work are:

1. HMP Addiewell
2. HMP Edinburgh
3. HMP Kilmarnock
4. HMP Glenochil
5. HMP Barlinnie

6. HMP Stirling
7. HMP Polmont
8. HMP YOI Grampian
9. HMP Perth
10. HMP Castle Huntly
11. HMP Shotts

Scotland has 17 prisons in total, which means six prisons currently have no independent advocacy provision connected to them. The Scottish Human Rights Commission (SHRC) noted in their research report [Access to Justice for Prisoners: The Complaints System](#), published in August 2025, that “the provision of independent advocacy in prisons is inconsistent and there is much unmet need”.

SHRC’s prison complaints report further highlighted the funding complexity that exists: “[Scottish Prison Service] SPS fund advocacy provision for some prisons, while others are funded by the council or other third sector funding, highlighting a lack of consistent funding framework around prison advocacy. Some organisations will therefore receive additional funding to work in prisons, while others are required to cover it under existing mental health funding.”

Having a contract to provide independent advocacy in a prison does not necessarily mean there is adequate provision. SIAA members experience multiple barriers in providing independent advocacy in prison settings. These barriers include changes in leadership or personnel, which means independent advocacy organisations must rebuild relationships from the beginning to explain the purpose and value of independent advocacy to advocacy partners and the prison system. When staff who understand independent advocacy move on, access can be restricted until new relationships are built, even when contracts remain in place. This is illustrated by one independent advocacy organisation that has contracts for providing independent advocacy in multiple prisons but find that their referrals are not spread evenly across the prisons they provide to. Independent advocacy provision in one prison has stalled due to lack of clarity on whether independent advocacy provision in a prison should fall under the 2003 Act duties or within the justice planning and budget. This issue has not been resolved due to staff changes within the local Health and Social Care Partnership.

These examples illustrates that provision depends not solely on funding infrastructure, but also on the working relationships that enable independent advocates to reach people who need support.

Examples of Independent Advocacy Provision in Justice Settings

Four of the ten independent advocacy organisations that responded reported having current or recent funding specifically for people in prison or newly liberated from prison.

Long-term NHS commissioning creates stable provision: One independent advocacy organisation has been commissioned by NHS Health Board to provide independent advocacy in a prison for 12 years. This sustained funding structure means 500-600 people access independent advocacy support annually through this route, representing about 20% of the organisation's work. This demonstrates what becomes possible when the infrastructure is in place.

Dedicated contracts lead to more consistent provision: One independent advocacy organisation noted that between January and September 2025, this service received 61 referrals from courts/solicitors (n=6) and prison service (n=55). This represents 7% of new referrals in this period, though the organisation notes this excludes self-referrals for justice issues, suggesting the true figure is closer to 10%. This organisation has specific justice settings specified in their contract, comprising both prisons and forensic settings.

What happens when structures are removed: One independent advocacy organisation had provided independent advocacy to those being liberated from prison. This funding had come through the Community Justice Scotland funding at a local level. Unfortunately, following Scottish Government changes to throughcare funding arrangements in 2024, this service closed on 1 April 2025. The funding changes required partnership applications that independent advocacy organisations could not meet because they must remain independent from service providers. The organisation reports there was "significant statutory need" among people meeting the definition of 'mental disorder' or having needs under the 2003 Act. However, funding restrictions prevent core contracts being used for prisoner support, and no referrals have been received since service closure.

Four organisations without dedicated justice contracts reported minimal referrals from justice agencies.

The pattern is consistently that without formal structures that enable independent advocacy in justice systems and settings, provision remains at 0-2% of referrals. One independent advocacy organisation received just one referral from justice social work in 18 months out of 857 total referrals. Another tracks that justice agency referrals are "not common," receiving only one youth justice referral in two quarters, which actually related to child protection rather than justice processes.

Organisations describe actively trying to build awareness with police, Crown Office and Procurator Fiscal Service, courts, justice social work, and Scottish Prison Service. However, awareness raising with justice services and systems does not create access when the commissioning infrastructure is not in place. Where people do access support, it typically happens through self-referral after seeing posters or hearing from others, rather than through structured pathways. What is needed is clear referral pathways, the Learning Disability, Autism and Neurodivergence (LDAN) Bill is an opportunity to create these referral routes for people in justice systems and settings that will be covered by the Bill.

This evidence shows that provision gaps do not result from lack of effort by independent advocacy organisations or lack of need. The gaps result from how commissioning systems are structured.

Independent Advocacy Provision and Forensic Mental Health

Many of SIAA's 32 member organisations regularly work in forensic mental health settings or 'secure care'. Some have specific contracts for forensic mental health wards or settings. However, some organisations do not specifically report that they work with advocacy partners in secure care because their contracts are designed more broadly. These organisations are contracted to work with particular groups rather than specific settings, so one forensic ward is not singled out in their reporting. There are five SIAA members that report working in secure care, however we believe that many more than five of our members organisations work in secure care but do not identify this due to the nature of their contracts.

Two organisations that responded to SIAA described working with people whose lives sit between mental health and justice systems.

One independent advocacy organisation works solely in a specialist forensic setting with a fairly consistent population of around 100 people. Independent advocacy is regularly offered and its role explained to patients by independent advocates themselves. This approach results in a close to 100% take-up rate, demonstrating that when people understand what independent advocacy is and what it can offer, they want to access it. The barrier is not lack of interest; it's lack of awareness and gaps in provision.

The organisation working in this high-secure forensic setting reports increasing requests for support with justice processes e.g. attending hearings, sitting in on solicitor meetings, and helping people understand what is happening in justice processes. They note these justice-related needs are now as common as requests for mental health or learning disability support. This indicates advocacy partners who have worked with independent advocacy to have their views heard within a health context also require independent advocacy in justice settings.

Commissioning boundaries create reporting gaps: One independent advocacy organisation is commissioned to support people in a Scottish prison, this is only around prison healthcare. The same organisation also support people in various settings who are subject to mental health disposals following criminal proceedings. However, the organisation reports that independent advocacy involvement in justice processes themselves is limited because their commissioning focuses on prison healthcare, and mental health care and treatment and/or social care in hospitals and the community. Most referrals come from Mental Health Officers not attached to criminal justice social work, and from NHS prison healthcare staff rather than the justice agencies themselves.

Again, this underlines how commissioning boundaries can mean that while people involved with justice system do access independent advocacy, it's not captured or planned for as justice provision. This creates a risk that when we plan justice independent advocacy, we may be planning around only part of the population who needs support.

Summary of Key Findings

- **Funding determines availability:** The presence or absence of dedicated justice funding is a primary determinant of independent advocacy provision, not underlying need. Organisations with dedicated funding for prison-based independent advocacy report justice referrals comprising 7-20% of their total work, with one service receiving 500-600 prison referrals annually from one prison setting. In contrast, organisations without specific justice contracts report justice referrals at 0-2% of total referrals, with several receiving no referrals from justice agencies despite awareness-raising efforts.
- **Independent advocacy organisations' relationships with professionals are key:** as there are no required referral points to independent advocacy in justice settings, independent advocacy organisations rely on their relationships with the staff who are 'gatekeepers' in a justice setting, particularly leadership. When independent advocacy is well understood by the staff working in justice settings, independent advocates get regular referrals. Provision depends not just on funding infrastructure, but also on the working relationships that enable independent advocates to reach people who need support.
- **Contracted provision shows consistent demand:** Organisations with dedicated funding for prison-based independent advocacy report justice referrals comprising 7-20% of their total work, with one service receiving 500-600 prison referrals annually from one prison setting they are contracted to work in.
- **Funding determines availability:** The presence or absence of dedicated justice funding is the primary determinant of independent advocacy provision, not underlying need. Organisations with dedicated funding for prison-based independent advocacy report justice referrals comprising 7-20% of their total work, with one service receiving 500-600 prison referrals annually from one prison setting. In contrast, organisations without specific justice contracts report justice referrals at 0-2% of total referrals, with several receiving no referrals from justice agencies despite awareness-raising efforts.
- **High uptake where consistency is available:** One SIAA member organisation provides the closest example to the 'opt-out' provision recommended in the Independent Review of Learning Disabilities and Autism in the Mental Health Act. This particular organisation provides independent advocacy in a specific high secure forensic hospital. Each patient is introduced to and offered independent advocacy by the independent advocates themselves, and the offer is presented more than once. This systematic approach has resulted in

consistently high uptake in recent years, frequently reaching 100%. This demonstrates that when independent advocacy is consistently available and properly explained, people want to access it.

- **Self-referral sometimes happens where formal pathways do not exist:** Where provision exists, people in custody occasionally self-refer through word-of-mouth or posters rather than through formal referral pathways. This means access depends on factors like literacy, confidence, and social connections rather than systematic processes that reach everyone who needs support.
- **Mental health disposals create grey areas:** Forensic mental health patients supported under mental health legislation are often served by independent advocacy referrals categorised as 'mental health' rather than 'justice' referrals, despite their ongoing involvement with the criminal justice system. This means justice-related independent advocacy provision may be higher than justice-specific data suggests, but is not captured in justice commissioning frameworks.

What This Means for Policy Development

Building Infrastructure That Enables Provision

The evidence shows that if we want people in justice settings to access independent advocacy, we need to create the commissioning infrastructure that makes it possible. The Learning Disability, Autism and Neurodivergence Bill presents an opportunity to establish frameworks that ensure:

Funding mechanisms explicitly enable independent advocacy provision in justice settings. This means dedicated funding streams that recognise the specialist nature of this work and the independence requirements of advocacy organisations. Current provision ranges from 7-20% of organisational work where dedicated funding exists, to 0-2% where it does not exist, demonstrating that funding structures, not need, determine provision.

Commissioning rules do not inadvertently exclude independent advocacy organisations. The changes to throughcare funding resulting in a service closure demonstrates how policy changes can eliminate provision when the practical implications for independent advocacy organisations are not considered. The throughcare funding rule change required partnership applications that independent advocacy organisations could not meet because they must remain independent from service providers. Testing how new commissioning rules will work for independent advocacy organisations before implementation could prevent similar situations.

Infrastructure exists consistently across Scotland. Currently, six of Scotland's 17 prisons have no independent advocacy provision at all, and provision in other justice settings depends on local arrangements. Consistent infrastructure would mean someone's ability to access independent advocacy does not depend on where they live

or which justice agency they are involved with, but reflects statutory entitlements and need.

Maintaining Place-Based, Grassroots Independent Advocacy Provision

The independent advocacy movement in Scotland has grown over 35 years, with many organisations starting through local communities coming together. This grassroots nature has ensured human rights and independence remain cornerstones of provision, in turn creating high quality provision. Independent advocacy groups are often led and influenced by people with lived expertise and by the needs of specific communities of interest and localities.

Policy development must protect and sustain grassroots, community-based independent advocacy organisations. These organisations have developed deep expertise, knowledge, and practice of independent advocacy over many years. The fact that SIAA member organisations are embedded in local communities and communities of interest meaning they understand the specific barriers people face in their areas and can respond flexibly to local needs.

When commissioning frameworks for justice independent advocacy are developed, they should **ensure local and community-based organisations can access funding**. Commissioning processes should not create administrative barriers that exclude smaller, grassroots organisations in favour of large-scale providers that have prioritised offering remote provision and/or AI powered services. These local independent advocacy organisations often have the established relationships and community trust essential for reaching people in justice settings. These organisations prioritise people-centred and relationship based provision that usually results in ‘in-person’ provision as the default. The Children’s Hearings national grant funding has included place based independent advocacy provision and is a useful model that has been [positively independently evaluated](#).

Utilizing Different Models of Independent Advocacy, Particularly Collective Advocacy

Independent advocacy takes different forms, each suited to different situations and needs. Collective advocacy and citizen advocacy models enable communities to develop long-term solutions to their rights-related issues and empower those most directly affected by public service design and decision-making. However, these models are currently under particular threat from funding cuts or reductions.

Justice settings would benefit from utilizing multiple models of independent advocacy. At the moment, it is largely individual issue-based independent advocacy that happens in justice settings. SIAA would recommend citizen and collective advocacy are considered as part of planning for future provision connected to the LDAN Bill.

Collective advocacy creates spaces for people to get together, support each other to explore shared issues and find common ground. 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 can help planners, commissioners, service providers and researchers to know what is working well, where the gaps are in services and how best to use resources effectively to tackle issues. It helps legislators and policy makers to create opportunities for people to challenge discrimination and inequality and helps people learn to become more active citizens. Collective advocacy groups benefit from skilled help from an independent advocacy organisation and with the support of resources. SIAA believe increased collective advocacy in justice settings is crucial to systems change, rights realisation and built in peer support opportunities.

Citizen advocacy occurs when an ordinary citizen is encouraged to become involved with a person who might need support in the community. The advocacy partner might experience social isolation or unfair treatment. The citizen advocate is not paid. For many people their citizen advocate is the only person not paid to be in their life and here the impact of having a citizen advocate cannot be overstated. 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. Citizen advocacy is a model that may suit throughcare settings well as it creates the circumstances for advocacy partners to build connections to their local community.

The Mental Welfare Commission's 2017 guidance on working with independent advocates, makes it completely clear that the 2003 Act gives the right of access to collective advocacy and citizen advocacy: "It is important to note that this right is for all people with a mental disorder; whether or not they are subject to compulsory measures under the Act; whatever their need for advocacy and whether or not they are incapacitated, or have communication difficulties. The Act gives people a right of access to both collective and individual advocacy, including citizen advocacy."

The Code of Practice Volume 1 for the Mental Health (Care & Treatment) (Scotland) Act 2003 states that provision of independent advocacy may be for one to one or group or collective advocacy. The Code further states that: 'Any or all of the various types [models] might be appropriate depending on the circumstances and personal preferences of the patient concerned.'

It is crucial that Scottish Government recognise that they must support a variety of independent advocacy models within the proposed LDAN Bill, to allow it to be effective in supporting people's voices to be heard and rights upheld. Collective and citizen advocacy are strategic, prevention-focused investments that foster a human rights

culture and maximize public expenditure. SIAA have worked closely with the Scottish Government team managing the new [Independent Advocacy Social Care Fund](#) which is connected to the 2025 Care Reform (Scotland) Act. The pilot fund is specifically for new collective, peer or citizen advocacy projects. Although at the early stages, SIAA are optimistic about the possibilities a fund of this nature can provide for advocacy partners and look forward to seeing the evaluation of the projects in the next few years.

Addressing Relationship-Dependent Access

SIAA's member evidence showed that even where contracts exist, access depends on relationships with justice staff and leadership. There is not yet inherent understanding of what independent advocacy is and its benefits. When staff who understand independent advocacy move on, independent advocacy organisations must rebuild relationships from the beginning and re-explain their role, even though their contract has not changed. This creates unstable access that depends on individual relationships rather than systemic processes.

Policy could support more stable access by:

- **Embedding independent advocacy in operational procedures and induction materials** for justice staff, so new personnel understand independent advocacy as part of standard practice.
- **Including independent advocacy awareness in training** for justice personnel at all levels. This could be part of the 'training' part of the LDAN Bill.
- **Establishing clear protocols for independent advocacy access** that do not depend on individual relationships but are built into how the system operates.

This would help ensure that independent advocacy access is built into how justice systems operate, not dependent on which individuals happen to be in post.

As concluded in the SHRC prison complaints report "There are clear examples of good practice which could and should be replicated across the prison estate". SIAA know this goes beyond prison settings throughout all justice systems, settings and processes. The LDAN Bill presents an opportunity to establish commissioning frameworks that create equitable access to independent advocacy across justice settings and throughout Scotland. It also presents an opportunity for staff in public service roles to undertake learning on independent advocacy provision for people in scope of the LDAN Bill.

SIAA is a Scottish Charitable Incorporated Organisation | Charity number SC033576

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

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