Scottish Independent Advocacy Alliance

Independent Advocacy Complaints

SIAA guidance for independent advocacy organisations and commissioners

Developed by:

Scottish Independent Advocacy Alliance

Supporting
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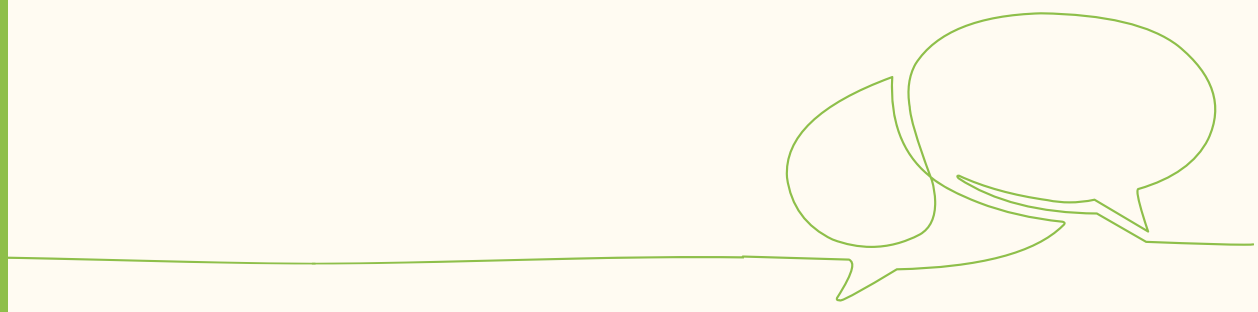
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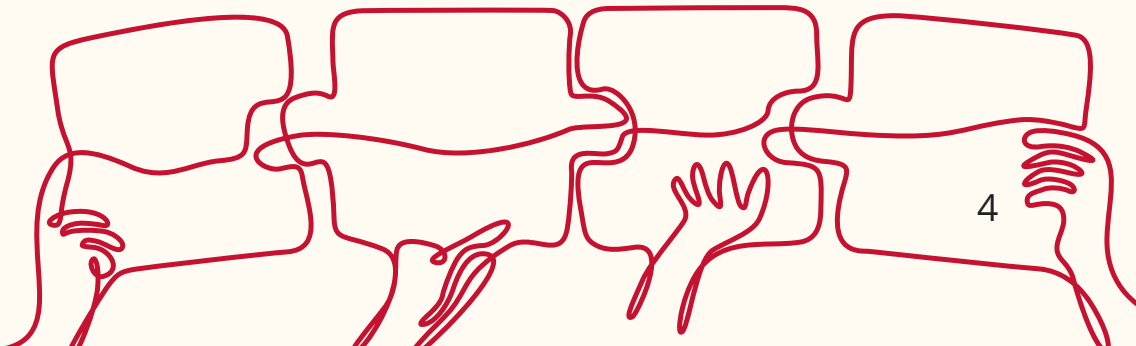


Glossary

Term / Acronym	Definition
2003 Act	The Mental Health (Care and Treatment) (Scotland) Act 2003. The key legislation that gives people with a mental disorder the legal right to access independent advocacy in Scotland. Also referred to as the Mental Health Act or MHA.
Mental disorder	The legal term used in the 2003 Act to define who has a right to independent advocacy. It includes mental health conditions, personality disorder, learning disability, autism, acquired brain injury, and dementia. SIAA acknowledges this term is outdated but uses it because it is the language of the current law.
Advocacy partner	The person who uses, or seeks to use, independent advocacy. Preferred over 'service user' or 'client', reflecting the collaborative nature of the advocacy relationship.
HSCP (Health and Social Care Partnership)	The integrated body responsible for delivering health and social care in a local area of Scotland, formed through integration of NHS and local authority services. HSCPs have a legal duty under the 2003 Act to ensure availability of independent advocacy. Depending on the area, complaints may be directed to the NHS Board, the local authority, or the IJB.
IJB (Integrated Joint Board)	The governing body of a Health and Social Care Partnership - a separate legal entity formed jointly by the NHS board and the local authority, responsible for strategic planning and decision-making.
SPSO (Scottish Public Services Ombudsman)	The final, independent stage for complaints about most devolved public services in Scotland, including HSCPs. Complaints to SPSO must normally be submitted within 12 months of the issue or of the HSCP's final response.

Glossary

Term / Acronym	Definition
OSCR (Office of the Scottish Charity Regulator)	If a complaint about an advocacy organisation relates to governance, financial management, or serious concerns about how the charity is run, it can be raised with OSCR — but only after the organisation's internal complaints process has been completed.
MWC (Mental Welfare Commission for Scotland)	An independent organisation that protects the rights of people with mental illness, learning disability, dementia, and related conditions in Scotland. The MWC has published guidance clarifying that the right under the 2003 Act applies to all people with a mental disorder, regardless of whether they are subject to compulsory measures.
Strategic advocacy plan	A planning document that HSCPs are required to produce under the Mental Health (Scotland) Act 2015, setting out how they will understand and meet local need for independent advocacy.



Introduction

The Scottish Independent Advocacy Alliance (SIAA) advocates for independent advocacy. SIAA has been dedicated to promoting, 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 independent advocacy in communities, care settings, hospitals, and prisons, working within the Independent Advocacy Principles, Standards and Code of Best Practice. Independent advocacy's human rights-based approach, emphasises the PANEL principles (Participation, Accountability, Non-discrimination, Empowerment, and Legality), supporting rights to be realised and voices heard across Scotland.

Participation

Ensuring individuals are actively involved in decisions affecting their lives.

Accountability

Holding decision-makers to account for their actions and policies.

Non-discrimination

Promoting fair treatment and access for all, regardless of background.

Empowerment

Supporting individuals to speak for themselves and make informed choices.

Legality

Upholding legal rights and frameworks to protect vulnerable individuals.

As this guidance is aimed at independent advocacy organisations, their commissioners and funders and policy makers with an interest in independent advocacy, we have not gone into details about what independent advocacy is.

If you would like more information about independent advocacy, please visit the SIAA website page 'What is independent advocacy?'.

Why we developed this guidance

This document serves two purposes:

1. To improve understanding of the right of access to independent advocacy that exists within the Mental Health (Care and Treatment) (Scotland) Act 2003, and the legal duty that Health and Social Care Partnerships have to 'ensure availability' of independent advocacy.

2. To provide clear guidance and templates for handling two distinct types of complaints:
   - Complaints about the availability of independent advocacy
   - Complaints about the quality of independent advocacy



Why This Matters

Understanding the distinction between availability and quality complaints is crucial. These two types of complaints have different legal bases, involve different responsible parties, and therefore require different complaint processes. Clarity on this distinction protects the independence of advocacy while ensuring that rights under the 2003 Act are upheld.

Using these templates with commissioners

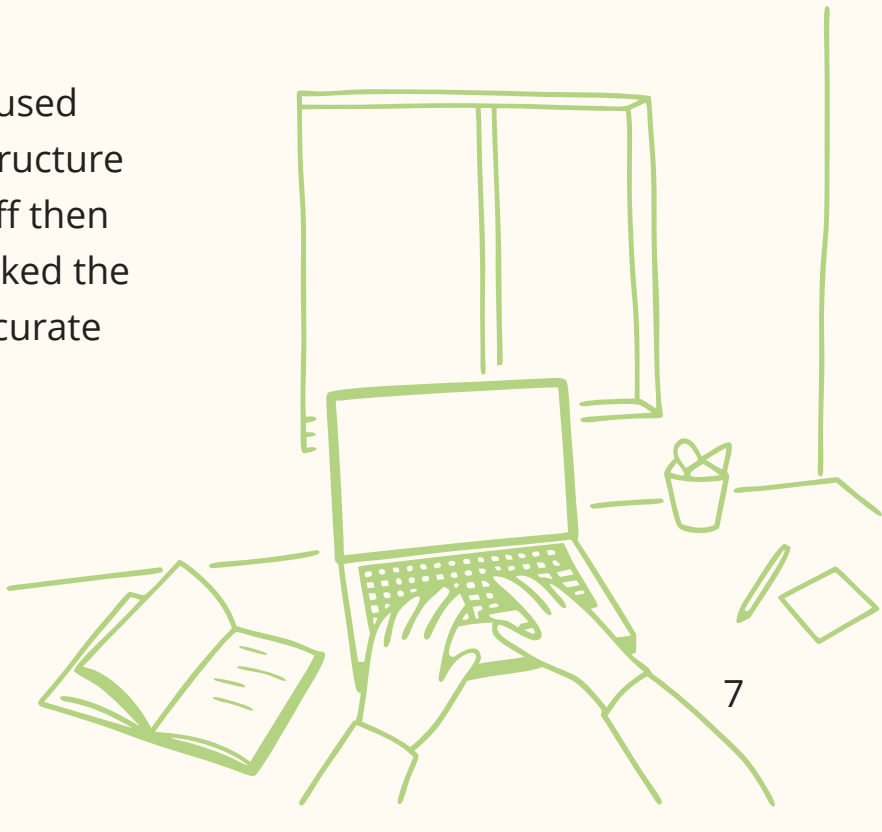
SIAA encourages member organisations that receive funding related to the 2003 Act right of access to use and adapt the template policies for their own organisations. These templates are provided in the appendices to this document.

Once updated, SIAA strongly recommends discussing your revised policies and templates with local commissioners. This conversation matters: sharing this guidance with them, explaining what you have updated in your complaints policy and why, serves as a practical reminder of their legal duties under the 2003 Act. It can also open up a broader discussion about the full breadth of the legal duty to 'ensure availability' — a conversation that may be overdue in many areas.

Acknowledgements

This guidance document, including the templates, was written by SIAA using staff, Board and SIAA member organisations' expertise. SIAA also used template policies from SIAA member organisations, specifically: Advocacy Service Aberdeen, The Advocacy Project, Angus Independent Advocacy and CAPS Independent Advocacy. SIAA also consulted with the SPSO in detail to ensure our guidance was accurate. We would like to thank our members that contributed policies and expertise as well as the SPSO for their views on the guidance.

AI transparency note: SIAA used Claude AI to suggest a re-structure for the draft document; staff then thoroughly edited and checked the content to ensure it was accurate and factual.



Background to Independent Advocacy Complaints

Mental Health and Capacity Law in Scotland

Mental health and incapacity law in Scotland is primarily concerned with authorising and regulating actions that limit an individual's autonomy, such as detaining someone for treatment, or appointing another person to make financial and welfare decisions on their behalf. The Mental Health (Care and Treatment) (Scotland) Act 2003 applies to people who have a "mental disorder", defined under section 328 of the Act to include any mental illness, personality disorder, or learning disability. The Act sets out a series of principles - including reciprocity, non-discrimination, and respect for carers - that must be considered by those with responsibilities under it. It is within this legal framework that the right to independent advocacy exists, and that the complaints processes described in this guidance operate.

Context and Legal Framework

In 2024, SIAA member EARS Independent Advocacy enquired whether it was common practice for local authority commissioners to require independent advocacy organisations to include Scottish Public Services Ombudsman (SPSO) involvement in their complaints processes. This enquiry initiated the work that led to this document. We thank EARS Independent Advocacy and their commissioner for consulting SIAA on this matter and engaging in the subsequent discussion.

SPSO Guidance on Advocacy Complaints

SIAA consulted with the SPSO following the enquiry. They provided critical guidance that distinguishes between two types of complaints that would arise about independent advocacy:

SPSO Guidance on Advocacy Complaints

"As we understand it, [independent advocacy] service itself is not within SPSO jurisdiction but there are certain types of complaints in this setting that would need to be responded to through the council's complaints handling procedure and then signposted to SPSO at the conclusion of stage 2."

SPSO further advised:

"The legislation (section 259 of the Mental Health (Care and Treatment) Scotland Act 2003) requires local authorities to secure availability of independent advocacy services to people in the local authority area 'who have a mental disorder' and to ensure that those people have the opportunity to make use of those services. In this case, we think that means that, if there are issues around availability and accessibility, which go beyond normal service user type issues, the [independent] advocacy service may need to signpost to the local authority's complaints handling procedure to address those issues."

The Critical Distinction

What is critical about the legislation is that the responsibilities of each local authority are to ensure access to, but not to provide, advocacy, and the advocacy must be independent. This means independent advocacy is not provided 'on behalf of' the Health and Social Care Partnership (HSCP), but it is still funded by them.

Therefore, if someone complains that independent advocacy isn't available or accessible because of how it's funded, the HSCP complaints procedure should be used. As independent advocacy is not provided 'on behalf of' the HSCP, and given that the advocacy must be independent, issues about the quality of independent advocacy - rather than the lack of its availability - are not for the HSCP. There could be issues around keeping the advocacy service

independent if the HSCP could take complaints about quality. Therefore, independent advocacy complaints about quality must follow a separate policy and procedure.

Two Categories of Complaints

Given the context set out above, this guidance establishes that complaints regarding independent advocacy fall into two distinct categories:

	Availability Complaints	**Quality Complaints**
What is it?	A complaint that someone cannot access independent advocacy at all.	A complaint about the quality of independent advocacy that has been received.
Who is responsible?	The HSCP — which has a legal duty to ensure independent advocacy is available.	The independent advocacy organisation that provided the advocacy.
Where to complain?	Through the HSCP's Complaints Handling Procedure.	Through the independent advocacy organisation's own complaints policy and procedure.
Escalation	Stage 1 (HSCP) → Stage 2 (HSCP) → SPSO	Stage 1 → Stage 2 → Stage 3 (review panel) → OSCR / funder
Legal or policy basis	Section 259, Mental Health (Care and Treatment) (Scotland) Act 2003.	Independent Advocacy Principles, Standards and Code of Best Practice; organisational governance.

The Importance of Accountability

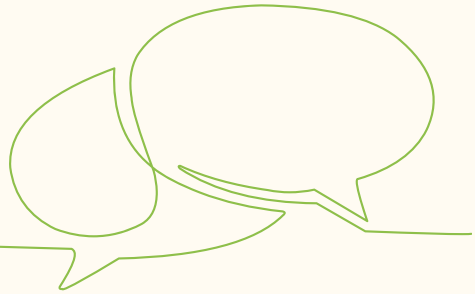
SIAA recognises that people seeking independent advocacy are often in times of crisis and already face significant barriers in having their voices heard. We acknowledge that following a complaints procedure to address the unavailability of independent advocacy may feel like an additional burden that many people would find challenging to navigate.

However, SIAA knows it is fundamentally important to highlight when individuals' rights to independent advocacy are not being upheld. If rights exist in law, there must be meaningful ways to address breaches of those rights. The right to independent advocacy is, at its core, the right to get support to have your voice heard, to participate in decisions, and to understand your choices and human rights. Until now, there has been no guidance on how to challenge failures to uphold the right in the 2003 Act.

Implementing these distinct complaints policies and raising awareness of the right of access, and the option to complain when access is denied due to insufficient resources, represents a small but important step that organisations can take to strengthen accountability and ensure that legal rights are not merely words on paper, but are genuinely accessible to those who hold them.

SIAA strongly encourages member organisations to record and regularly highlight to commissioners instances where people with a right to independent advocacy are being denied access due to insufficient resources. This is not about criticising individual organisations who are doing their best with limited capacity - it is about holding HSCPs accountable for their legal duties under Section 259 of the 2003 Act.

We recognise that both independent advocacy organisations and commissioners must navigate this carefully to maintain robust independence and manage potential conflicts of interest. However, accountability for legal duties must take precedence. **When HSCPs fail to adequately fund independent advocacy services to meet demand, they may be breaching their statutory obligation to 'ensure availability.' This breach has real consequences for people's rights and must be challenged.**



Example

If a local independent advocacy organisation's capacity only allows them to support people through statutory processes (such as Mental Health Tribunals or guardianship applications), they cannot provide independent advocacy to someone with a 'mental disorder' who has a right under the 2003 Act but needs support with situations such as:

- A GP visit
- Reporting an incident to police
- An unpaid carers issue
- Speaking to a social worker about a care plan

That person may be being denied their legal right to independent advocacy.

For some people, these situations can be as daunting as formal statutory processes. Anxiety, stigma, and communication challenges may make it extremely difficult to act on these issues alone — which is precisely why independent advocacy support matters.

The core issue is not the independent advocacy organisation's eligibility criteria, which are set by the funding made available to them. It is the current level of commissioned capacity — set by HSCPs — that does not meet the full scope of the legal right, and therefore may not fulfil their statutory duty to 'ensure availability' under Section 259 of the 2003 Act and the Mental Health (Scotland) Act 2015.



When HSCPs do not fulfil their duty to ensure availability, they must be open to being challenged through complaints. Independent advocacy organisations play a crucial role in making this accountability possible.

Role of independent advocacy organisations in supporting accountability

- Record, where possible, when people with rights under the 2003 Act cannot access independent advocacy
- Report capacity issues to commissioners systematically and transparently
- Challenge the HSCP on the right of access in the 2003 Act and their legal duties
- Signpost people to the organisation's complaints policy and templates
- Provide written confirmation to individuals when the organisation's resources does not allow for support

SIAA's learning platform provides opportunities for all staff and volunteers to learn about the laws relevant to independent advocacy and the importance of the 2003 Act right of access. It is vital that all staff, particularly those taking referrals and managing waiting lists, understand how to identify when someone has a right of access under the Act but cannot access the provision they are entitled to, and can clearly communicate this to both the individual and to commissioners.



SIAA is interested in understanding any member support needs arising from the referrals and waiting lists processes. Please reach out via enquiry@siaa.org.uk if you have any thoughts or comments about this.

Complaints About the **Availability** of Independent Advocacy

The right to access independent advocacy under the Mental Health (Care and Treatment) (Scotland) Act 2003 is broad, but in practice, many people who hold that right cannot exercise it. This section explains what the right means, why it sometimes cannot be accessed, and how to complain when it isn't.

It is worth noting that independent advocacy provision in Scotland is not limited to the 2003 Act. However, it is the 2003 Act that establishes the wide right of access for people with a "mental disorder", and it is that right which forms the basis of availability complaints.

The Legal Duty

Health and Social Care Partnerships (HSCPs) have legal duties under Section 259 of the Mental Health (Care and Treatment) (Scotland) Act 2003:

> "To secure the availability, to persons in its area who have a mental disorder, of independent advocacy services and to take appropriate steps to ensure that those persons have the opportunity of making use of those services."

Guidance from the Scottish Government on implementing the 2003 Act and commissioning independent advocacy, alongside guidance from the MWC, provides clarity on what the right of access means in practice.

Code of Practice Volume 1

The Code of Practice Volume 1 for the Mental Health (Care & Treatment) (Scotland) Act 2003 provides additional clarification:

- Provision of independent advocacy may be for one-to-one, group, or collective advocacy
- 'Any or all of the various types [models] might be appropriate depending on the circumstances and personal preferences of the patient concerned.'

Mental Welfare Commission Guidance

The MWC's guidance on working with independent advocates makes it completely clear that the 2003 Act gives the right of access to people beyond compulsory measures and statutory processes and the right applies to models like collective advocacy and citizen advocacy, not just the individual issues based model:

'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.'

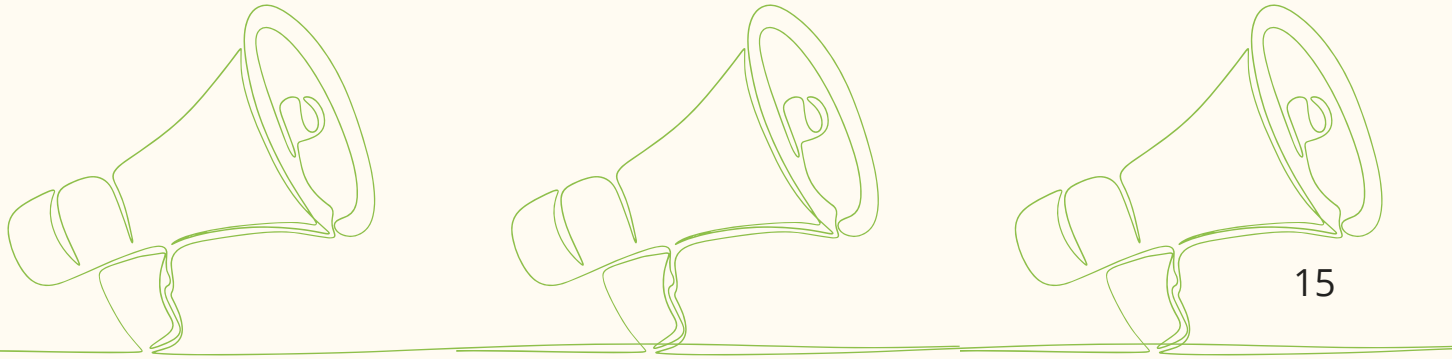
Who Does the Right Apply To?

The right to access independent advocacy applies to anyone with a 'mental disorder' as defined in the Act. SIAA recognises the term 'mental disorder' is outdated but as it is mentioned in the law it is important to include it here and describe what the wording from the law means.

You may have a right to independent advocacy under the 2003 Act if you have:

- A mental health condition
- A personality disorder
- A learning disability
- Dementia
- An acquired brain injury

It has also been understood that autistic people are encompassed within the definition of mental disorder under the Act.



Why Someone Might Not Be Able to Access Independent Advocacy

Despite this legal right, there are several common reasons why people cannot access independent advocacy in practice.

- **Capacity limits**. The local independent advocacy organisation has a waiting list or has closed to new referrals because demand exceeds the funding available.
- **Eligibility criteria that are too narrow**. HSCPs commission independent advocacy within a budget, which often means the eligibility criteria are drawn more tightly than the Act requires. Someone may be told they don't qualify - but the Act's definition of who holds the right is broader than those criteria suggest.
- **No service commissioned for their circumstances.** In some areas, there is simply no independent advocacy commissioned for particular groups or situations, for example children and young people - meaning the right exists on paper but there is no provision.
- **The most suitable model of independent advocacy is unavailable.** Individual, collective, and citizen advocacy have different functions; the model a person needs may not be available locally.

Example

A woman with a diagnosis of an eating disorder contacts her local independent advocacy organisation for support ahead of a care review meeting with her social worker. She is told the organisation is currently only available to people going through formal mental health tribunal processes, and that she does not meet the eligibility criteria.

Under the 2003 Act, she has a right to independent advocacy - her diagnosis means she meets the definition of mental disorder, and the right applies regardless of whether she is subject to compulsory measures. The eligibility criteria applied by the organisation reflect the level of funding provided by the HSCP, not the full scope of the legal right. This is an availability complaint and the correct route is through the HSCP's complaints process, not the advocacy organisation's.

How to Make an Availability Complaint

Availability complaints should be directed to the local HSCP's Complaints Handling Procedure. Depending on the area, this may mean contacting the NHS Board, the local authority, or the Integrated Joint Board. HSCPs operate a two-stage complaints process; if unresolved at Stage 2, the complaint can be escalated to the Scottish Public Services Ombudsman (SPSO).

Independent advocacy organisations play an important role in making this process navigable. When they cannot provide support due to capacity or eligibility constraints, they should:

- ☑ Confirm this to the individual in writing
- ☑ Explain the right of access under the 2003 Act
- ☑ Signpost to the HSCP complaints process
- ☑ Signpost to other support (such as a Citizens Advice bureau) that may help with making the complaint

Note: SIAA is not a regulatory body and does not handle complaints about the availability or quality of independent advocacy. SIAA can provide guidance and support to member organisations on handling complaints appropriately.



Complaints About the **Quality** of Independent Advocacy

Where an individual wishes to raise concerns about the quality of independent advocacy they have received, they should contact the organisation that provided the independent advocacy and request their complaints policy and procedure.

Examples of Quality-Related Complaints

Quality complaints might include concerns about:

Independent Advocacy Delivery	Independence & Ethics
• Conduct of staff or volunteers • Communication issues • Delays in response or lack of follow-through	• Concerns about independence • Conflicts of interest • Confidentiality breaches • Adherence to independent advocacy principles

Most SIAA member organisations will have ways of explaining to advocacy partners what is outwith their role - it might be helpful to underline this in a complaints policy. For example, advocacy partners cannot make a complaint if they do not get the outcome they hoped for, as this is separate from the quality of independent advocacy provided and is purposefully outwith independent advocacy's control.

Find out about independent advocacy principles

Independent Advocacy Principles, Standards and Code of Best Practice

Find out about how independent advocacy organisations measure quality and outcomes

Outcomes Framework: Toolkit for Demonstrating Impact of Independent Advocacy

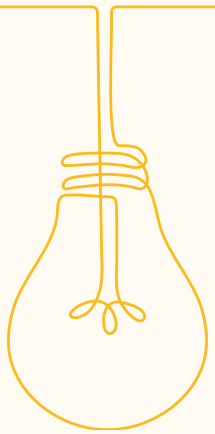
Defining "Quality" in Scottish Independent Advocacy: Research Report Summary

Why Quality Complaints Stay with the Organisation

As SPSO guidance makes clear, for independent advocacy to remain truly independent, complaints about quality cannot usually be handled by the HSCP that funds them. Allowing funders to investigate quality complaints would compromise the independence that is fundamental to advocacy. Independent advocacy organisations must be free to act solely in the interests of the people they support, without fear of funder interference.

This requires that quality oversight remains with the organisation itself, its board, and potentially sector regulators (OSCR is the charity regulator in Scotland), but not with service commissioners. In some circumstances where a complaint remains unresolved with an independent advocacy organisation, an individual can make a complaint to the funder if all other avenues have been exhausted.

Charity Regulator (OSCR)	Funding Body
If a complaint relates to governance, financial management, or serious concerns about how the charity is run, concerns can be raised with the Office of the Scottish Charity Regulator (OSCR). OSCR Charity Concern Form Note: OSCR will expect the organisation's internal complaints process to have been completed first.	Depending on the nature of the complaint and the response received, the person may be able to raise concerns with the organisation's funders. However, funders will typically only consider complaints after the organisation's internal process is exhausted, and their remit is usually limited to matters of contract compliance rather than day-to-day quality.



Template Complaints Policies

SIAA has developed template complaints policies for independent advocacy organisations to adopt or adapt based on their specific circumstances. These templates reflect good practices from across the sector while maintaining flexibility for different organisational contexts.

For independent advocacy organisations — when adapting these templates, consider:

- Your organisational capacity and staffing levels
- Requirements in your funding agreements
- Accessibility needs of your advocacy partners or potential advocacy partners (e.g. whether an Easy Read format is needed)
- Your governance structure and board involvement
- Any specific requirements from regulators (e.g. OSCR, Care Inspectorate)

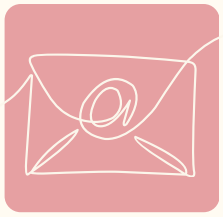
Appendices

The following appendices are provided as separate documents so that organisations can use and distribute templates independently as needed. All templates can be adapted to suit individual organisational contexts while maintaining alignment with the principles and legal framework outlined in this guidance.

Appendix	Templates, Guidance and Sample Letters
Appendix A	Quality Complaints Template - A comprehensive policy template for advocacy organisations to adopt or adapt.
Appendix B	Availability Complaints Guidance - Guidance for making a complaint about lack of access to independent advocacy.
Appendix C	Sample Complaint Letters - Template paragraphs and letters for making availability complaints at each stage.

Contact

Scottish Independent Advocacy Alliance





Website: www.siaa.org.uk

Find an advocate: www.siaa.org.uk/find-advocate/

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SIAA is a Scottish Charitable Incorporated Organisation
Charity number SC033576

This Guidance was written by SIAA staff drawing on policies developed by SIAA member organisations, and SPSO guidance. It has been edited with the assistance of Claude (an AI language model) and reviewed for accuracy by SIAA staff.

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