Inquiry into regulation of care for older people

Scottish Independent Advocacy Alliance (SIAA)

The Scottish Independent Advocacy Alliance (SIAA) is a membership organisation which promotes, supports and defends Independent Advocacy in Scotland. It aims to ensure that Independent Advocacy is available to any vulnerable person in Scotland.

The right to Independent Advocacy for those with mental disorders or who are potentially at risk is enshrined in Scottish legislation. However, Independent Advocacy can also have a key part to play in supporting other vulnerable groups such as black and minority ethnic groups, older people and people with problem drug and/or alcohol use, amongst others.

Independent Advocacy helps people by enabling them to express their own needs and to make their own informed decisions. Independent Advocates support people to gain access to information and explore their options. They speak up on behalf of those who are unable to speak for themselves or choose not to. Independent Advocacy is not about making decisions for someone, counselling or providing advice, it is about tackling injustice by enabling a person to have control over their life and to make their views heard.

Independent Advocacy organisations do not provide any services other than advocacy. They are separate organisations in their own right, are financially independent, and all those employed in an Independent Advocacy organisation know that they are only limited in what they do by the principles of advocacy, resources and the law. This ensures they are able to assist vulnerable individuals whilst being as free as possible from any conflicts of interest.

Inquiry into the Regulation of Care for Older People

In Scotland all individuals with a mental disorder (which covers mental illness, personality disorder, dementia and learning disability) have a legal right to Independent Advocacy under the Mental Health (Care and Treatment) (Scotland) Act 2003. The Adults with Incapacity (Scotland) Act 2000 also gives a person a legal right to Independent Advocacy and the Adult Support and Protection (Scotland) Act 2007 places a duty on Council Officers to consider the importance of providing Independent Advocacy.

Independent Advocacy supports people to understand their rights and empowers them to take control of their lives. Advocacy helps to uphold people’s rights by holding people to account. This is not only relevant to ensuring quality of care, but can also support people through any other aspect of their lives where their rights may be disregarded. This is reflected by the
experience of Zena in the SIAA’s A Voice to Trust Film\(^1\) and by many of the stories in the SIAA’s book, ‘A Voice Through Choice’\(^2\).

To ensure a high quality of care for Scotland’s most vulnerable people it is important that the views of service users are sought and that every effort is made to address barriers that may make it difficult for people to make their opinions and experiences known. Independent Advocacy has a key role to play in achieving this and yet evidence shows that the availability of Independent Advocacy for older people is patchy. The *SIAA Map of Advocacy 2009-10*\(^3\) found that, of the 14 Scottish Health Board areas, 5 had limited or no advocacy for older people. This was particularly true for older people living in the community.

**Can we be confident that the regulatory system is picking up on care services where the quality of care is poor?**

The SIAA does not believe that the existing regulatory system is always picking up on care services where quality of care is poor. Many of our member independent advocacy organisations who work with older people in care services expressed concern about the nature of announced and unannounced inspections. Our members have told us that both announced and unannounced inspections can give establishments too much time to get prepared and as a result the inspection may not give a full picture of the care service on a day to day basis. Family members, independent advocates, and others who visit regularly and without prior notice may be more likely to get a clearer picture of the quality of care. In addition the scope of the inspection can be limiting and not enough support and encouragement is given to the wider reporting of poor care out with the inspection programme.

**Are there any particular weaknesses in the current system?**

Independent Advocacy organisations can support service users during inspections and also provide information to inspectors regarding their experience of the care service. They can also comment on care service’s compliance with the National Care Standards particularly those relating to Independent Advocacy\(^4\).

We have already highlighted issues raised by our members about the notice given for both announced and unannounced inspections and the impact this may have on the quality of the inspection. For example, Independent Advocacy organisations sometimes experience increased demand for posters and leaflets about their services when inspections are due so that the service can be seen as complying with the National Care Standards. In other instances the SIAA has had requests from care providers for Independent Advocacy leaflets. This demand and level of engagement with the

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\(^1\) [http://www.youtube.com/watch?v=Yil2SMw45e4&feature=player_embedded](http://www.youtube.com/watch?v=Yil2SMw45e4&feature=player_embedded) (Zena’s story, 3:47 mins into the video)


organisation is not always replicated when an inspection is not expected so the inspection does not give a clear reflection of compliance.

In most instances Independent Advocacy organisations report that care organisations strive to meet the care standards but the application of this can become a “tick box” exercise. One member stated that “Most services try their best but are hindered by lack of resources”. Pressure on the service and the inspector(s) can lead to compliance with the regulations being measured but with limited emphasis on the experience of care out with the time of the inspection and the individual experience of the person receiving the care, giving a narrow view of the service.

This can be further illustrated by the patchy involvement of independent advocates in inspections. While we are aware that, in some areas, advocates are interviewed as part of the inspection and are therefore able to give their views on the quality of care, level of service user involvement and how well the service is complying with its obligations regarding advocacy under the Care Standards, this is not replicated across Scotland. We are, unfortunately, also aware of cases where advocates have been excluded and asked to not to visit a service during an inspection. One of our members stated:

“We have never been asked our view by the regulators in 18 years, even when they know we are present in an establishment and it would be reasonable for them to ask us as it would highlight issues that had occurred since last inspection.”

- GM, Older Peoples Advocacy Manager

Sometimes Independent Advocacy organisations have been contacted by commissioners or Social Workers after inspections have revealed problems in a care service. This raises concerns that access to Independent Advocacy in some areas may be crisis focused rather than preventative. This lessens the safeguarding potential of independent advocacy where independent advocates may have been able to raise and help to address issues prior to problems within a home escalating to the point they require outside intervention.

Because of the limitations of inspections the SIAA believes that more should be done out with the inspection process to encourage and enable people to raise issues at other times. Essential to this is the ability of the system to take into account the views of service users.

Does the system adequately take into account the views of service users?

Independent Advocacy can be key to enabling service users to make their views heard. Regrettably this paper has already illustrated that the availability of independent advocacy for older people varies across Scotland and that, at April 2010, 5 Health Board areas had limited or no provision. Where provision is available, capacity and resources are limited.
Research by the SIAA, due to be published in the autumn, found that 55% of Independent Advocacy organisations believe that their current level of funding is not sufficient to meet demand for their services. One organisation stated, “The demand for our service has grown but the service has been unable to grow with this demand because of lack of funding”.

There are a total of 54 Advocacy organisations throughout Scotland employing 450 paid staff and 1,200 volunteers. Advocacy Organisations endeavour to support as many people as possible despite limited resources and, in 2009-10, supported over 25,000 individuals from a range of backgrounds including older people, individuals with a mental health problem, and individuals with a learning disability. It is estimated that up to 70% of Scotland’s care home population may have dementia and therefore have a legal right to Independent Advocacy. The latest available Scottish Government care home figures show that, at 31 March 2009, there were a total of 1,442 registered care homes providing 43,894 places to 38,240 residents. This means that an estimated 26,750 older people in Scotland’s care homes may have a legal right to Independent Advocacy. Resource restrictions mean that Independent Advocacy organisations do not have the capacity to support all the vulnerable older people who need access to Independent Advocacy in residential care homes in Scotland, let alone individuals with a need for Independent Advocacy living in the community who are accessing care services.

Access, however, is not limited solely by availability. The SIAA is aware of incidents where independent advocates have been discouraged from supporting people in care, either through the lack of information given to service users about Independent Advocacy (despite the requirements under the National Care Standards), or where advocates have been actively blocked from engaging with service users. One of our members gave us this example:

“A few days after we had delivered an awareness session to a staff group in a care home a member of their staff left a message on our answering machine regarding making a referral for a resident. When we phoned back to speak to them they were not on shift, so we left a message. At this point in time we did not know the name of the resident or the detail of the situation. The next phone call was from the unit manager to say they didn’t know why the staff member had phoned as no one needed advocacy. The next time an advocacy worker was visiting their advocacy partner in the same care home, the original staff member approached them to say they had been reprimanded for phoning and introduced the worker to the resident, who did, indeed, want advocacy support and now has it.’”

- MM, Advocacy Manager

Older people are often dependent on the workers involved in their lives referring them to Independent Advocacy when they need it. However, the

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5 All SIAA research reports are published on the SIAA website at www.siaa.org.uk. An advance summary of the results of this research will be available in the SIAA magazine published in September.
6 See footnote 5
7 http://www.scotland.gov.uk/Publications/2010/09/10151751/0
8 http://www.scotland.gov.uk/Publications/2010/04/27111958/0
worker may have a limited knowledge of independent advocacy and therefore not understand the role, purpose and responsibilities of an independent advocate, making it less likely they will make a referral. Likewise members have commented that “advocates may be excluded as it is assumed that their involvement may slow a process down, bring other considerations forward or support the person in making a decision that professionals think is not the best option”. Where a person with no family or friends and seems settled within a care setting, then their care may only be reviewed by their care manager on an annual basis without any informal visits in between and therefore a need for Independent Advocacy may not be identified nor the option arise.

Where independent advocates have been present they have been vital for raising concerns. One member mentioned concerns that they had been involved in on behalf of their advocacy partner(s) with the then Care Commission. The incidents included the misuse of restraints and, in one case, a patient being given a bath which was too hot and resulted in burns. The complaints were upheld. The importance of access to Independent Advocacy can also be illustrated by the fact that a few residents of the Elsie Inglis Nursing Home with no family were referred to their local Independent Advocacy organisation by Social Work when they, the Care Commission and the Police were investigating the home earlier this year. The organisation was also interviewed by the Police as part of the investigation.

Another concern raised further illustrates the need for Independent Advocacy, particularly non-instructed advocacy for those who lack capacity. Members highlighted issues with the operation of section 13(z)(a) of the Social Work (Scotland) Act 1968 (circular CCD5/20079). The guidance has been interpreted as offering local authorities the option to place people who lack capacity in a care establishments on a permanent basis with no legal supervision, also known as ‘fast tracking’. This is interpreted as the alternative to following process established under the Adults with Incapacity (Scotland) Act 2000 and amounts to permanent detention without the case ever being heard in a court or tribunal. The SIAA and its members are concerned about the human rights implications of this process and believe that this practice raises further questions about whether the national care standards for vulnerable older people are being met when their human rights appear to be disregarded. One of our members requested monitoring information on Section 13(z)(a) from the Scottish Government Mental Health Law Division who could not provide them with any information and redirected them to the Mental Welfare Commission (MWC). The MWC informed our member that they knew nothing about it. It is a concern of the Independent Advocacy movement that little or no monitoring of this situation is taking place, despite the requirements set out under paragraph 4 of the CCD5/2007 circular.

The SIAA believes that all older people should have access to Independent Advocacy. Independent Advocacy will help them to have their say in the care

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9 [http://www.scotland.gov.uk/Publications/2008/03/20114619/12](http://www.scotland.gov.uk/Publications/2008/03/20114619/12)
they receive, improve their quality of life and will complement the wider regulation of older people’s care services in Scotland.

Does the registration and regulatory system provide an appropriate basis for the regulation, inspection and enforcement of integrated social and NHS care in the community?

The registration and regulatory system is a key element of regulation but should not be its sole mechanism. More needs to be done on prevention as well as improving enforcement. This should include addressing the negative attitudes towards older people that sometimes leads to poor care and the isolation of older people which can make them vulnerable to poor care. Tackling isolation will also support them to better enable them to speak up where they are experiencing poor care. Independent Advocacy has a key role to play, alongside making care facilities more open to visitors and funding more home visits for vulnerable older people.

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