

Scottish Mental Health Law Review consultation (the Scott Review) – Questions for additional proposals

Questions

Chapter 1: Independent advocacy

Overall proposals

1. We are proposing that the Scottish Government should consolidate and align all the different pieces of legislation and policy to ensure consistency regarding the definition of independent advocacy, the right to access it and how it is commissioned and funded. What are your views on this proposal?

- We would urge the Review to consider the wider context of independent advocacy and the need to increase its usage as part of wider safeguards, protections and enablement of rights. A balance needs to be struck when considering new proposals, ensuring they do not create a more onerous process for patients to apply for and secure an independent advocate. All proposals in this area should be assessed with this core objective in mind.
- Our members would reflect that there can be confusion around the range of advocacy-type roles, and there is a need as part of reforms to clearly define the role, its purpose, and who can access this. The proposals for codified practice, training and oversight in this regard could assure quality, clarify roles and improve consistency.
- If all types of independent advocacy are consolidated under one overarching structure there needs to be clarity regarding funding to ensure that people with mental health conditions are not differentially disadvantaged in accessing services or that the burden of funding does not unduly lie within mental health provision.

Improving access

2. Do you think there should be an opt out system for independent advocacy?

- All patients who could benefit from IA should be aware of it, that it is available to them, and be assisted to access it. An explicit 'opt in' system is only one method of helping to ensure this - IA advocacy should be offered at times more than solely the outset of contact with services.

3. Please give your views on our suggestions for change

- Even within a context of improved information and understanding of the role of independent advocacy some people may chose not to have a independent advocate. These wishes should be respected and followed irrespective of whether there is an opt in or opt out system.
- Proposals regarding advance statements and their legal status may be relevant. i.e. a person may indicate in their advance statement whether or not they wish to have independent advocacy.

4. We think that an independent body should be created by the Scottish Government with a specific remit to evaluate independent advocacy organisations, or responsibility be given to an existing organisation to do this. Resource should be given to independent advocacy organisations to collect data in a uniform way across Scotland, so issues can be tracked at structural and strategic level. Please give us your views on these proposals

- An evaluation body would be helpful in this regard to potentially drive services to boost uptake. By evidencing the effectiveness of independent advocacy, it would ensure there is a clear case for investment by services in these roles and their development.
- We would suggest that a separate independent body may be inappropriate and unnecessary for this role in respect of people with mental health conditions. We would suggest the MWC would be an appropriate body to take up these duties, as they have a locus in relation to the rights of people with mental health conditions and their carers and oversight of some of the key junctures and circumstances which could trigger consideration of the role of independent advocacy.

Who can be an independent advocate?

5. Please give us your views on our proposals for who can be an independent advocate.

- Many of our members were surprised that an independent advocate did not already need to be registered, and would set this an expectation for working in support of a potentially vulnerable patient group.
- We would urge that, to ensure the esteem this role is held in increases and there is a quality assurance framework, a formal registration process would be of benefit.
- As regards a qualification, we can see potential benefits as part of wider efforts to standardise and improve the consistency of provision from independent advocates. The core skills these practitioners require, of empathy, relationship building and the development of experience in engaging with people with mental health conditions and carers, are often developed by experience more than via an academic process. We would urge that any qualification therefore be experience and competency based. Ongoing training, peer support, reflective practice, learning, and CPD would be better than a singular qualification.
- If there is a qualification process it should be standardised and open to delivery from a range of providers.
- The danger of a qualification process that is too stringent inhibiting people from becoming an independent advocate needs to be borne in mind, to ensure that this process leads to an increase in qualified, and supported advocates.

6. Please also let us know if you consider the qualifications and registration should be required for those who support collective advocacy groups

- Again we would suggest that experience and peer support and CPD is more important than a initial qualification for such a role.

Diversity, equality and inclusion

7. Please give us your view on our proposals for improving diversity ,equality and inclusion in independent advocacy, including:

- a. Those commissioning independent advocacy services to require collection and sharing of monitoring data**
- b. Resource provided for diversity and equality training for all independent advocacy workers**
- c. Support for independent advocacy organisations to have dedicated staff to work with specific groups they share a background with, and to work with groups facing particular barriers in Scottish society**

- All organisations should have accountability in relation to diversity, equality and inclusion and an appropriate governance and training system to support this. It should be reviewed within the proposed oversight/evaluation of independent advocacy organisations.
- The recent Mental Welfare Commission Report (Racial inequality and mental health services in Scotland: a call to action) highlights the differential experiences of people from ethnically diverse backgrounds in relation to accessing mental health services and the use of the mental health act. This raises serious causes for concern.
- All services need to be able to be responsive to people with a range of protected characteristics. People may or may not wish to be represented by a 'specialist' independent advocacy service. However all independent advocacy services must have a broad range of competencies. Separate organisations rather than experience and expertise *within* an organisation may bring a potential risk of fragmentation particularly in areas or characteristics where numbers are low. Ongoing review and input from those with lived experience regarding the types of independent advocacy services that they find accessible is important.
- Our members also report difficulties for people with severe and enduring conditions accessing independent advocacy. We would urge in this regard that having a mental health condition is seen in the same light as a protected characteristic.
- A range of needs must be considered and steps taken to improve access. This would include training for independent advocates in for example use of interpreters.

Funding and commissioning of independent advocacy

8. Do you think there should be a national fund for the provision of independent advocacy in Scotland? Please give reasons for your answers

- We do not take a view on whether funding should be national or local. What we would urge is that, regardless of how it is provided, transparency on funding availability, the criteria for application for local areas, and ensuring that no areas are left behind is critical
- We would also urge that any such fund is in addition to funding provided for the provision of mental health services. Delivering greater independent advocacy services should be done alongside and in addition to, rather than in place of, fully accessible, person-centred mental health care.

- If all types of independent advocacy are consolidated under one overarching structure there needs to be clarity regarding funding to ensure that people with mental health conditions are not differentially disadvantaged to access services or that the burden of funding does not unduly lie within mental health provision.
- In the context of funding, legal aid for representation for people with a mental health condition should also be considered as part of boosting the advocacy and safeguards available to people under mental health law. This would fit the principle of the funding proposed, to secure necessary safeguards under mental health law.

The role of independent advocacy in supported decision making

9. Please give us your views on the proposals for training and your reasons for these. The proposals include:

- a. a training programme on Human Rights and SDM to all independent advocacy organisations and :**
- b. a training programme and awareness raising for the public and other relevant groups on SDM**

- We would urge that *continuous* training is provided for independent advocates to enable them to continue to develop in their role.
- Any training programme should be independent, quality assured and open to provision by a range of providers.
- The proposals include the term “specialist SDM practitioner” as a separate term and role to independent advocacy. We are unclear regarding the role, qualifications, competencies, standing and nature of the proposed specialist decision making practitioner and would welcome further clarification and consultation.

10. Scottish Government should appoint an agency to scrutinise independent advocacy organisations regularly. Such an agency might need to be overtly human-rights based. For independent advocacy to promote and protect human rights effectively, the scrutinising agency would have to have a thorough understanding of human rights law and its application in practice. Please give us your views.

- We would welcome the appointment of an agency to take up this role. In doing so, again it would boost the wider esteem and professionalism of the role.

- It would also provide reassurance to patients that, in engaging an independent advocate, their actions are held to a code of assurance and scrutiny.
- As above, the MWC is well placed to undertake this role.

Independent advocacy for carers

11. Independent advocacy organisations are resourced by the Scottish Government to recruit dedicated staff and volunteers specifically to support unpaid carers. Please give us your views

- We would support efforts to engage unpaid carers with additional support. We would suggest this does not need to be exclusively independent advocacy organisations resourced to provide this, but agree with the principle of such a role.