

# Written evidence from the Scottish Independent Advocacy Alliance (COV0207)

## Introduction

The Scottish Independent Advocacy Alliance (SIAA) is a membership organisation that has the overall aim of ensuring that independent advocacy is available to any vulnerable person in Scotland. Independent advocacy safeguards people who are marginalised and discriminated against or whom services find difficult to serve, empowering people who need a stronger voice by enabling them to express their own needs and make their own decisions.

SIAA welcomes the opportunity to contribute to the UK Parliament's Human Rights Committee call for evidence on the human rights implications of the Government's response to COVID-19. Our contribution draws on the experiences of our members and their expertise in supporting vulnerable people to have their voices heard in a range of situations relating to, for instance, mental health, education and social security.

Independent advocates are human rights defenders. They support people to understand and secure a range of human rights helping to make them meaningful in the real world. In addition, the values that underpin independent advocacy mesh with the PANEL principles of a human-rights based approach (Participation, Accountability, Non-discrimination, Empowerment and Legality) because they:

- Enable people to participate in systems and processes
- Hold decision makers to account
- Fight discrimination
- Empower people
- Promote equality
- Ensure that decision makers work within the law

Independent advocacy organisations are well-placed to play a pivotal role in supporting people through this time of crisis. They are trusted community organisations with excellent local links and there is independent advocacy provision in all 32 of Scotland's local authorities.

## **1. What steps need to be taken to ensure that measures taken by the Government to address the COVID-19 pandemic are human rights compliant?**

SIAA acknowledges that these are complex times presenting unprecedented challenges. Consequently, we recognised the need for the introduction of legislation to ensure certain safeguards to protect the right to life (Article 2 of the Human Rights Act). However, the emergency legislation is also having a negative impact on a number of other human rights which, during a time of crisis, are more important than ever and must be consciously protected, promoted and realised.

The pandemic presents an opportunity for the UK Government to go beyond 'compliance' and design explicitly human-rights based policy and supports – including both legislative and non-

legislative activities – that will protect human rights for all and ensure that already marginalised people and groups are not left further behind.

#### Compliance

- At a minimum, new measures and restrictions must be compliant with existing human rights legislation, including the Human Rights Act 1998 and all the international human rights treaties which apply to the UK.
- They must also comply with other relevant legislation, such as the Equality Act 2010 (and, in particular, the Public Sector Equality Duty), the Adult Support and Protection (Scotland) Act 2007 and the Children (Scotland) Act 1995.

#### Monitoring, evaluation and scrutiny

- International human rights frameworks make clear that any new powers introduced during a national emergency must fulfil certain criteria, including being legal, necessary and proportionate. Ensuring that this is the case will require a significant amount of ongoing work to monitor, evaluate and scrutinise the impacts of the new measures, openly and transparently.
- Underpinning this work is a requirement for the UK Government to capture equalities data disaggregated by protected characteristic, to allow for a detailed analysis of the impact of the measures on different groups of people. In this way, if policies and practices are having a disproportionate impact on people who share protected characteristics, this can be recognised and responded to, so the impact is mitigated.
- SIAA supports the SHRC's call for all forms of scrutiny of the emergency powers to be conducted by relevant, independent bodies.
- SIAA notes that the Coronavirus Act 2020 expires after two years, subject to six-monthly reviews. We support the British Institute of Human Rights (BIHR's) comment that this raises significant concerns about the proportionality of the new powers it introduces. In contrast, the Coronavirus (Scotland) Act 2020 expires automatically after six months, but can be extended.

#### Human rights budgeting

- The UK Government should adopt a human-rights budgeting approach, which “asserts that there are values, goals and objectives which extend beyond purely economic ideas that budgets must be pressed to serve”<sup>1</sup>. This will ensure that human rights are explicitly considered when resources are allocated.
- It is also incumbent upon the UK Government to demonstrate that new measures and restrictions which may restrict human rights have not been taken for budgetary reasons alone.

#### Human rights impact assessments

- Governments are required by Section 19 of the Human Rights Act to publish a human rights compatibility statement alongside all legislation. To that end, the UK Government has stated that it believes the Coronavirus Bill 2020 to be compatible with human rights. We note, however, that the BIHR has highlighted the fact that its analysis was published a day after

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<sup>1</sup> The impact of COVID-19 on the public finances and the Fiscal Framework, Scottish Human Rights Commission and the Health and Social Care Alliance Scotland, May 2020

the Bill was laid before Parliament on 19 March. They also conclude that, “some of the most worrying clauses of the Bill have not been dealt with by the Analysis, missing consideration of key issues for some of the most vulnerable in our communities. Added to this, we have also noted that where proposals have been included in the Analysis, there are worrying conclusion and/or missing information”<sup>2</sup>.

- In order for impact assessments to be meaningful, they must be comprehensive, evidence-based and provide robust scrutiny. We note, as an example of good practice, the ‘Independent Children’s Rights Impact Assessment on the Response to Covid-19 in Scotland’<sup>3</sup>, commissioned by the Children and Young People’s Commissioner Scotland, “In the absence of a comprehensive approach to ensuring human rights compliance by the Scottish Government”<sup>4</sup>

## **2. What will the impact of specific measures taken by Government to address the COVID-19 pandemic be on human rights in the UK?**

### The impact on human rights: Evidence from the independent advocacy sector

During the course of lockdown, SIAA has been hosting regular, fortnightly video calls with our member organisations about the repercussions of Covid-19. In addition to providing a safe space for peer support, these calls also ensure that SIAA has up-to-date oversight, at a national level, of the issues facing independent advocacy organisations and the people that they support.

The impact of the pandemic - and the measures taken by both the UK and Scottish Governments to address it - on human rights has consistently been one of the key concerns raised by members over the last few months. The manager of one member organisation described the current situation as, ‘A human rights crisis as much as a health crisis’. Managers and independent advocacy workers have cited evidence of a range of human rights issues, including:

- Reduction in participation by advocacy partners in forums where critical decisions are being made about their care and treatment. A member organisation reported that, as Mental Health Tribunals moved from face-to-face to remote provision, they saw a drop in attendance by their advocacy partners from 95% to 15%. Other members report of guardianship applications being fast-tracked through the courts, becoming ‘simply a process with no participation’. In other cases, such as during children and families meetings, members reported of ‘gatekeeping’ of access to participation, so that parts of the meeting were taking place without the person involved (or their independent advocate) present
- Reductions in access to social care, with no indication of when a return to a normal level of service provision could be expected
- Issues with access to food and medicine, including parents with children home from school that they cannot afford to feed, as well as people in the ‘shielding’ category who do not know how to access food or urgent medication
- Families not being able to have face-to-face contact with Looked After Children

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<sup>2</sup> Human Rights Implications of the Coronavirus Bill: The risk of making vulnerable adults and children even more vulnerable, BIHR, March 2020

<sup>3</sup> [‘Independent Children’s Rights Impact Assessment on the Response to Covid-19’](#), Young People’s Commissioner Scotland and Observatory of Children’s Humans Rights, July 2020

<sup>4</sup> Ibid, p4

- Digital exclusion, particularly for certain groups of people e.g. people with learning disabilities, or people in hospital who are reliant on ward staff to mediate access to phones/laptops etc. Connectivity is also a key concern in rural areas of Scotland.
- A move from 'supported decision making' to 'substituted decision making', as vulnerable people's views and preferences are increasingly side-lined or ignored
- Problems accessing solicitors in certain areas for mental health tribunals
- Increased workload to check that the emergency powers are being used correctly – as a last resort and not a first resort – and that cognisance is still being taken of people's views and preferences
- Concerns that vulnerable people are being pressured into signing DNRs without fully understanding the implications.

In addition to this evidence of the current, ongoing erosion of human rights, SIAA members are also very concerned that this 'rolling back' of human rights in a time of crisis becomes the new normal, such that hard-won human rights are subsequently not reinstated as they were pre-pandemic.

### The role of independent advocacy in defending human rights

In order to respond to the significant impact of Covid-19 on human rights – both now and as we move from crisis to recovery – it is imperative that people continue to be informed of their rights, that they are supported to realise them and that there are accessible and robust mechanisms to provide redress when things go wrong.

People must be given the information they need to make good decisions and feel confident that their views and opinions will be considered in decisions that are made about them. However, in practice, many people will require significant support to make this a reality. They may need help in understanding the complexities of decisions that are being made about them, as well as in overcoming barriers to their participation such as power imbalances, lack of confidence and a history of feeling ignored and irrelevant in previous decision-making.

Independent advocacy has a pivotal role to play in this regard, now more than ever. Independent advocates are human rights defenders, experienced in identifying gaps between policy and practice and standing up to injustice. Independent advocacy also has a clear role to play in intervention and preventing people and situations from reaching a crisis point.

A key plank of the government's response to Covid-19 must therefore be to ensure that people know about and have access to independent advocacy to support them through the pandemic. Concerted efforts must be made, for instance, to identify opportunities to promote awareness of and access to independent advocacy.

In addition, independent advocacy organisations require higher levels of secure, stable funding to ensure that they are able to respond effectively to the demands of the Covid-19 crisis. Our members have done an admirable job of flexing positively to the very testing circumstances of the pandemic, thus minimising the negative impacts on the marginalised people they support. However, even before the current crisis, many independent advocacy organisations in Scotland were struggling to balance reduced funding with an increased demand for their services. It is an unavoidable truth that inadequate funding leads to poorer outcomes for vulnerable people and groups who cannot be supported to know their rights, fight for their rights and/or seek redress when necessary. Our members are unequivocal on this matter. Increased funding would allow independent advocacy

organisations to defend human rights and mitigate the negative impacts of the government's Covid-19 measures on a greater scale.

### Different types of independent advocacy

There are two different types of independent advocacy, both of which are relevant and useful within the context of supporting marginalised people and groups to understand and realise their human rights during the Covid-19 pandemic. For more information, see SIAA's [Principles, Standards and Code of Best Practice \(2019\)](#) for independent advocacy.

#### *1) Individual advocacy*

There are a number of different types of individual advocacy, but it always involves a one-to-one relationship between an independent advocate and an advocacy partner (the person being supported). It can be provided by both paid and unpaid advocates. An advocate supports an individual to represent his/her 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.

Non-instructed advocacy is a specific type of individual advocacy that happens when there are issues with a person's capacity perhaps resulting from limited communication due to a physical disability or a learning disability. In such situations, a non-instructed advocate seeks to uphold their advocacy partner's rights and ensure that decisions are taken with full consideration of their unique preferences, rights and perspectives.

#### *2) Collective advocacy*

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 there are gaps in services and how best to target resources. 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.

### **3. Which groups will be disproportionately affected by measures taken by the Government to address the COVID-19 pandemic?**

The current pandemic is hugely concerning for everyone - but it is increasingly clear that both the virus itself and the policies and practices put in place to mitigate its impact are experienced differently by different people. Although everyone has been significantly affected by many of the government's new measures, people belonging to certain groups are disproportionately affected and at increased risk of having their human rights compromised.

SIAA members have reported particular concerns about the following groups:

- Children – for instance, the huge impact of school closures on education, contact with peers and mental health, as well as the loss of free school meals and, for many children, school as a space that provides safety and stability
- Older people – for instance, in relationship to reduced participation in decision-making about guardianships and problems accessing food, medication and social contact
- Disabled people – for instance, in relation to reduced access to social care, and discrimination in terms of equality of access to health care
- BAME people – for instance, being significantly more likely to be admitted to intensive care or die as a result of Covid-19
- Women – for instance, due to the rise in domestic abuse resulting from lockdown restrictions and being more likely to have lost their jobs or been furloughed than men
- Carers – for instance, because of an increase in terms of caring load accompanied by a decrease in respite support
- People living with mental illness – for instance, because of the impact of restricted movement and lack of contact with support networks, as well as the potential impact of increasingly restrictive government measures
- People living in poverty – for instance, in relation to multiple, overlapping vulnerabilities in relation to access to food, insecure housing and insecure employment
- People who are digitally excluded – for instance, in relation to people’s abilities to participate meaningfully in decisions that are being made about their care or treatment, because they cannot afford to access technology, do not have the skills/capacity to access technology, live in rural areas with poor connectivity or because they are fearful of technology.

In reality, of course, many people will belong to multiple ‘at risk’ groups and the government must make it an explicit focus to research and understand these ‘intersectional’ impacts and then to take targeted, bespoke action to protect those most at risk.

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