Introduction to Independent Advocacy Podcast

Transcript

Welcome to Human Rights 2020s, a podcast from the Human Rights Consortium Scotland. This episode is a recording of a webinar called Introduction to Independent Advocacy: Defending and Promoting Human Rights. It was held on the eighth of February 2023. Our host is the Consortium Senior Policy Officer Lucy Miller, and the speakers are Laura Pasternak, Daniela Rondina, Dave Budd, Suzanne Swinton and Rob Gowans. Thank you.

Laura Pasternak

Hi, everyone. I'm delighted to be here and talk to you all today. And I'm delighted to be joined by some amazing colleagues that are going to tell you more about advocacy as well from experience, so I'm going to open up my notes if you lose me for whatever reason, someone just shout at me because I wouldn't necessarily see that I’ve lost you. So I'm Laura Pasternak. I'm the Policy and Public Affairs Manager at Who Cares? Scotland. And my role is basically to, to work on collective advocacy. So to amplify our members, our care-experienced members voices, to decision makers to bring about a change and policy and practice. Who Cares? Scotland if you don't know about us yet, is Scotland's only national membership organisation for care-experienced people. Our mission is to secure a lifetime of equality, respect and love for care-experienced people. We currently have over 3700 members and at the heart of our work are their rights, the power of their voices to bring about positive change. We also provide individual relationship-based independent advocacy, and a range of participation and connection opportunities for care-experienced people across Scotland, and that includes collective advocacy. We work alongside corporate parents and various communities to broaden understanding and challenge stigma faced by care-experienced people, with policymakers, leaders, elected reps, locally and nationally to shape legislation, policy and practice. And we do this collaboratively building on the aspirations of The Promise to secure change. I'm going to show you a video now of some of our advocates explaining independent advocacy to you in their words.

Advocate 1

Independent advocacy helps people to have a stronger voice and to have as much control as possible over their own lives.

Advocate 2

As an advocate young people may ask for help to support them on a range of issues that can vary from getting to spend time with their family and friends, to communication with their social worker, issues around care planning, as well as that important step of leaving care.

Advocate 3

The advocacy we provide is relationship-based, meaning that through trusting relationships, we obtain meaningful views that we can then represent at a child's hearing.

Advocate 4

The young people are our boss, and we will do and say exactly as directed by them, either alongside them, or on their behalf. They’ve got complete control over how they use us. They tell us what to do. What to say who to say it to and how.

Advocate 5

My job is to support the young person. It's not for mum, dad, foster carers, kinship carers or whoever else they may be living with at the time.

Advocate 6

when I meet with a young person for the first time, I'm able to tell them that we're separate from services like social work, education or health. And I've worked for them and them only. I like to tell them that I have this parrot on my shoulder. And this parrot likes to listen to everything that they're telling me. The parrot then repeats to make sure that they've understood what their views and thoughts are,

Advocate 7

The advocacy is very much an opt-in, they consent to that, you know, they're in agreement, and they're willing to work with us, they feel they can get something out of that advocacy relationship, that we’re able to amplify their voice, you know, in a way that that's important to them.

Advocate 8

Another thing that I think makes us slightly different is that we don't have a legal duty to act in the best interests of a child or young person. And this really offers us the opportunity to elevate their voice, be there only for them and support them to be heard.

Advocate 9

The one to one relationship between myself and the young person helps them feel respected, included, listened to and understood. This relationship is built on trust between us and is long lasting.

Advocate 10

The young people that I’ve supported have said that they enjoy the fact that we don't need to discuss the hearing every time we meet up and they can just use the time for us to get to know each other.

Advocate 11

You never offer advice to children and young people. We don't make choices or decisions and we only ensure that they understand the situation, their options and their rights within the Children's Hearing system.

Advocate 12

It might be there a day or two after the hearing, I'm meeting up with a young person as well, because maybe immediately after the hearing is not the time to be going over this because it's a very emotional and draining process for them. And it might be that they're very happy with the decision. And there's maybe just a couple of things, I just want to make sure that they understand the decisions that are being made.

Advocate 13

The young person knows that I will be beside them on every step of the journey until they decide that they're able to self advocate and no longer wish my support.

Laura Pasternak

Thank you for watching that and, and hearing how some of our advocates describe independent advocacy. I think you'll notice from there that that focuses a bit more on the children's hearing process and advocacy around that. But independent advocacy really underpins the Access to Justice journey for every stage that our care-experienced members are going through throughout their lives. And crucially, it's a form of early intervention to prevent rights abuses from occurring in the first place. Advocacy helps children grow up loved safe and respected and able to fulfil their full potential helping to keep The Promise. When delivering independent advocacy our advocates follow the national practice model for the children's hearing system, which was commissioned by the Scottish Government to develop a sustainable model of advocacy to realise the policy intention of section 122 of the Childrens Hearings Scotland Act 2011. So, this national practice model outlines the role of advocacy workers, including their independent status and requirement for strong understanding of children's experiences and commitment to children's rights, a solid knowledge base of policy and legislation around children and young people, working knowledge and procedures related to children's hearings, expertise and advocacy practice, and skills in working with children and young people to ensure consistent excellence of practice and delivery of advocacy within the Children's Hearing system across Scotland. The model sets out core principles, standards and outcomes with practical guidelines and indicators. But these are actually rooted in the Scottish Independent Advocacy-aligned standards and codes of best practice which Suzanne will talk about later.

For an example of principles, an advocate puts the young person first, seeks to understand and explain what's going on around that young person. They only work for the children or young person and it's for all children and young people who wish to take up the offer, sensitive to their individual needs. So in some areas, we also provide non-instructed advocacy for disabled care-experienced children and young people. The helpline at Who Cares? Scotland was set up to support care-experienced people during the pandemic, and it's still going now. And it actually provides lifelong advocacy throughout Scotland, recognising that not all care-experienced people will necessarily fit in the advocacy contracts that local authorities commission us for, so we can support, signpost and offer choice for anybody that contacts the helpline, particularly those over 26. And those issues that they require support on could be around finance, housing, connecting into our services. So I'm gonna pass over to Lucy for the next part. Thank you.

Lucy Miller

Thanks very much, Laura. And thank you for explaining that so well. In order to understand a bit better how we can use independent advocacy in real life, we're going to hear from some case studies now, so I'm going to pass over to SIAA, Partners in Advocacy and CAPS independent advocacy. I’m going to introduce you to Daniela from SIAA, and we'll introduce the first of these case studies. Thanks, Daniela.

Daniela Rondina

Thank you very much. Let's see. So my name is Daniela Rondina and I am the Development Officer for the SIaA. We're now going to share two case studies from our membership. Case studies are always helpful to understand what independent advocacy looks like in practice, and the huge difference it makes in people's lives. So the first case study we're going to have is from Partners in Advocacy, and the second one will be from CAPS independent advocacy, so we can please start with Dave from Partners in Advocacy.

Dave Budd

Thank you very much, Daniela. Hi there, folks. My name is Dave has been mentioned and I work for Partners in Advocacy. I'm the service manager for the Edinburgh and Lothians projects. So I'm going to tell you a little bit about Raffia’s story. So Raffia is a young woman with a learning disability. Raffia is from a Muslim family The family made attempts for her to be married. Raffia did not want this. Due to this and physical assault from a family member, she was subjected to adult support and protection. Raffia’s referral qualified for our project under a category six case. Advocacy was sought to gather her views. So how did Raffia feel? She felt that her views were not being considered, particularly by her family. She felt her family talked over her and did not share information with her. She felt her family regularly prevented her from going into a respite which she enjoyed and she wanted to attend. This also contravened a court order. She wanted to marry somebody, but for it to be her choice. She found the adult support and protection meetings distressing. And she was subjected to guardianship which was held jointly by the local authority and her family members. She expressed her wish to move out of the family home and into supported accommodation.

So I'll say a little bit about how did human rights apply to this situation? So Article Two of the Human Rights Act 1998 provided the prohibition of torture, which in a lot of cases when it comes to forced marriage, violence can be used in order to make the marriage happen, which violates the right of prohibition of torture. So I'm going to say a little bit about how advocacy may have helped. The Independent advocate ensured that they could communicate with Raffia using interpretation and language services. Raffia was female and Muslim and the independent advocate was male, and ensured that he was not left alone with Raffia. The Independent advocate gathered together all of the facts involved with the case and supported her to understand the rights that were at stake. The Independent advocate supported her to attend adult support and protection case conference meetings and understand everybody's role. They also explain the adult support and protection process in a way that she could understand, and helped Raffia to influence and understand the decisions and actions that were being made and being taken and review them afterwards. Over the time the independent advocate was involved, others observed that Raffia became increasingly confident about wanting to share her views and assert her own rights. Thank you very much for listening.

Daniela Rondina

Thank you very much, Dave. And if we can go to our second case that will be CAPS Independent Advocacy. Mohasin?

Mohasin Ahmad

Hi everyone. So as Daniela said, my name is Mohasin Ahmed, and I work for CAPS, an independent advocacy organisation that provides individual and collective advocacy around East and Midlothian and in Edinburgh. So there are a number of different collective advocacy groups for people who have lived experience of mental health issues. Among these are groups for people with lived experience of mental health, from minority ethnic backgrounds and from the LGBTQIA plus community. So those two groups are the ones that I am the facilitator for. So these groups are special, in the sense of they’re two new groups doing something different to what CAPS usually does. And instead of focusing on specific mental health issue, they're focused on specific communities. And as groups facing multiple layers of disadvantage, from experiencing mental health issues and from being part of a marginalised group, it's important that people from these communities can be supported to find their voice and know their rights. Today, I'll be sharing an example from the LGBTQIA plus collective advocacy group on how they worked together on an activity to uphold their human rights, specifically, the right to health.

So back in June last year, the group completed a refresh of an audit tool that LGBT health and wellbeing had created, which serves as a guide for mental health service providers to become more inclusive of LGBT plus communities in their practice. This piece of work is important as LGBT communities can often face inequalities in health care access, due to stigma, fear of discrimination, and the lack of inclusivity which affects the quality of care that people receive. Back when the group began in mid 2021, common experiences of negative interactions with healthcare professionals, and their lack of knowledge about LGBT issues, led the group to decide that they wanted to improve professionals’ understanding of LGBT issues within mental health and increase access to specialist services. So that is how our work with mental health audit tool began. We have presented the tool and accompanying resources that the group created on intersectionality and spotting and addressing discrimination at a number of events and have hosted our own sessions to talk about LGBT inclusivity and mental health with professionals. This work has helped people in the group to share their experiences and use them to inform better practice for the community. They have said that being part of this work has empowered them to feel more in control of their situations, and thus help to turn negative experiences into something more positive. We've also had feedback from professionals that our work has been beneficial to them to learn more about how to support people from LGBTQIA plus communities so that they can receive a better quality of care. The group is also recently just presented to social work students on LGBT inclusivity and some of the social issues that they might need to think about in their practice. And this was really well received. We did it only yesterday actually. And we got great feedback. And that helped to inform them on how they can be more inclusive in their practice.

So it's important that people have this opportunity to find their voice and collectively work together to advocate for themselves.

If you are interested in the audit tool, it can be found on the LGBT Health and Wellbeing website under Resources and the accompanying resources that the group created can also be found on the Publications and Reports page on the CAPS website. Thank you.

Lucy Miller

Thanks very much all. I'm going to pass over now back to Laura from Who Cares? Scotland who will give us two more case studies from Gemma and Thomas.

Laura Pasternak

Thanks, Lucy. I'm going to hand straight over to Gemma who's our advocacy and participation coordinator at Kibble secure care centre. And you may want to give a wee introduction about your role, Gemma, as well. And then we’ll hand over to Thomas who's one of our amazing national reps. So without further ado, I'll hand over to you and share your presentation.

Gemma

Thanks, Laura. Hi, everyone. I'm Gemma, and I'm one of the independent advocacy workers from Who Cares. As Laura touched on I'm based Kibble education and care which provides secure care, residential care and foster care to children and young people. And that's where I'm based. That's where I provide the service. For the next five minutes, I'm going to walk you through a real life case study of providing advocacy to a young person in the care system while applying a rights-based lens. So next slide please Laura.

This case study started last spring when a key worker in one of the residential houses got in touch with me to ask if I could support a 14 year old young person. This young person previously lived in foster care in a remote location. But this had broken down, leading to the move to Kibble. Coincidentally, and fortunately for this young person, this move meant that he was now living closer in location to his relatives, particularly his older sisters and brothers. The key worker explained to me that the day before, a social worker who the young person had never met before visited to announce that the young person would be leaving shortly and moving to another residential house, this time back in the local authority, again in a very remote area. And the social worker had stated that the time at Kibble was only designed to be a short term emergency basis. And this move would provide the young person with stability and the reason given for the need for stability was that the young person was running away. He had in their words absconded 14 times over the four weeks of living at Kibble. So my focus wasn't on the professionals perspectives about what should happen next. It was about the young person's perspective. My role was to find out exactly what was going on for that young person and what he wanted to happen. From what I was picking up so far, he hadn't been given the opportunity to have his voice heard. When we met, he did confirm that this decision to move him again was yet another decision made about him, without him. It was so important to understand the context to him running away. Yes, he had run away 14 times. But he wasn't running away from the residential house, he was running towards what was important to him. He was going to see his family, his secure base. He told me that since leaving the care of one of his parents and coming into the care system, he had been asking repeatedly to live with these relatives. Social work were supposed to have assessed his older sister, as someone who could look after him. And yet two years down the line, that hadn't happened. And even though he was living closer to the family, the times he could actually see them was dependent on Social Work arranging that, which he was lucky if that was maybe once or twice a month. The social worker was off sick, his care plan had completely drifted, and so no wonder he'd taken it into his own hands. He told me, ‘what am I meant to do, if I move, my life wouldn't be any better off, it will get worse. But if I stay here actually have a chance’ and moving to this residential placement will take him away from everything he cared about. It would also affect his right to thrive in education, as he had been attending school at Kibble, and really enjoying that learning for the first time in a long time. So his goal was to stay in the residential house in the short term while working towards the end goal of returning to his family. And he instructed me to support him within that process. At this point, I was picking up that he had been let down by a number of adults in his life. So trust was really important. So we spent lots of time together, getting to know each other and building that relationship.

But any decisions that would happen about his life would really be made by three panel members at Children's hearing. So it was important to support the young person to feel comfortable to express his views, and have a say from a rights based lens. This is in keeping with article 12 of the UN CRC, I have the right to be listened to and taken seriously. Fortunately, the panel members really listen to the young person, despite social work still recommending that he be moved to this residential house and the local authority, because he was running away. The panel members understood his running away served the unmet need to be with his family. No major decisions were made at that first hearing. And it was deferred for three weeks, which meant he could stay in Kibble for the meantime. And it also gave us the time to get the help of a child friendly lawyer from Clan Childlaw. The lawyer would be able to hold social work to account with this kinship assessment that was supposed to be completed. And from a rights-based lens this is in keeping with article 40, I have the right to legal help. Until that point, the young person didn't know that he could actually have his older sister take part and to have her say about their time together, as well as this kinship assessment. So we talked to the children's reporter who arranges the hearings, she was able to get in touch with the sister who could then be involved with that in line with the siblings rights legislation which came into action in 2021. At that next hearing, the panel members unanimously agreed that the young person should remain where he is and will have increased time with his family, while the outstanding kinship assessment was completed, which the panel members were urging social work to do. And by this point in the journey, it felt like we had addressed a bit of a paradigm balance and know the young person was driving his plan forward. The involvement of advocacy had a bit of a domino effect for this young person as now he had a whole team around him; he had a solicitor, he had his key worker, he had me. We were there for him, his views and his rights. And at one point, he turned to me and said, ‘this is the first time since I've been in care that I feel people are actually listening to me.’ And so finally, after five months of living at Kibble, the kinship assessment for his sister was completed and was successful. Social Work recommended the move to the care of his family at the next children's hearing, with arrangements for him to go to mainstream school. Finally, the social worker recommended what was in line with his views and his rights, particularly article 9 of the UN CRC, I have the right to live with family who care for me. I can't put into words just how delighted this young person was with this outcome. And with every step in the journey, you'll see the line at the bottom there, because what was running in parallel was that relationship, built on respect and trust, I can't say that the advocacy would have happened without that relationship there. So overall, this was a really significant journey, it began with the threat of a move that would have had negative consequences for this young person. But by amplifying his voice, his views, his rights, the voice he already had, that just wasn't being listened to. But also respecting his human agency, it ended with the best possible move out of the system into this family. Thank you. And I'll hand you over to Thomas. Thank you.

Thomas

So Hi, I'm Thomas. I'm part of the national representative body for Who Cares? Scotland. And I'm kind of turning the coin on from what Gemma was saying. As she was speaking from an advocate’s point of view, I'm going to be speaking from a young person's point of view. Only a few years ago, coming up to my 16th birthday, I was worried about housing while I was in care, where would I go? What would happen? And I was able to get in touch with an advocate from Who Cares? Scotland. And she first asked me not anything about what was going on, it was where we wanted to meet. And looking back, it was kind of really crucial for that to be in a safe space, and the space that I chose. It was really important to create that safe space. So I could be open and honest without feeling like I don't need to hide anything. So we decided to meet up, I think it was Costa or somewhere. And we spoke about the issues, that was the reasons why I was feeling the way I was. And I told her that I spoke to my social worker but none of them were listening, at least that's the way I felt. And my advocate, she explained that they will listen. Because I'm the most important person in this scenario, which is something that I never, I still don't comprehend. So my advocate did a lot for me on a practical level, such as helping me get my views across, helped me share my feelings, but also helping me find me, helping me find my voice when I was at a point where I could self advocate for myself. And at a point to where the knowledge that she had, she was slowly passing on to me, so I didn't need to phone her every issue that I had, because I knew the information. And it was only a matter of speaking out loud, which again, she's a reason that I can confront people, I can get my voice or get my views and rights and make people listen. And I guess she's the reason I'm here today. And I think Gemma touched on the domino effect of what advocacy can do. It can build your whole support network and put you into a place where you're speaking. You're speaking for people, and you're speaking for yourself mainly. And I've had the opportunity such as this one today to speak to so many, such a broad bunch of people, such as corporate parents, academics, and policymakers, politicians, because she gave me my voice and she helped me find that I could do this. But yeah, so thank you and I'll pass back over.

Lucy Miller

Thanks very much, Thomas and Gemma, those were really really great case studies and really powerful to hear about. So now we're going to move on. So we've heard all about what independent advocacy is and how actually works in practice. And we appreciate that there's quite a lot of organisations here who have the power to lobby and influence senior stakeholders. So we're gonna go over the current policy and legal landscape of independent advocacy in Scotland, hearing about the Mental Health Law Review the Human Rights Incorporation Bill, as touched on at the start of this, the National care service, UN CRC, and The Promise. So I'm going to pass over to Suzanne, from SIAA, who will give us an introduce this current policy, legal landscape of independent advocacy in Scotland. Thanks, Suzanne.

Suzanne Swinton

Thanks, folks, it's really great to be here and to hear the practical case studies from people from their own lived life experience as well. And that's so much more powerful than anything that I can tell you today. But I just want to give you a kind of a wider context and a broad context of independent advocacy in Scotland and where we’re at at the moment. So I work for Scottish independent advocacy Alliance, and I am their chief officer there. And we are the only national organisation that promotes, supports, and actively advocates for the Principles and Practice of independent advocacy. We're a membership organization, and the members themselves provide the independent advocacy, as you've heard today, from CAPS, Who Cares, and Partners in Advocacy, and there's, if you go onto our website, you'll see the list of memberships across Scotland as well. So our vision, and it really fits with the kind of the Human Rights Incorporation Bill, is that everybody who needs that should have access to independent advocacy, and that it must be of the most highest standard possible. We really believe that people in groups who are at risk of not having their economic, social and cultural rights met, independent advocacy will support individuals to participate and access justice as well. Our foundational document is the principles, standards and codes of best practice. And actually, these align very closely with human rights values as well. And then these are the underpinning framework for good advocacy practice. And that's that we're loyal to the people and groups that we support, and stand by their views and wishes, and ensure that people's voices are listened to and taken into account. And independent advocacy stands up to injustice, discrimination, and disempowerment. And when that happens, it's really important that people have as much control and power as possible within their own life. And independent advocacy is definitely a tool that can enable that to happen, as we've heard from some of these case studies today. Our definition of independent advocacy is that, that it's about speaking up for and standing alongside individuals and groups, and actually not being influenced by the views of others. It's really, really important that people can have their own voice heard and hold as much power and control in the situation as possible, to ensure that their human rights are recognised. And Scottish independent advocacy alliance go one step further as well along with the membership, to say that we really believe it's important to have structural, financial and psychological independence from others, providing no other services, that we have no other interest, ties or links, other than the delivery, promotion and support in defence of independent advocacy, we say this so that people don't have conflict of interest. And I think you heard one of the case studies earlier, talking about not working in that person's best interest. And that's to ensure that the person can have their voice heard, and that their views are taken into account. And it may be what they say may differ from the professionals and the person's life. But it's really important that people know what is important to the individual and what they want for their life as well. So in Scotland we've got a really diverse independent advocacy movement, and it's made up of two different groups of advocacy, so individual or one to one and that individual advocacy could be made up from professional or issue based advocacy. So people that are paid to be independent advocates, and citizen advocacy where your local people are matched with another local person who may not have support networks in their community. And they draw alongside that individual to support them, to have presence in their local community and to have their voice heard, and their views taken into account, and collective advocacy, which is a really, really important model. So it creates spaces for people to get together and support each other to explore and share issues and find common ground. And earlier on, we heard how impactful that was in the case study from CAPS as well. It's really important that people have the opportunity to speak up about their experiences, values, and expectations, and enables people to find a strong voice and campaign and influence and change agendas and decisions that shape and affect their lives as well. And independent advocacy, as we've mentioned today, is very closely aligned to human rights, as it enables individuals and groups to have a better understanding of their rights, enables routes to remedy and access to justice. And we've heard some of that today, in particularly in the we're talking about children's hearings and adult protection, and enables the right to participation. And we've heard that really strongly today about that, I think, being able to find their own voice within that situation. And it also empowers rights holders as well. So our context of independent advocacy today is very diverse as well, there's quite a diverse law landscape in Scotland. So the Mental Health Care and Treatment Act gives people the right to access independent advocacy, if they have mental health issues, learning disabilities, acquired brain injuries. So I think it comes down to the definition, and I know it's not a popular definition of mental disorder, and mental health, a lot of you are looking to change that. And people that identify as having a disability also have the right to access independent advocacy under the Social Security Act. Different bits of legislation give different levels of rights or duties. So we find that there's a duty to inform under adult protection, and a duty to inform under social care for children's hearings. The duty to inform tells children and young people about the right to advocacy through the children's hearing. So what we see in Scotland is quite a jigsaw, that different groups of people have different rights and rights to access. But when we see, in primary legislation, like the Mental Health Care and Treatment Act, we see that people have a real right to access that advocacy and it's more available. I say that with a caveat because adults have that right to access independent advocacy through the Mental Health Care and Treatment Act as do children. But we find across Scotland, that it can be quite patchy in the access to independent advocacy, if you're a child or young person needing to access mental health advocacy. The Mental Welfare Commission did a report in 2018, called The Right to Advocacy that highlighted that the right to access advocacy for children was quite patchy. Now, there's been a number of different reviews over the last few years about strengthening independent advocacy across Scotland. So the review of Adult Social Care, the independent review of learning disability and autism, and most recently, the independent review of the Mental Health legislative framework. And then there's some really strong recommendations about the future of independent advocacy. I will be coming on to that a bit later today. So but I'll stop and I'll come back to that future and some of the recommendations from the different reviews.

Lucy Miller

Thanks, Suzanne. And we're gonna hand it over to Rob from the Alliance who will touch on some of the laws that you have just done. Thanks, Rob.

Rob Gowans

Hello, everyone. My name is Rob Gowans and I’m the policy and public affairs manager at the Health and Social Care Alliance, or the Alliance for short. So, yes, I'm going to touch on the sort of Human Rights Incorporation Bill and the sort of National Care Service, it's a couple of areas that present potential opportunities to strengthen the role of independent advocacy. Suzanne and Lucy have both sort of touched on the Human Rights Incorporation Bill, so I won't go into loads of detail. The incorporation process stemmed from the National Taskforce for Human Rights Leadership, which sort of met between 2018 and 2021 and published 30 recommendations which are accepted by the Scottish Government. These included incorporating several human rights treaties into Scots law, which basically means my very rough definition for people is the sort of adding the rights directly into domestic law to give them greater force. And apologies if that's an over-simplified explanation. The Scottish Government's committed to introducing a new human rights bill for Scotland which will incorporate all major UN human rights treaties, as well as the right to a healthy environment, rights for older people and LGBT plus people. The Scottish Government is committed to passing the bill within this parliamentary session. So it's before 2026. They're planning to run a consultation on this in the first half of this year. So it's definitely one to sort of look out for and find when it when it comes out. The incorporation process presents an opportunity to sort of include advocacy, not necessarily as an additional right, but it's an essential part of access to justice, helping people claim the rights they already have through the treaties that will be incorporated, as you've seen from the presentations and case studies earlier. But that's not all for exciting developments. The Scottish Government's also engaged in the process of reform of social care, including plans to create a national care service. This presents an opportunity to reinforce independent advocacy and the vital role it's got in social care. Independent advocacy is vital to ensuring the people are properly supported to access health and social care and holding public bodies accountable when people's human rights are not met. But advocacy groups have a preventative role. It prevents situations of conflict or poor practice from escalating and enabling people to stay engaged with services that are struggling to meet their needs. Independent advocacy is closely aligned with people's aspirations for social care and self directed support, particularly with regard to the realisation of human rights, the prevention of crisis and prioritisation of early interventions, and co-production. So, as I mentioned, currently independent advocacy is mentioned in both the Social Care Self-Directed Support Act and Mental Health Care and Treatment Act as a key part of the delivery of social care and support. Particularly the Self-Directed Support Act states that independent advocacy is a key part of providing people with information about self-directed support, which, for those who don’t know is kind of Scotland's model for delivering social care. However, due to the discretionary aspects of information sharing about independent advocacy, local practice and social workers informing people about independent advocacy is quite varied across Scotland. So that there's the kind of current developments and the national care service offers an opportunity to strengthen existing legal commitments. This includes actually requiring ministers to make provision for independent advocacy services within the national care service and in turn ensuring that vital services are properly resourced. Independent advocacy could be in strategic planning and the duty to share information about local services included for social work professionals. As drafted, the national care service bill, which is sort of currently being considered by the Scottish Parliament does include the provision that the Scottish ministers may, by regulations, make provision about the provision of independent advocacy services in connection with the services that the National care service provides. The Alliance would like to see the bill amended to go a bit further and strengthen those provisions. We think there should be a legislative duty on ministers and caregivers to ensure that every care board should ensure there's an adequate provision of independent advocacy services within that area with sustainable funding. We know that in local authorities and health and social care partnerships where independent advocacy is included within strategic planning, that local independent advocacy services can provide more sustained support to people and improve their outcomes. And we also recommend that there's this sort of definition of independent advocacy included in the legislation. And we'd recommend using the Scottish Independent Advocacy Alliance, its definition that Suzanne described earlier. So there's sort of a couple of potential possibilities for sort of strengthening independent advocacy. So thank you, everyone.

Suzanne Swinton

Thanks, Rob. So I’m going to hand over to Laura.

Laura Pasternak

Hiya. Ao I'm going to talk a bit about some of the other policy developments, more related to children and to care-experienced people of all ages. So the first thing I'm going to talk about is the UN CRC Scotland Bill. And so I'm sure a lot of you already know this, but the point of the UN CRC bill is to bring the UN Convention on the Rights of the Child into Scots law and make those rights binding and not just guiding for public bodies in Scotland. And at the moment that Bill has passed at the Scottish Parliament, and it's undergoing a negotiation kind of stage. Because there was a Supreme Court challenge, and the UK Government and the Scottish Government are negotiating the amendments to try and make the bill compatible with the devolution settlement. So that was passed in 2021. And part three, section 11 outlines what a children's rights scheme inspired by the Welsh model would entail. And this is a scheme where Scottish ministers should set out their plans to ensure that they are going to comply with their duty to act compatibly with the UN CRC and to secure better or further effect to the rights of children. So basically, the law is saying that ministers have to say their plans for how they're going to uphold children's rights and improve children's rights. So in paragraph D, the Bill states this scheme must arrange for ministers to ensure children are able to participate in decisions affecting them, including access to support, representation, and it specifically mentioned Children's Advocacy Services as an example. And inextricably linked to that part is the next part, which means that they must identify and address any situation where a child's rights are at a significant risk of not being fulfilled. So at the moment, the bill has been passed, and the challenge wasn't on this section of the bill. So this section of the bill is likely to be retained, I imagine. And when it goes back to the Scottish Parliament for reconsideration, it states that Children's Advocacy Services need to be provided to support that right of participation, and it's Scottish ministers’ responsibility to do so. So far, the UN CRC strategic implementation board, which was established in 2021, hasn't discussed advocacy but has promised a specific discussion. They have discussed, however, The Promise, so I'll tell you a wee bit more about that. So again, in case any of you don't know, The Promise is Scotland's commitment to improve the care system, and it promises that all children in Scotland will grow up loved, safe and respected. And The Promise came out in 2020. And was that the output of the independent peer review, that so many care-experienced people campaigned for. So The Promise document states that care-experienced children and adults must have the right and access to independent advocacy at all stages of their experience of care and beyond. So it covers lifelong access to advocacy. And the Scottish Government's Promise Implementation Plan published last year committed the government to supporting The Promise Scotland, which is the organisation driving change to uphold The Promise to scope a National Lifelong Advocacy Service for care-experienced people and their families, which will deliver recommendations to Scottish ministers by the end of this year. Promise Scotland have said that they may be in a position to report earlier and that when they produce recommendations it will include a fully costed model to identify how to deliver that in practice, and recognition that a service may not be up and running until 2024. As part of the scoping work, The Promise Scotland are looking to identify interim measures for children going through the care system right now and care-experienced adults so that they're able to easily identify advocacy and support services that are available. The Keeping the Promise team within the Scottish Government are assisting The Promise Scotland with this work and the need for advocacy for other groups of children. So for example, care-experienced children living with a disability, or who have experience of conflict with the law, and other ongoing commitments to advocacy across different work streams, some of which have already been mentioned today. All that is outwith the scope of this work. But The Promise Scotland expect the government to work to ensure alignment between the different commitments so we don't end up with a system where there's children and adults with multiple different advocacy workers. So that's the update on those policy developments. And I'll hand back over to Lucy.

Lucy Miller

Thanks, Laura. We're coming to the end of our presentation section of this webinar. And I'm going to hand over to Suzanne from SIAA, again, who will close and tells the next steps for strengthening the asks of decision makers. And using that legislation that Rob Suzanne and Laura spoken about to influence that change.

Suzanne Swinton

So as I've mentioned earlier, there's been some key recommendations around some specific bits of legislation. So the Mental Health Law Review being one. And then there was a raft of different recommendations in that review that really closely aligned to human rights as well and the human rights incorporation bill. So the Rome Review highlighted that certain groups of people were not able to access independent advocacy, because they weren't being told about it, or they didn't know about independent advocacy. And one of the recommendations was that people would be automatically told about their right to independent advocacy, and that they would have to opt out of independent advocacy if they didn't want that. Alongside that, the Mental Health Law Review reinforced that, and has suggested considering opt-outs for independent advocacy. And this is not just for adults, it's also including children, and young people. And it's not just for one type of advocacy, there's different models of advocacy, as we've heard, such as collective advocacy. And if this was to happen, there needs to be significantly increased resources, and it needs to be sustainably funded. And that has also been a very strong recommendation. Because actually, if you want individuals that are at risk of their rights not being met, to access independent advocacy, to support them around participation and access to justice, then there needs to be a sustainably funded, and an adequately resourced independent advocacy movement as well. And I know that independent advocacy would like to work with people with lived experience on how that might look. There needs to be a widened right of access to independent advocacy. We've talked about children and young people in particular that have the right to access independent advocacy under the Mental Health legislation, but often only are able to access that if they're detained. So there needs to be a widened right for independent advocates as well. That has been a recommendation and other groups as well that may require advocacy support. An explicit right for collective advocacy has been recommended in the Mental Health Law Review to raise court action on human rights breaches as well. And independent advocacy organisations think this is a really important right, because independent advocacy groups and organisations often see those small everyday rights infringements that happen for individuals, and they will be able to take that to the court and challenge it while it is happening, and maybe change systemic issues that are causing human rights infringements for individuals and groups. There has been a call to be able to show the difference and the impact independent advocacy is making across Scotland, and another SIAA members are really keen to work to be able to demonstrate the collective impact and the quality work that they're doing, the difference that it's making for individuals having their voices heard and being in more control of their everyday life. The other key ask is that the legislation is aligned and policy is aligned, so that there's a clear definition of what independent advocacy is, and the SIAA definition, it's a very strong definition. And it enables people to access advocacy that doesn't have that same conflict of interest. So those are some of the recommendations that have been made. But thank you for coming along today and hearing the case studies and the different scenarios around that. So thank you very much.

Outro

Thank you for listening to the human rights 2020s podcast. For more information about our work as Scotland’s civil society network for the protection and promotion of human rights, please visit our website at [www.hrcscotland.org](http://www.hrcscotland.org) or follow us on Twitter @HRCScotland Thank you.