

Independent advocacy and the Social Security (Scotland) Bill

Stage 3

April 2018

We believe that a new Section 8A of the Social Security (Scotland) Bill would help to ensure the practical and affordable provision of independent advocacy services for anyone requiring assistance under the new Act who wants it, and call on the Scottish Government and MSPs to support this amendment.

This briefing includes:

1. A proposed amendment supported by over **60** organisations to ensure the provision of independent advocacy services for people accessing the new Scottish social security system
 2. An explanatory note on why we are proposing this amendment
 3. Information on the affordability of our proposal
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1. Amendment to ensure people requiring assistance under the Act can access independent advocacy services

After Section 8, Page 3, line 33, at end insert new section-

“(8A) Independent advocacy support and representation

(1) Where an individual applies for assistance of a type described in Chapter 2, the individual shall have a right to support from independent advocacy services at all stages of the determination of their entitlement to assistance where the individual requests the support of independent advocacy services.

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(2) The Scottish Ministers have a duty to advise the individual of any independent advocacy services which are available to assist individuals to apply for assistance under this Act, and at all stages of the determination of their entitlement to assistance.

(3) The Scottish Ministers may by order or by regulations make provision for, or in connection with-

(a) the provision of independent advocacy services for individuals applying for assistance under this Act, and at all stages of the determination of their entitlement to assistance; and

(b) the requirements that must be met for organisations providing independent advocacy services to be independent for the purposes of subsection (1) above

(4) A power of the Scottish Ministers to make an order or regulations under this section shall be exercisable by statutory instrument.

(5) A statutory instrument introduced under this section containing an order or regulations may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Scottish Parliament. “)

Effect

To ensure that individuals requiring assistance under this Act are have a right to support from independent advocacy services, and that the Scottish Ministers have a duty to inform individuals requiring assistance of the availability of such services to support their applications for social security entitlements and at all stages of the determination of their applications. The amendment also gives Scottish Ministers the powers to make provision for, or in connection with, independent advocacy services.

We believe that the Social Security (Scotland) Bill must be strengthened by the inclusion of provisions recognising the universal right to independent advocacy and providing access to independent advocacy services. This call is supported by over **60** organisations, as outlined in **Appendix 1** and is vital if the Social Security (Scotland) Bill is to fully recognise the right to social security – as indicated in the Principles at Section 1 – and improve outcomes for everyone who requires assistance under the legislation.

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2. Explanatory Note

Our organisations believe that:

- a) Independent advocacy is a key element of the right to social security and a practical way to put this right into effect
- b) Anyone claiming social security should have the choice to access an independent advocate, when they feel they need one, at any point in the social security process
- c) Independent advocacy is **not** something that should be imposed on anyone who does not want it (and not everyone will want it)
- d) The Scottish Government should have a duty to fund independent advocacy services in each local authority area, including both individual and collective advocacy
- e) Estimations of anticipated demand show that providing independent advocacy services is affordable
- f) The proposed Scottish Social Security Agency should have a duty to inform people going through the social security process about the right to independent advocacy, availability of services and contact details of the local advocacy provider

A typical independent advocacy service

In practise, independent advocates provide a few hours' support to people going through the benefits process, often having been referred from an advice agency or third sector organisation. Each case is considered on its own merits. An independent advocate explains what their role is and the person can decide whether or not they require advocacy and, if not, be referred to other services, e.g. advice.

If the person requires independent advocacy support, the advocate will typically help prepare for the assessment meeting and take part in it with them.

Jim was referred to an Independent Advocacy Service by his GP as he wished to claim Personal Independence payments but was having difficulty describing how his condition affected him. An advocacy worker met with Jim for one hour and went through the form with him, helping him to think about the support that he needed to stay well. The advocacy worker then attended an appointment at an advice agency with Jim to complete the application form for PIP. Making sure that Jim was given the chance to correctly describe his conditions and the support that he needed. 4 months later when Jim was called for a face to face assessment he called his advocacy worker who met with him for an hour to go through the questions that he would be asked in the assessment and to help him prepare what he most wanted to say in the assessment. The advocacy worker then attended the face to face assessment with Jim the following week and supported him to describe how his conditions affected him on a daily basis. In total the number of hours support

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provided by the advocacy worker amounted to 1 hour for the initial appointment, 1 hour for an advice appointment, 1 hour to prepare for the assessment and 1 hour for the face to face assessment with the addition of traveling time to the assessment centre and advice agency this (approximately) results in just 6 hours support in a 4 month period to make a claim and attend an assessment. Although the hours of advocacy support provided are small, the impact of the support is much greater. As a result of receiving that support Jim was able to clearly describe his conditions both on his initial claim form and at the assessment. This resulted in his claim being assessed accurately and avoided the need for reconsideration or appeal. Because Jim felt listened to and understood he also managed to avoid the deterioration in his mental health that had occurred during previous attempts to claim benefit which meant that Jim did not need to access crisis services or require medical intervention.

Independent advocacy puts rights into the real world

Including independent advocacy in the Social Security (Scotland) Bill is consistent with the Scottish Government aim of a rights-based system. It is a practical tool that:

- enables people to participate fully, meaningfully and actively in the system
- enables equal access to the system
- combats discrimination and promotes equality
- empowers people in situations where there is an inherent power imbalance
- holds decision makers to account and ensures that they work within the law.

The Bill already recognises that social security is a human right. The Scottish Government has previously made clear that “a rights based approach must be the cornerstone of the new system; from policy development and service design, all the way through to the delivery of benefits.”¹ Independent advocacy is a human right and a practical tool that makes the right to social security ‘accessible’².

Why giving access to everyone is important

The amendment agreed at Stage 2 of the Social Security Committee’s proceedings provides for access to independent advocacy services by people with mental illness, personality disorder or a learning disability as defined under the Mental Health (Care and Treatment) Act 2003, the terms of which are likely to be reviewed soon. We welcome this progress but believe there are many people who would benefit from independent advocacy support who will not be covered by this amendment.

¹ <https://beta.gov.scot/publications/social-security-principles-and-a-rights-based-approach/>

² <http://www.ohchr.org/EN/Issues/RightSocialSecurity/Pages/SocialSecurity.aspx>

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For example:

- People with a range of long term conditions or impairments not related to mental illness, personality disorder or learning disability (including MND, hearing loss, visual impairment)
- Trauma experienced women
- Refugees and asylum seekers
- Unpaid carers
- People with experience of homelessness.

We are also concerned that offering independent advocacy services to some groups and not others is discriminatory.

But not everyone will want independent advocacy

Recognising the universal right to independent advocacy and access to services **does not** mean that everyone going through the system will require to use an independent advocate or will be told they must have an independent advocate. The use of independent advocacy will always be an active choice that people make and independent advocacy should not be imposed upon anyone. Robust information and signposting services in the new system would ensure that the Scottish Government and Social Security Agency fulfil their duty to make people aware of the availability of services, should they choose to access them.

What independent advocacy is ... and isn't

Independent Advocates are professionals with a particular set of skills, knowledge and expertise. They are a vital resource for many different people who find it difficult to access services for a variety of reasons. Independent advocacy safeguards people; who are vulnerable and discriminated against; or whom services find difficult to serve. Some people find it difficult to articulate their needs and they find speaking up for themselves stressful, difficult or intimidating. An independent advocate offers support and reassurance during an individual's interactions with the state (to offer redress to the inherent power imbalance) and puts the emphasis on expressing what the person wants to say informed by the independent advocate's detailed knowledge of the process. Independent advocacy helps people to:

- Be understood and heard by professionals and services who make decisions that affect their lives
- Better understand and navigate systems
- Understand their rights, and what to do when those rights are not met

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- Think through their choices and make informed decisions
- Influence the design and delivery of systems and services
- Access services that they would otherwise be unable to engage with.

Advocacy is not:

- Mediation
- Giving advice
- Making decisions for someone
- Speaking for someone when they can express themselves.

The benefits of independent advocacy

Independent advocacy can also help the agency staff by;

- Ensuring smooth communication between agency staff and people claiming their entitlement
- Ensuring that people fully understand the process and that they understand what the agency staff are telling them.
- Ensuring that people provide all relevant information at an early stage
- Ensuring that people are able to fully participate
- Ensuring that staff are aware of any adjustments that need to be made to accommodate a person during an interview.
- Assisting people to take part in collective groups or consultation responses, ensuring research staff get an accurate picture of the claimant experience.

Naseem has experience of claiming disability benefits and applied to join the Social Security (Scotland) Experience Panels. As a member of the experience panels she was invited to attend an event to deliver a talk about her experiences. Although Naseem wished to participate, due to problems with social anxiety and past trauma, she did not feel that she would be able to attend. She contacted her advocacy worker who had previously supported her to claim disability benefits and was aware of her benefit journey. Her advocacy worker met with her and went over her experiences with her and discussed any possible triggers that may present a problem for Naseem. On the day of the event her advocacy worker attended with her and supported Naseem to provide input regarding her benefit experiences and to participate in the group discussions. In total the advocacy worker provided 4 hours of support and as a result Naseem was able to provide her input into the design of the new Social Security benefits and felt included, respected and understood.

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3. Affordability of providing independent advocacy services based on anticipated demand

Supporting the provision of independent advocacy services is affordable and will help save public money by reducing the number of appeals. The Scottish Independent Advocacy Alliance (SIAA) estimates that the cost of providing this support would be around £1.68m a year to provide 48 FTE staff across Scotland working in already constituted and operating independent advocacy organisations (**see table below**). Each Local Authority already has at least one independent advocacy organisation and could easily build capacity to meet the increase in demand.

This funding would support thousands of people across Scotland and seeks to mitigate the risks of financial burden of not providing the service through lengthy appeals and redetermination processes if someone has not been heard during a face to face assessment. It is also anticipated that demand will be lower in the future as the Scottish Government has indicated that face to face assessments will reduce.

Mary was in receipt of DLA and was invited to claim PIP, she was not aware that she could get support to do this and attended an advice appointment to complete the form. Having lived with her condition for 20 years Mary was not accustomed to discussing her support needs and became anxious when questioned about what she was capable of. She never mentioned the difficulties that she had with some daily tasks as she was too embarrassed. When Mary was invited to attend a face to face assessment she attended alone and again became too anxious to discuss her condition. She found herself just agreeing with everything the assessor said so she could get out as quick as possible and because there was no information about the difficulties she had with some tasks on her claim form she was not asked questions about them. As a result Mary did not receive enough points to entitle her to PIP and her DLA payments were stopped. Mary was referred to advocacy by her CPN. Her advocacy worker contacted the DWP with her and asked for a reconsideration. Together they then drafted a letter explaining how her condition affects her. The advocacy worker then helped her to gather evidence from her support team to support the letter which was then sent to the DWP along with the reconsideration letter. As a result Mary was awarded PIP and her payments started again. The next time her PIP was reviewed she used the advocacy service to help complete her review form and attend the assessment. At both times Mary was able to give a more accurate picture of her support needs and continues to receive her PIP award.

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Anticipated demand and financial implications for independent advocacy in the new Scottish social security system

TOTAL ANTICIPATED COST YEAR 1					£1,680,000
	PIP caseload per annum		Est. FTE advocacy	Rounded and adjusted	FTE cost
Total	147743		4,000.00		
Dumfries and Galloway	4759	3.22%	1.19	1.50	£52,500
Borders	2471	1.67%	0.62	1.00	£35,000
South Ayrshire	2963	2.01%	0.74	1.00	£35,000
East Ayrshire	3735	2.53%	0.93	1.00	£35,000
North Ayrshire	4360	2.95%	1.09	1.50	£52,500
South Lanarkshire	9968	6.75%	2.49	2.50	£87,500
East Lothian	2365	1.60%	0.59	1.00	£35,000
Midlothian	2750	1.86%	0.69	1.00	£35,000
Edinburgh	11247	7.61%	2.81	3.00	£105,000
West Lothian	5994	4.06%	1.50	1.50	£52,500
North Lanarkshire	13004	8.80%	3.25	3.50	£122,500
Glasgow	23507	15.91%	5.88	6.00	£210,000
East Renfrewshire	1595	1.08%	0.40	1.00	£35,000
Falkirk	4291	2.90%	1.07	1.00	£35,000
Renfrewshire	5133	3.47%	1.28	1.50	£52,500
Inverclyde	2931	1.98%	0.73	1.00	£35,000
Argyll and Bute	1984	1.34%	0.50	1.00	£35,000
East Dunbartonshire	1888	1.28%	0.47	1.00	£35,000
West Dunbartonshire	3015	2.04%	0.75	1.00	£35,000
Stirling	1835	1.24%	0.46	1.00	£35,000
Clackmannanshire	1518	1.03%	0.38	1.00	£35,000
Perth and Kinross	2997	2.03%	0.75	1.00	£35,000
Fife	9531	6.45%	2.38	2.50	£87,500
Dundee	4936	3.34%	1.23	1.50	£52,500
Angus	2701	1.83%	0.68	1.00	£35,000
Aberdeenshire	3750	2.54%	0.94	1.00	£35,000
Aberdeen City	3822	2.59%	0.96	1.00	£35,000
Moray	1842	1.25%	0.46	1.00	£35,000
Highland	5439	3.68%	1.36	2.00	£70,000
Shetland	300	0.20%	0.08	1.00	£35,000
Orkney	453	0.31%	0.11	1.00	£35,000
Eilean Siar	659	0.45%	0.16	1.00	£35,000

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Appendix 1: Supportive organisations

The universal right to independent advocacy and access to independent advocacy services is supported by the following organisations:

- AdvoCard
- Angus Independent Advocacy
- Borders Independent Advocacy Service
- Bi Polar Scotland
- British Institute for Human Rights
- Carers Scotland
- Ceartas Advocacy
- Coalition of Carers in Scotland
- Coalition for Racial Equality and Rights (CRER)
- Crohn's and Colitis UK
- Common Weal
- Connect
- Disability Agenda Scotland (DAS)
- Dumfries & Galloway Advocacy Service
- ECAS Edinburgh
- Enable Scotland
- Energy Action Scotland (EAS)
- Engender
- Edinburgh Voluntary Organisations Council (EVOC)
- Equality Network
- Families Outside
- Forth Valley Migrants Support
- Glasgow Homelessness Network
- HUG (Highland User Group)
- Human Rights Consortium Scotland
- The Health and Social Care Alliance Scotland (the ALLIANCE)
- Independent Advocacy Perth & Kinross
- Leonard Cheshire Disability Scotland
- Marie Curie Scotland
- MECOPP

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- MND Scotland
 - MS Society Scotland
 - Mydex CIC
 - Media Co-Op
 - National Association of Welfare Rights Advisers
 - National Carers' Organisations
 - Nourish Scotland
 - Oxfam Scotland
 - Patients Advocacy Service
 - Partners in Policy Making
 - Positive Action in Housing
 - Positives Prisons? Positive Futures
 - Poverty Alliance
 - Royal Blind and Scottish War Blinded
 - Rape Crisis Scotland
 - Saheliya
 - Samaritans
 - Scottish Association for Mental Health (SAMH)
 - Scottish Association of Social Work (SASW)
 - Scottish Care
 - Scottish Council on Deafness (SCoD)
 - Scottish Independent Advocacy Alliance (SIAA)
 - Scottish Women's Aid
 - Scottish Council of Voluntary Organisations (SCVO)
 - Scottish Community Safety Network
 - See Me
 - Shared Care Scotland
 - Scottish Human Rights Commission (SHRC)
 - Scottish Recovery Network
 - Support in Mind Scotland
 - Unite the Union
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- Dr Katie Boyle, Roehampton University
 - Prof Abigail Marks, Heriot Watt University
 - Dr Sue Cowans, Heriot Watt University
 - Prof Jill Stavert, Napier University

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