

JUSTICE COMMITTEE

CHILDREN (SCOTLAND) BILL

SUBMISSION FROM THE SCOTTISH INDEPENDENT ADVOCACY ALLIANCE

We welcome the opportunity to respond to the Children (Scotland) Bill at this stage. We are pleased the Bill has a focus on children expressing their views however we are concerned the Bill does not include any reference to independent advocacy. We believe that children going through any proceedings should have a right to access independent advocacy in order to help them to know and understand their rights, think through choices and make informed decisions. We are concerned about the age limit of 12 for the presumption of capacity as this means that children under 12 will be considered to lack the maturity to form a view. We disagree with this, as this will exclude younger children who may be below the age of 12 but may be very mature and able to form their own views and able to express preferences. An independent advocate would be able help a child formulate and express their views from a very young age. For children with limited capacity due to their age or disability or limited verbal communication then a non-instructed independent advocate could act to defend the human rights of the child and ensure their rights are central to the proceedings.

We consider independent advocacy as a human right. Independent advocacy helps people to access other human rights and fits with the PANEL principles (Participation, Accountability, Non-discrimination, Empowerment and Legality) because it:

- enables people to participate in systems and processes;
- holds decision makers to account;
- fights discrimination;
- empowers people;
- promotes equality; and
- ensures that decision makers work within the law

Independent advocacy puts rights into the real world

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

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

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
- 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.

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 gaps are 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.

The benefits of independent advocacy for staff

Independent advocacy can also help staff by;

- Ensuring smooth communication between services and children and young people
- Ensuring that children and young people fully understand the process and that they understand what they are being told.
- Ensuring that children and people are able to fully participate

The Scottish Independent Advocacy Alliance
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