



## **Consultation response:**

# **The Children's Hearing (Scotland) Act 2011 Safeguarders Panel Regulations 2012**

### **About the Scottish Independent Advocacy Alliance**

The Scottish Independent Advocacy Alliance (SIAA) is a membership organisation which promotes, supports and defends Independent Advocacy in Scotland. It aims to ensure that Independent Advocacy is available to any vulnerable person in Scotland.

The right to Independent Advocacy for those with mental disorders or who are potentially at risk is enshrined in Scottish legislation. However, Independent Advocacy can also have a key part to play in supporting other vulnerable groups such as black and minority ethnic groups and people with problem drug and/or alcohol use, amongst others.

Independent Advocacy helps people by enabling them to express their own needs and to make their own informed decisions. Independent Advocates support people to gain access to information and explore their options. They speak up on behalf of those who are unable to speak for themselves or choose not to. Independent Advocacy is not about making decisions for someone, counselling or providing advice, it is about tackling injustice by enabling a person to have control over their life and to make their views heard.

Independent Advocacy organisations do not provide any services other than advocacy. They are separate organisations in their own right, are financially independent, and all those employed in an Independent Advocacy organisation know that they are only limited in what they do by the principles of advocacy, resources and the law. This ensures they are able to assist vulnerable individuals whilst being as free as possible from any conflicts of interest.

### **The Children's Hearing (Scotland) Act 2011 Safeguarders Panel Regulations 2012**

In Scotland all individuals with a mental disorder (which covers mental illness, personality disorder, dementia and learning disability) have a legal right to Independent Advocacy under the Mental Health (Care and Treatment) (Scotland) Act 2003. The Adults with Incapacity (Scotland) Act 2000 also gives a person a legal right to Independent Advocacy and the Adult Support and Protection (Scotland) Act 2007

places a duty on Council Officers to consider the importance of providing Independent Advocacy. In addition the Education (Additional Support for Learning) (Scotland) Act 2004 provides young people and parents with the right to have an independent advocate present at any discussions or meetings with an education authority in regard to the authority's functions under the Act. This means that the right to Independent Advocacy exists for individuals of all ages including children and young people.

By supporting children and young people to make their views known Independent Advocacy makes a valuable contribution to Children's Hearings. We therefore welcome the opportunity to respond to this consultation on the draft safeguarder panel regulations.

**1. For draft Regulation 3, do you agree with the proposed arrangements for the recruitment and selection of members of the Safeguarders Panel?**

Given the importance of safeguarders to Children's Hearings, the SIAA believes that Scottish Ministers should actively target and recruit safeguarders who have experience of being young people going through the Children's Hearing System. We believe that the experience of these safeguarders will be invaluable to their role. We also believe that children and young people should be part of the recruitment process. These measures will help to ensure that any safeguarders appointed are those best able to consider the views and experiences of children and young people.

**2. In respect of draft regulation 5(2) and 5(3), do you agree with the suggested prerequisites for appointment to the safeguarders panel?**

The SIAA needs more information regarding the key competencies for any applicant for appointment and further information regarding what level of experience would be required. At present the legalisation is disappointingly vague about the minimum competencies and knowledge base of a member of the safeguarder panel.

We note that although key competencies are already part of the training provided to existing safeguarders, considerable variations exist in how standards are applied at the moment to recruitment, appointing, training etc. This was noted by Independent Advocates. One told us, *"I worked with solicitors, social workers and health professionals [as safeguarders], all of whom seemed to approach the task at hand from their own professional perspective. Sometimes this worked really well, at other times I felt it was at odds with what the child needed. In many cases I felt that recommendations were made on the basis of the safeguarder's personal/professional value base, and not necessarily on what the child and their family needed."*

We believe that to ensure consistency of approach the competencies should be clearly set out within the legislation and a minimum competency level for a member of the safeguarder panel established. This should include a minimum level of knowledge and understanding regarding the role of the safeguarder and of children's rights issues. In developing these standards, the Scottish Government should

engage with children and young people to ensure that any competencies or standards are in line with the needs of the child. Children and young people should also be involved in the training and recruitment of safeguarders.

**3. In respect of draft regulation 5(4), do you agree with the proposed classes of persons disqualified from appointment, or from continuing as a member of the Safeguarders Panel?**

Whilst we agree with the inclusion of those on the list of persons disqualified from appointment or from continuing as a member of the Panel, we believe that this list should be expanded.

We believe that the list should better reflect the potential for conflicts of interest and that the legislation itself should include a clear definition of conflict of interest, particularly those conflicts that are not employment based. Given that the safeguarder's role is to ascertain the child's view and to come to his or her own view of what is in the child's best interest, it is important that there are measures in place to prevent even the perception of conflict of interest, as the safeguarder is supposed to be independent from everyone. This will help to build trust with the children and young people taking part in the hearing.

**4. Based on draft regulation 7(1) & 7(2), do you agree with the basis on which the Scottish Ministers must appoint and reappoint a person as a member of the Safeguarders Panel?**

Measures must be put in place to enable children and young people to be involved in appointments and reappointments. Children and young people should also be involved in any ongoing quality assurance mechanisms.

**5. In considering draft regulation 7(4), do you conclude that the grounds on which a person may be removed from the Safeguarders Panel are sufficiently wide?**

Safeguarders will often be working with vulnerable young people and in difficult circumstances; this makes it essential that the quality of their contribution is to a high standard. We therefore believe that this section should be expanded to provide provision for children and their parents/guardian to make complaints/feedback regarding a safeguarder and for an investigation to take place regarding the complaint.

The complaints/feedback provisions should:

- include a duty on public authorities to publicise the provision, including the publication of materials in a range of accessible formats;

- introduce timescales within which any complaint should be investigated;
- include a duty for public authorities to publish information about complaints annually; and,
- place a duty on Scottish Ministers to produce clear guidelines on how any complaint should be investigated to ensure a fair and consistent approach.

The legislation should also include scope for suspension during the investigation of the safeguarder's conduct/inability/or failure to comply with training requirements. This will allow safeguarders to set out their response to any complaint or issue identified regarding their performance prior to a decision being made about whether the person should be removed from the panel, whilst at the same time also protecting the wellbeing of any children or young people.

During any investigation, children and young people should be given access to Independent Advocacy. The Independent Advocate will support the child or young person to understand the complaints system, the potential consequences of the complaint, to make their own decisions around the complaint and to make their views known. Because an Independent Advocate is independent of any other service provider there will be no risk of conflict of interest and the child or young people may be more comfortable in expressing their views.

**6. Do you support the requirements set out in draft regulation 8 – that mean that members and prospective members of the safeguarders panel must attend (and successfully complete) training required by the Scottish Ministers?**

We strongly support this training requirement. We believe that it is essential to ensure best practice given the sensitivity of a safeguarder's work, and the potential for conflicts of interest. For example, safeguarders are sometimes sent information from the Children's Hearing regarding their remit and what their focus should be; this is potential influence on the safeguarder before they meet the child. Advocates told us, *"In asking for a safeguarder, panel members were often clear about what they felt that a safeguarder could achieve, as opposed to just identifying an area for the safeguarder to look at. I have been at children's panels where it was stated that a particular named safeguarder should be approached because of what the panel knew about that individual's work practice and value base."*

Any training should involve children and young people to ensure it is fit for purpose.

**7. Do you support the proposals set out at draft regulation 10 for the payment of fees, expenses and allowances to members and potential members of the Safeguarders Panel?**

The SIAA supports these proposals. We agree that there needs to be more transparency around fees, expenses and allowances.

**8. Do you agree with the proposed arrangements set out at draft regulation 11(4) and (5) for the monitoring and assessment of the performance of members of the safeguarders panel? Are they realistic and proportionate?**

We refer to our recommendation in response to question 5 that a complaints/ feedback system should be introduced as a means to review the performance of safeguarders – this should help to inform the continuous monitoring and assessment of the performance of members of the safeguarders panel. This monitoring should be informed by feedback from children and young people and be consistently applied across Scotland.

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