



SIAA Response

A Mediation (Scotland) Bill: A Consultation by Margaret Mitchell, MSP for Central Scotland

A proposal for a Bill to increase the use and consistency of mediation services for certain civil cases by establishing a new process of court-initiated mediation that includes an initial mandatory process involving a statutory duty mediator

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The Scottish Independent Advocacy Alliance

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.

This response 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, health, social care, education and social security. Often these situations are complex and involve the independent advocate supporting their client to challenge a decision or make a complaint, using both court-based procedures and alternative dispute resolution (ADR) processes.

A Mediation (Scotland) Bill: SIAA's position

- The vulnerable people and groups supported by independent advocacy often find formal court-based procedures very adversarial, stressful and intimidating. Consequently, SIAA

broadly welcomes the introduction of the Mediation (Scotland) Bill and its aim of increasing the use and consistency of mediation services in Scotland as an alternative to going to court.

- The Bill needs to recognise and promote the importance of independent advocacy and advice as mutually supportive, but distinct, avenues of assistance to help people successfully navigate any new system of mediation. Independent advocacy and advice fulfil different functions and provide different levels of support – they are not interchangeable.
- Many people using the new mediation procedures will be vulnerable and may require access to independent advocacy to support them and ensure their voices are heard meaningfully and consistently throughout the mediation process. This is particularly critical given the power imbalances that can often exist between different parties in a mediation situation.

Our evidence shows that people without a statutory right to access independent advocacy find it very difficult to find an advocacy organisation that is able to support them (as a result of both the organisation's funding criteria for taking on clients and its capacity to deliver). Consequently, SIAA would like to see the Bill include a right to independent advocacy for all individuals taking part in the new court-initiated mediation processes.

- Note, even people with a statutory right to independent advocacy (e.g. via the Mental Health (Scotland) Act 2003) are not always able to exercise this right due to a range of barriers, such as lack of knowledge and understanding, as well as a paucity of adequate funding for independent advocacy organisations to be able to deliver at the necessary capacity.

In order to make the right to independent advocacy a meaningful right, the new court-initiated mediation procedures would need to:

- recognise actively the value of independent advocacy and promote access to it at every stage of the process, from the issuing of the self-test questionnaire and subsequent correspondence, as well as at all face-to-face meetings with mediators
 - ensure that the right to advocacy is meaningfully supported by adequate and sustainable funding across Scotland.
- In addition, SIAA would contend that it is critical that everyone involved in the new processes of court-based mediation (including duty mediators, mediators, lawyers and

court staff) undergoes comprehensive training on independent advocacy, in order that they can confidently:

- recognise the value of independent advocacy and the purpose it serves in giving a voice to marginalised and vulnerable individuals as they navigate complicated systems, make complaints and resolve disputes
 - understand the existing legislative framework around who has a right to independent advocacy
 - recognise from their interactions with people utilising the new court-initiated mediation processes who might benefit from independent advocacy to ensure they understand their options and have their voice heard throughout the processes, thus tackling potential power imbalances between the parties
 - support them to access independent advocacy by signposting them in a timely fashion to relevant organisations
- SIAA seeks clarity regarding how information from individual cases utilising the new court-initiated mediation processes will be gathered, analysed and acted upon in order to bring about systemic improvements and enhancements. We would like a requirement for an annual report to a Scottish Parliamentary Committee embedded in the Bill, to ensure ongoing learning from issues and trends.

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