

PE1838/H

Children and Young People's Commissioner Scotland submission of 3 February 2021

Established by the Commissioner for Children and Young People (Scotland) Act 2003, the Commissioner is responsible for promoting and safeguarding the rights of all children and young people in Scotland, giving particular attention to the United Nations Convention on the Rights of the Child (UNCRC). The Commissioner has powers to review law, policy and practice and to take action to promote and protect rights.

The Commissioner is fully independent of the Scottish Government.

This submission relates to the general concept of regulation of both statutory and non-statutory advocacy and does not make any comment about the specific circumstances raised by the petitioners.

The operation of non-statutory child advocacy services engages several children's human rights issues, as set out in the United Nations Convention on the Rights of the Child (UNCRC), the European Convention of Human Rights (ECHR) and other relevant international human rights treaties. In particular, it engages the following UNCRC rights:

- Art. 3 – best interests to be a primary consideration in all decisions.
- Art. 9 – to contact with parents from whom they are separated.
- Art. 12 – to be heard in judicial and administrative proceedings.
- Art. 16 – to privacy and family.
- Art. 19 – protection from violence.
- Art. 40 – to a fair trial.

The UN Committee on the Rights of the Child provides additional guidance concerning children's rights to be heard in its [General Comment no. 12](#).

This issue also engages the ECHR, incorporated into Scots law via the Human Rights Act 1998 and the Scotland Act 1998, and the following rights:

- Art. 6 – to a fair trial.
- Art. 8 – to respect for private and family life.
- Art. 13 – to an effective remedy.
- Art. 14 – to prohibition of discrimination.

Child advocacy, its purpose, and guidance for child advocacy services are contained in several key domestic laws, policies, and frameworks. In some cases, advocacy services are provided on a statutory basis, for example a national advocacy service has been established by the [Children's Hearings \(Scotland\) Act 2011 \(Children's Advocacy Services\) Regulations 2020](#), which entered into force in November 2020. This establishes requirements regarding standards, qualifications, and training for children's advocacy services provided under the Children's Hearings System. Advocacy support was also introduced to support children making referrals to the [First-tier Tribunal for Health and Education](#) under the [Education \(Scotland\) Act 2016](#).

The [Children \(Scotland\) Act 2020](#) does not contain any provisions regarding regulation of children's advocacy services, but did create a formal role for child support workers in cases under s11 of the Children (Scotland) Act 1995. The 2020 Act also establishes a system of registration for Court Welfare Reporters and for child contact centres.

The [2014 Scottish Government Children's Advocacy Guidance](#) underlines the importance of children's advocacy, including in supporting children's UNCRC rights, and sets out that children's advocacy should respect children and young people's rights, empower them, and ensure that their views are considered and inform decisions on matters affecting them. Children's advocacy is used in different public services and, while anyone can act as an advocate for a child or young person, their role is to support the individual concerned to make their own choices. The Guidance also contains criteria for good children's advocacy, including, inter alia, knowledge of children's rights.

The [Family Justice Modernisation Strategy](#), which resulted from consultations on potential changes to the Children (Scotland) Act 1995, states that "to ensure the best interests of the child are met there would need to be minimum standards of training and experience set out in legislation."

Advocacy is also provided on a non-statutory basis by a range of third sector organisations. Many, but not all, are members of the Scottish Independent Advocacy Association (SIAA). As they outline in [their submission](#) to the Committee, SIAA members are subject to a range of organisational accountability measures to ensure that the services they provide children are high quality and safe. However, there is at present no way to prevent advocacy being offered in situations which lack this accountability.

Given the increased prominence given to advocacy in the 2020 Act, we believe that there is benefit in exploring the potential for the consistency and quality of children's advocacy services to be improved through some form of registration. This could be on the basis of registration of providers, along the lines of the model introduced by the 2020 Act for contact centres ([see our evidence to Committee regarding the Children \(Scotland\) Act 2020](#)).

If standards to regulate child advocacy services were to be introduced, they should not be excessive nor result in any significant impact on the availability of provision. Such standards should be developed from a children's rights perspective, ensuring children's rights to be heard and have their views taken into account in decision-making, children's development, and that decisions are taken in children's best interests and which respond to the needs of each individual child. Training requirements should be child rights-centred and include: training in human rights (particularly children's rights), child development, seeking the views of children, and supporting children in expressing their views if they choose to do so in person. However, registration should not prevent a child from choosing to be supported by someone they know, for example a family member or trusted adult.