



The Scottish Independent Advocacy Alliance

Mental Health Tribunal Advocacy Guidelines

A companion to the Code of Practice for Independent Advocacy





Published by:
Scottish Independent Advocacy Alliance,
Melrose House, 69a George Street, Edinburgh, EH2 2JG

www.siaa.org.uk

Scottish Charity No. SC033576

Company No. 236526

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The Scottish Independent Advocacy Alliance is funded by a grant from the Scottish Government.

Design and typesetting by Luminous Creative
www.luminouscreative.co.uk

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ISBN: 978-0-9558394-7-4

Foreword



The *Mental Health (Care and Treatment) (Scotland) Act 2003* made a number of innovations in Scottish mental health law. For example, not only did section 21 of the Act establish the Mental Health Tribunal for Scotland, but section 1 sets out fundamental principles which those discharging functions under the Act — including the Tribunal — require to have regard to.

The Tribunal is the body that grants and reviews compulsory measures for the detention, care and treatment of people with mental disorder. The Tribunal's work is important because it impacts directly on the liberty of individuals. In my view, the principles set out in section 1 of the Act clearly put the focus on those individuals' involvement in Tribunal proceedings.

Section 259 is another innovative provision of the Act providing every person with a mental disorder with the right of access to independent advocacy. Empowering individuals by assisting them to articulate their views on issues affecting them in situations which they may find unfamiliar and stressful is an important safeguard, assisting in keeping the focus firmly on the patient.

The Tribunal, while relatively young in years, has developed its understanding of the best practice of independent advocacy in its own proceedings. The publication of these *Mental Health Tribunal Advocacy Guidelines* is a substantial step in the understanding of the role of independent advocacy within the Tribunal setting. It is my hope that these Guidelines will be read not only by independent advocates, but by service users, mental health professionals, lawyers and members of the Tribunal, ensuring that all who participate in Tribunal proceedings have a clear understanding of the nature and scope of independent advocacy.

I commend the skill and professional approach taken by independent advocates within the Tribunal system, and I welcome these Guidelines as a tool to consolidate the skills of independent advocates and to ensure consistent advocacy of a high quality in Tribunal hearings throughout Scotland.

Dr. Joe Morrow
President, MHTS, March 2012

Acknowledgements

The Scottish Independent Advocacy Alliance would like to thank the following people for their contribution to these Guidelines:

- The Patients' Advocacy Service who shared their good practice for advocates at Tribunals, providing a starting point for these guidelines.
- The SIAA member organisations who contributed staff time, knowledge and expertise at the consultation events.
- The Tribunal Members who took part in the consultation event and gave comments and feedback.
- Valerie Mays, Legal Secretary to the Mental Health Tribunal for Scotland.
- All of the people who gave their comments and feedback.

Thanks also to the Scottish Government Reshaping Care & Mental Health Division for the financial contribution to the publication of this document.

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Introduction

The *Mental Health (Care & Treatment) (Scotland) Act 2003* recast mental health law in Scotland. It put in place a new statutory framework to provide, where appropriate, for the detention in hospital of people suffering from mental disorder and for the compulsory treatment — whether in hospital or in the community — of people suffering from mental disorder. It removed decisions in respect of mentally disordered patients from the existing courts and passed them to a newly established specialist tribunal, the Mental Health Tribunal for Scotland ('the Tribunal'). It also set out a series of principles which those discharging any function under the Act must have regard to. It should be noted that the section 1 principles do not apply to a person providing Independent Advocacy to a person (see section 1(7) of the Act).

The Act includes the right to have support from an Independent Advocate at Tribunal hearings. (See Section 259(1) of the Act).

These guidelines have been informed by the *Principles & Standards for Independent Advocacy*, information from the Tribunal and practice guidelines developed by Independent Advocacy organisations. They have been developed to provide guidelines for Independent Advocates supporting a person, before, during and after attending a Tribunal hearing. The aim is to ensure consistent good practice on the part of those advocates and also to increase understanding of members of the Tribunal as to what can be expected of Independent Advocates.

The Guidelines work alongside the *Principles and Standards* and *Code of Practice for Independent Advocacy* and, where necessary, alongside the *Non-Instructed Advocacy Guidelines*. They have been written to apply to all types of advocacy. Throughout Scotland advocacy organisations share the same core Principles although they might do things in a slightly different way.

The responsibilities of organisations in relation to providing advocacy support for an individual at a Tribunal hearing are the same as for advocacy in any situation and can be found in the *Code of Practice for Independent Advocacy*. The document also includes a few responsibilities that should be specifically considered in providing advocacy for individuals in a Tribunal situation.

The Guidelines are divided into sections detailing what should happen before, during and after Tribunal hearings. For each recommended action the related Principle and Standard is detailed.

What is Independent Advocacy?

Independent Advocacy is about standing up to injustice.

Many of us find it difficult, at times, to get our voice heard about decisions or actions that affect our lives. Some people have family, friends or carers to help them to speak up. Some don't have anyone in their lives to help them. Sometimes a family member may have their own ideas about what would be best for the person, which might not be the same as what the person wants. Carers and professionals have a 'duty of care' for the person, which may conflict with their wishes.

Advocacy:

- safeguards people who are vulnerable and discriminated against or whom services find difficult to serve
- empowers people who need a stronger voice by enabling them to express their own needs and make their own decisions
- enables people to gain access to information, explore and understand their options, and to make their views and wishes known
- speaks up on behalf of people who are unable to do so for themselves.

What is the SIAA?

The Scottish Independent Advocacy Alliance (SIAA) is a membership organisation responsible for promoting, supporting and defending Independent Advocacy in Scotland. The SIAA is working towards ensuring that the best quality Independent Advocacy will become available to anyone who needs it in Scotland. The SIAA provides information and support, gathers and distributes information, represents advocacy organisations at various levels and raises awareness and understanding of Independent Advocacy across Scotland. The SIAA works to influence legislation, policy and practice in relation to Independent Advocacy.

Different types of advocacy

Citizen advocacy

Citizen advocacy is when ordinary citizens are encouraged to become involved with a person who might need support in their communities. The citizen advocate is not paid and not motivated by personal gain. The relationship between the citizen advocate and their Advocacy Partner is on a one-to-one, long term basis. It is based on trust between the Partner and the advocate and is supported but not influenced by the advocacy organisation. The advocate supports their Partner using their natural skills and talents rather than being trained in the role.

Group or Collective advocacy

Collective advocacy is where a group of people who are all facing a common problem get together on a formal basis to support each other over specific issues. Individual members of the group may also support each other over specific issues. The group as a whole may campaign on an issue that affects them all. A collective voice can be stronger than that of an individual, as groups are more difficult to ignore. Being part of a collective advocacy group can help to reduce an individual's sense of isolation when raising a difficult issue.

Peer advocacy

Peer advocacy is when individuals share significant life experiences. The peer advocate and their Advocacy Partner may share age, gender, ethnicity, diagnosis or issues. Peer advocates use their own experiences to understand and empathise with their Advocacy Partner. Peer advocacy works to increase self-awareness, confidence and assertiveness so that the individual can speak out for themselves, lessening the imbalance of power between the advocate and their Advocacy Partner.

Professional advocacy

Professional advocacy is also known as one to one, individual or issue based advocacy. It is provided by both paid and unpaid advocates. An advocate supports an individual to represent their own interests or represents the views of an individual if the person is unable to do this themselves. They provide support on specific issues and provide information but not advice. This support can be short or long term.

Principles & Standards for Independent Advocacy

Principle 1: *Independent Advocacy puts the people who use it first*

Standard 1.1

Independent Advocacy is directed by the needs, interests, views and wishes of the people who use it

Standard 1.2

Independent Advocacy helps people to have control over their lives and to be fully involved in decisions which affect them

Standard 1.3

Independent Advocacy tries to make sure that people's rights are protected

Standard 1.4

Independent Advocacy values the people who use it and always treats people with dignity and respect

Principle 2: *Independent Advocacy is accountable*

Standard 2.1

Independent Advocacy is accountable to the people who use it

Standard 2.2

Independent Advocacy is accountable under the law

Standard 2.3

Independent Advocacy is effectively managed

Principle 3: *Independent Advocacy is as free as it can be from conflicts of interest*

Standard 3.1

Independent Advocacy cannot be controlled by a service provider

Standard 3.2

Independent Advocacy and promoting independent advocacy are the only things that independent advocacy organisations do

Standard 3.3

Independent Advocacy looks out for and minimises conflicts of interest

Principle 4: *Independent Advocacy is accessible*

Standard 4.1

Independent Advocacy reaches out to the widest possible range of people, regardless of ability or life circumstances

What is the Mental Health Tribunal for Scotland?

The Mental Health Tribunal for Scotland ('the Tribunal') is an independent judicial body established by the *Mental Health (Care and Treatment) (Scotland) Act 2003* ('the 2003 Act'). Its role is to make decisions about the compulsory detention and the compulsory care and treatment of people with a mental disorder.

The Tribunal consists of the President and around 350 members. There are three groups of members — legal, medical, and general. Each hearing will have a panel of three members which includes one person from each group. The legal member, a solicitor or Advocate, ('the convenor') will chair the hearing. Medical members are psychiatrists. General members are people with a special interest in mental health including psychiatric nurses, social workers, psychologists, service users and carers.

The Tribunal considers the following types of proceedings:

- applications to the Tribunal, e.g. an application seeking revocation of a short-term detention certificate or an application for a compulsory treatment order (CTO)
- references to the Tribunal, e.g. made by the Scottish Ministers or by the Mental Welfare Commission
- appeals to the Tribunal from patients or Named Persons, e.g. appeal against transfer to the State Hospital
- reviews by the Tribunal, e.g. a two year review of a CTO, a compulsion order (CO) or a compulsion order and a restriction order (CORO)
- cases remitted to the Tribunal by the Sheriff Principal or the Court of Session after a patient has successfully appealed against the decision of the Tribunal.

A Mental Health Officer (MHO) will make an application to the Tribunal for a CTO in relation to a service user where the service user requires to be treated on a compulsory basis for more than 28 days.

For those people already subject to a Compulsory Treatment Order (CTO) their Responsible Medical Officer (RMO) might also apply to the Tribunal for changes to their CTO e.g. varying a CTO from a hospital based CTO to a community based CTO.

The Tribunal is required to review the case of everyone subject to a CTO/CO/CORO at least once every two years. If the service user or their Named Person are unhappy with the CTO/CO/CORO they both have the right to ask the Tribunal to review it.

The Tribunal will also consider cases where a service user is in hospital as a result of criminal proceedings e.g. where the service user is subject to a CORO or Hospital Direction or Transfer for Treatment Direction.

If the Mental Welfare Commission has concerns about a service user's care or their order it can refer their case to the Tribunal for consideration.

When making an application to the Tribunal the 2003 Act places a duty on the MHO to ensure that the person concerned is informed about Independent Advocacy, their right to it and how to access it.

For all types of proceedings before the Tribunal a service user has the right to have Independent Advocacy. This guidance is for advocates in all hearings.

Before the Tribunal Hearing

Advocacy organisations have reported that, when receiving a referral for someone about to attend a Tribunal, notice can be anything from a day up to a month. In order to help the process Health staff should be encouraged to make a referral to the advocacy organisation as early as possible. Preparation will help reduce the person's stress and anxiety, it is important that people know what to expect. It is vital therefore that, where possible allowing for the notice period, enough time is spent with the individual before the hearing to ensure the person is as prepared as possible.

On receipt of the referral the advocate should arrange to meet the person as soon as possible.

The advocate should also bear in mind that this guidance reflects best practice. No two hearings will be the same and the process can vary according to a range of factors. It may not always be possible to follow all of the guidance all of the time but the advocacy organisation and advocate should follow these as closely as possible.

At that and any following meetings the advocate should explain

- who they are
- about the advocacy service
- what they do
- that they are independent of all others involved
- how that is different from a legal representative (including a Curator ad Litem) or a Named Person
- why the referral was made e.g. that the person has a right to Independent Advocacy support and check that they do want to have an advocate support them
- that, if they have a Named Person, he or she may also wish to have Independent Advocacy support.

Advocates must explain to their Advocacy Partner what advocacy is and how it can help them.

From Principle 1, Standard 1.1

Before the Tribunal Hearing

The advocate should try to ensure that the Advocacy Partner is informed

- that the Advocacy Partner is the most important person in the process
- about the principles of the *Mental Health (Care & Treatment) (Scotland) Act 2003*
- what the Tribunal is about
- what order is being sought in respect of the Advocacy Partner and what it means — where necessary the advocate should explain the legislation or support the Advocacy Partner to access the information or provide a leaflet
- that, where the Advocacy Partner has the legal capacity to instruct a solicitor, they can seek free legal advice and representation — where necessary provide a list of solicitors
- that they can have their advocate with them when meeting their legal representative if they wish to do so
- that they can ask for an independent doctor's report to be prepared. This request must be made through a legal representative. The report will be free of charge.
- that their Named Person also has the right to free legal advice and representation
- that they can ask questions about statements made by professionals or anything else to do with the Tribunal
- that their legal representative can ask questions about statements made by professionals
- that, during the hearing, they can ask for a break, if necessary. They can also leave the hearing if they wish.
- that they have the right to change their mind at any time during the hearing.

Before the Tribunal Hearing

Advocates must help their Advocacy Partner be involved in any relevant decision making process.

Advocates must help their Advocacy Partner to get as much information as they can to make informed choices.

From Principle 1, Standard 1.2

Advocates must keep their Partner informed of anything that might affect them.

From Principle 1, Standard 1.4

Advocates must safeguard the rights of their Advocacy Partner and inform others of their Partner's rights.

From Principle 2, Standard 2.1

Advocates must be aware of and act within the law at all times.

From Principle 2, Standard 2.2

Before the Tribunal Hearing

The advocate should try to ensure that the Advocacy Partner knows what is likely to happen at a Tribunal hearing

- The layout of the room
- The make-up of the panel and the various responsibilities of the members
- Who else will be there
- Where everyone may be sitting
- That the Convener of the panel will explain the procedure that will be followed
- That there will be microphones recording the Tribunal hearing
- That they can speak on their own behalf or have the advocate speak for them as they wish
- That they have the right to free representation at the hearing by a solicitor who can help protect their legal rights
- That, if they have a Named Person, the Named Person can also have a lawyer representing them
- That the advocate is there for the Advocacy Partner and not for the Named Person
- That the Named Person may have their own advocate if they wish
- That the Named person has a legal right to attend the Tribunal hearing
- That the Advocacy Partner has the right, on the day of the Tribunal hearing, to de-nominate the Named Person

Advocates must help their Advocacy Partner be involved in any relevant decision making process.

Advocates must help their Advocacy Partner to get as much information as they can to make informed choices.

From Principle 1, Standard 1.2

Before the Tribunal Hearing

The advocate should

- help the Advocacy Partner prepare their personal statement if they wish, helping them think about what they want people to know/hear that is important to them
- where reports and other relevant paperwork are available, go through this with the Advocacy Partner, if they wish to do so, making notes of any comments for referral throughout the hearing
- help the Advocacy Partner to consider any reports in advance of the hearing and, where appropriate, prepare any questions and points of clarification in discussion with the solicitor
- help the Advocacy Partner think about what may be raised during the hearing. If the Advocacy Partner identifies issues that they do not wish to hear discussed ensure they know they can have time out from the hearing while these are being discussed.

Independent Advocacy helps people to have control over their lives and to be fully involved in decisions which affect them.

Advocates must help their Advocacy Partner to get as much information as they can to make informed choices.

From Principle 1, Standard 1.2

Before the Tribunal Hearing

The advocate should

- agree with the Advocacy Partner on whether they want to read their statement themselves or if they wish the advocate to do it on their behalf. Alternatively establish if the Advocacy Partner prefers to give a copy of the statement to the panel rather than having it read out
- help the Advocacy Partner explore possible consequences of their personal statement, this may include if their legal representative believes the statement will not help support their argument
- help the Advocacy Partner consider options for the hearing, that they can go, not go, speak to the panel by telephone. Options might also include speaking to the panel in advance of the hearing, asking the panel to come to the ward to speak to them. The advocate can establish options from the Tribunal Clerk in advance of the hearing.

Advocates must help their Advocacy Partner be involved in any relevant decision making process.

Advocates must help their Advocacy Partner to get as much information as they can to make informed choices.

From Principle 1, Standard 1.2

Advocates must be clear about what their Advocacy Partner wants them to do.

From Principle 1, Standard 1.4

Before the Tribunal Hearing

The advocate should

- in the event that the Advocacy Partner feels unable to attend the hearing themselves they should agree (a) if they want the advocate to attend and if so (b) what the advocate should say on their behalf
- help their Advocacy Partner think about possible outcomes of the Tribunal and explain that any decisions will be made on the day
- make it clear that having an Independent Advocate does not mean that there is no need for the Advocacy Partner to have legal representation.

The advocate should enable the Advocacy Partner to outline their expectations.

From Principle 1, Standard 1.1

Advocates must help their Advocacy Partner to be aware of the different choices that they have.

From Principle 1, Standard 1.2

Advocates must be clear about what their Advocacy Partner wants them to do.

From Principle 1, Standard 1.4

The advocate should

- if necessary, support the Advocacy Partner to contact a solicitor or contact the solicitor on their behalf
- if the Advocacy Partner lacks capacity to instruct a legal representative the advocate should be aware of the need to uphold the rights of the Advocacy Partner
- consider any possible barriers to communication the Advocacy Partner may have (e.g. hard of hearing, interpreter etc.) and ensure that the Panel are made aware of these.

Before the Tribunal Hearing

Advocates must help their Advocacy Partner to be aware of the different choices that they have.

From Principle 1, Standard 1.2

Advocates must know the relevance of law and policy, what their Advocacy Partner's rights are and know how to access appropriate information.

From Principle 1, Standard 1.3

The advocate should

- where possible agree the approach the Advocacy Partner wishes at the hearing. These may include any of the following:
 - Reading a statement without the Partner present
 - Reading a statement with the Partner present
 - Identifying at what point the Advocacy Partner wishes the personal statement to be made
 - Clarifying with the Advocacy Partner any response to the information that has been discussed
 - Taking notes to discuss after the hearing or during the hearing
 - Not reading a statement or taking notes. Simply offering a supportive role in preparing for the hearing.

Advocates must help their Advocacy Partner to be aware of the different choices that they have.

From Principle 1, Standard 1.2

Before the Tribunal Hearing

The organisation must ensure that

- advocates have a clear understanding of their role
- Advocacy Partners are clear about the role of the advocate
- advocates have training on the rights of the Advocacy Partner and what happens at a Tribunal hearing
- advocates can access up to date, relevant information
- advocates undertake training or preparation on relevant legislation.

Independent Advocacy is directed by the needs, interests, views and wishes of the people who use it.

Principle 1, Standard 1.2

Independent Advocacy helps people to be fully involved in decisions which affect them.

From Principle 1, Standard 1.2

Independent Advocacy tries to make sure that people's rights are protected.

Principle 1, Standard 1.3

Before the Tribunal Hearing

The organisation should consider ensuring that

- a list is prepared of solicitors specialising in Mental Health law.

At the time of publication the Scottish Government, the Mental Welfare Commission, the Mental Health Tribunal for Scotland and the Scottish Legal Aid Board are discussing working together to produce a list of approved mental health solicitors which can be handed out by any organisation. When this list is complete it will be available for Independent Advocacy organisations.

Independent Advocacy is accountable to the people who use it.

Principle 2, Standard 2.1

Independent Advocacy is accountable under the law.

Principle 2, Standard 2.2

During the Tribunal Hearing

Sometimes the person who is the subject of the hearing feels unable to attend. If that does happen they may ask their advocate to attend on their behalf.

- If the Advocacy Partner is unable to attend the hearing and wishes the advocate to go they should agree in advance of the hearing what the Advocacy Partner wants the advocate to say. If a personal statement is prepared (see page 11) the advocate should then ensure that the statement is read out to the Panel.

The advocate should enable the Advocacy Partner to outline their expectations and record these in the advocacy agreement.

From Principle 1, Standard 1.1

Independent Advocacy helps people to have control over their lives and to be fully involved in decisions which affect them.

Principle 1, Standard 1.2

Advocates must be clear about what their Advocacy Partner wants them to do.

From Principle 1, Standard 1.4

During the Tribunal Hearing

Sometimes the person who is the subject of the hearing may be assessed as lacking capacity. In such a case advocates should bear in mind that the individual may nevertheless have the capacity to make choices and decisions and that it will be important that as much as possible is done to support them to express their views.

- If an Advocacy Partner cannot give instruction the advocate must be clear that they are acting in a non-instructed capacity. In that case advocates must be clear that theirs is a safeguarding role and that they are following the *Non-Instructed Advocacy Guidelines* as well as those included in the *Code of Practice*
- If the Advocacy Partner does lack capacity the advocate should be aware that a Curator ad litem should have been appointed.

Independent Advocacy helps people to be fully involved in decisions which affect them.

From Principle 1, Standard 1.2

Independent Advocacy tries to make sure that people's rights are protected.

Principle 1, Standard 1.3

During the Tribunal Hearing

On many occasions the Advocacy Partner will attend the hearing supported by the advocate.

If attending the hearing the advocate should

- speak if asked to do so by their Advocacy Partner, either as agreed before the Tribunal hearing or while it is going on
- speak if the advocate notices something that needs to be raised.
- if acting in a non-instructed capacity, be clear that theirs is a safeguarding role and that they are following the *Non-Instructed Advocacy Guidelines* as well as those included in the *Code of Practice*.

Independent Advocacy tries to make sure that people's rights are protected

Principle 1, Standard 1.3

Advocates must be clear about what their Advocacy Partner wants them to do.

From Principle 1, Standard 1.4

During the Tribunal Hearing

If attending the hearing the advocate should

- support the Advocacy Partner to ask questions, if they have any, about the statements being presented by professionals. Questions may be prepared in advance; others may arise during the Tribunal hearing.

Independent Advocacy helps people to have control over their lives and to be fully involved in decisions which affect them.

Principle 1, Standard 1.2

If attending the hearing the advocate should

- support their Advocacy Partner to ask for a break, or ask on their behalf, if they require one. This may be for discussion or clarification or may be if they feel they need a break from the proceedings
- clarify, if the Advocacy Partner wishes to leave the hearing, what they wish the advocate to do e.g. stay in the hearing, accompany the Advocacy Partner out
- be aware that, if the Advocacy Partner needs to discuss something with their advocate during the hearing, the hearing proceedings should stop until the discussion is finished.

Advocates must be clear about what their Advocacy Partner wants them to do.

From Principle 1, Standard 1.4

Advocates must safeguard the rights of their Advocacy Partner and inform others of their Partner's rights.

From Principle 2, Standard 2.1

During the Tribunal Hearing

One aim of the 2003 Act was to remove cases involving applications for compulsory measures of care and treatment for mental disorder from the Sheriff Court and to give jurisdiction for making decisions on such applications to the Tribunal. Tribunal proceedings should be more informal than the hearings which previously took place in the Sheriff Court. It should be remembered that the role of an advocate is not adversarial. An advocate should stand alongside the Advocacy Partner making sure that their voice is heard or that their rights are upheld. The presence of an Independent Advocate in this setting can help in ensuring a person's rights are upheld and the principles of the 2003 Act are followed.

Advocates' DOS and DON'TS during a Tribunal hearing

Dos

- Listen to the Advocacy Partner
- Ask for clarification
- When speaking be clear that these are the views of the Advocacy Partner
- Take notes if agreed with the Advocacy Partner in advance of the hearing
- Ask the Advocacy Partner if they are clear about what is going on or being said
- Ask questions as agreed with the Advocacy Partner
- Flag up with the Tribunal if the Advocacy Partner has any need for communication aids or specialist communication support
- Give due consideration to the legal procedures
- Be respectful.

Don'ts

- Express your own views
- Give your opinion
- Give an interpretation
- Answer any questions about capacity
- Follow your own agenda
- Ask your own questions unless acting in a non-instructed capacity or to seek clarification.

During the Tribunal Hearing

Organisations must ensure

- that advocates have a clear understanding of their role and that any actions taken by an advocate should be agreed with the Advocacy Partner in advance or should be consistent with a safeguarding role for advocates.

Advocacy organisations must ensure advocates receive training in their role and are clear about their role.

From Principle 1, Standard 1.2

After the Tribunal Hearing

If the Advocacy Partner had a solicitor representing them at the hearing then the solicitor would usually feedback on the hearing and explain the decision of the panel. If the Advocacy Partner wishes the advocate should attend this meeting.

If the Advocacy Partner has no solicitor, or following the feedback from the solicitor, the advocate should

- spend some time with the Advocacy Partner to talk about the hearing if they wish. This can happen immediately after the meeting with the solicitor or, if necessary, the advocate should meet with the Advocacy Partner at a later stage.

Independent Advocacy helps people to be fully involved in decisions which affect them. Advocates must help their Advocacy Partner to be aware of the different choices that they have.

From Principle 1, Standard 1.2

After the Tribunal Hearing

If the Advocacy Partner has no solicitor, or following the feedback from the solicitor, the advocate should

- try to make sure the Advocacy Partner, where possible, understands what happened at the hearing, the decision of the panel and what that will mean to them
- this should include supporting them to consider if and when to appeal any decision made and, if necessary, signposting to legal advice and assistance
- consider and agree what to do in the case of an adjournment or an interim order
- monitor any recorded matters.

Advocates must know the relevance of law and policy, what their Advocacy Partner's rights are and know how to access appropriate information.

From Principle 1, Standard 1.3

If the Advocacy Partner has no solicitor, or following the feedback from the solicitor, the advocate should

- if the Advocacy Partner wishes, support them to feedback the outcome of the hearing to others such as friends or family members.

Independent Advocacy is directed by the needs, interests, views and wishes of the people who use it.

Principle 1, Standard 1.1

Independent Advocacy helps people to be fully involved in decisions which affect them.

From Principle 1, Standard 1.2

Appendix 1 — Advocacy is, advocacy is not

Advocacy is...

- about standing alongside people who are in danger of being pushed to the margins of society
- about standing up for and sticking with a person or group and taking their side
- a process of working towards natural justice
- listening to someone and trying to understand their point of view
- finding out what makes them feel good and valued
- understanding their situation and what may be stopping them from getting what they want
- offering the person support to tell other people what they want or introducing them to others who may be able to help
- helping someone to know what choices they have and what the consequences of these choices might be
- enabling a person to have control over their life but taking up issues on their behalf if they want you to.

Advocacy is not...

- making decisions for someone
- mediation
- counselling
- befriending
- care and support work
- consultation
- telling or advising someone what you think they should do
- solving all someone's problems for them
- speaking for people when they are able to express a view
- filling all the gaps in someone's life
- acting in a way which benefits other people more than the person you are advocating for
- agreeing with everything a person says and doing anything a person asks you to do.

Appendix 2 — Glossary of terms

Advocate

An advocate helps people express their views and make informed decisions. An advocate helps people to find out information, explore options and decide for themselves what they want. Advocates can be a voice for the person and encourage them to speak out for themselves.

There are different kinds of advocacy, though they all share things in common. Advocates will never tell people what to do, or allow their own opinions to affect the support they provide. All advocacy tries to increase confidence and assertiveness so that people can start speaking out for themselves.

Independent Advocates are as free from conflicts of interest as possible.

Advocacy

The process of standing alongside another, speaking on behalf of another and encouraging the person to speak up for themselves. Advocacy can help address the imbalance of power in society and stand up to injustice.

Advocacy Agreement

An Advocacy Agreement explains, for example, what the person can expect from their advocate, what issues they want the advocate to support them with, the contact details of the advocate, what happens at the end of the Advocacy Partnership and the advocacy organisation's complaints process.

Advocacy Partner

The person who uses advocacy. Some advocacy organisations use the term 'client' or 'service user'.

Capacity

Ability to reason, make decisions and consider choices, express views and receive and understand information. The law assumes that people have capacity unless a doctor's assessment shows that a person lacks capacity.

Commissioner

Usually representatives from the Local Authority or Health Board who fund advocacy.

Conflict of interest

Anything that could get in the way of an advocate being completely loyal to their Advocacy Partner. For example, it would not be appropriate for an advocate volunteering for a mental health advocacy organisation to also work in the local psychiatric hospital, because this would affect their ability to be on the side of the Advocacy Partner. It would also affect their relationships with hospital staff. Other conflicts of interest could include relationships as well as financial investments.

Curator ad Litem

A legal representative, usually a solicitor, who is appointed by the court, when the court believes that the person lacks the mental capacity to make decisions for themselves. The curator ad litem represents the person in court or in a Tribunal, making decisions in the person's interests.

Independent Advocacy organisation

An advocacy organisation that is structurally, financially and psychologically separate from service providers and other services.

Structurally — an Independent Advocacy organisation is a separate organisation in its own right. For example, they are registered as a charity or company and have their own Management Committee or Board of Directors. Everyone involved in the organisation recognises that they are separate and different from other organisations and services.

Financially — an Independent Advocacy organisation has its own source of funding that does not cause any conflicts of interest and that does not compromise the work it does. (See conflict of interest)

Psychologically — Everyone involved in the organisation knows that they are only limited in what they do by the principles of Independent Advocacy, resources and the law. It is important to recognise that although there may be conflicts of interest present, psychological independence is vital.

Named Person

A person chosen by a service user to be involved in decisions about their mental health care and treatment.

Non-instructed advocacy

Non-instructed advocacy happens when a person who needs an Independent Advocate cannot tell the advocate what they want. This may be because the person has complex communication needs or has a long term illness or disability that prevents them from forming or clearly stating their wishes/desires. This usually takes place with people who have dementia or profound and/or severe learning difficulties.

Personal Statement

A service user may draw up a personal statement to be read or heard by Tribunal members that they wish to be considered at a Tribunal hearing. The personal statement may include significant personal information that they believe to be relevant to their situation, what they think of the situation, what they agree or disagree with and any strong feelings they may have about the issues raised.

Safeguard

Ensuring that people's rights are protected.

Service provider

A person or organisation involved in giving support or care services to an individual.

Service user

The person who uses advocacy. Some advocacy organisations use the term 'client' or 'Advocacy Partner'.

Third party

A person or organisation not directly connected with the Advocacy Partnership.

Appendix 3 — Principles of the *Mental Health (Care & Treatment) (Scotland) Act 2003*

The Principles require that any person, other than those who are exempt (which includes those providing independent advocacy services under section 259 of the 2003 Act), in considering a decision or course of action in relation to the Act, takes into account the following matters:

- the present and past wishes and feelings of the patient, where they are relevant to the exercise of the function and in so far as they can be ascertained by any means of communication appropriate to the patient. Where the decision relates to medical treatment and the patient has an Advance Statement then this should be given due consideration
- the views of the patient's named person, carer, and any guardian or welfare attorney so far as it is practical and reasonable to do so
- the importance of the patient participating as fully as possible in any decisions being made and the importance of providing information to help that participation (in the form that is most likely to be understood by the patient). Where the patient needs help to communicate (for example, translation services or signing) then these should be considered. Any unmet need should be recorded
- the range of options available in the patient's case
- the importance of providing the maximum benefit to the patient
- the need to ensure that the patient is not treated any less favourably than the way in which a person who is not a patient would be treated in a comparable situation, unless that treatment can be shown to be justified by the circumstances
- the patient's abilities, background and characteristics, including, without prejudice to that generality, the patient's age, sex, sexual orientation, religious persuasion, racial origin, cultural and linguistic background, and membership of any ethnic group.