

## **Draft Advocacy Guide for Commissioners**

### **Consultation questions**

1. Since the publication of the Guide for Commissioners by SIAA in 2010 there have been several developments. For example the publication of the NHS Healthcare Quality Strategy in 2010; the introduction of the Patient Rights (Scotland) Act 2011; the publication of the Patients Charter of Rights and Responsibilities in October 2012; publication of the Carers and Young Strategy in 2010, and the provision of joint Scottish Government and COSLA Guidance on Procurement of Support and Care Services in 2010.
2. The guide has been updated to incorporate these and other relevant developments.
3. Sections 5 and 6 of the Guide explain commissioner's statutory responsibilities under the Mental Health (Care and Treatment) Act 2003 which are further explained in the Code of Practice Volume 1. Based on the definition taken from the legislation the guide provides the following Principles and Standards for Independent Advocacy:

#### **Principle 3**

Independent advocacy is as free as it can be from conflicts of interest.

Standard 3.1 - Independent advocacy providers cannot be involved in the welfare, care or provision of other services to the individual for which it is providing advocacy.

Standard 3.2 - Independent advocacy should be provided by an organisation whose sole role is independent advocacy or whose other tasks either complement, or do not conflict with, the provision of independent advocacy.

Standard 3.3 – Independent advocacy looks out for and minimises conflicts of interest

Please note:

- Standards 3.1 and 3.2 associated with Principle 3 above reflect the definition of independent advocacy in the Mental Health Act (Care & Treatment) (Scotland) Act 2003 and differ from the standards used by the advocacy movement in the SIAA Principles and Standards.
- The remaining Principles and Standards i.e. Principles 1, 2 and 4 and the associated standards set out in Appendix 1 are consistent with the Principles and Standards given in the SIAA Principles and Standards.

**Question 1: Are you content with the level of detail given in relation to the statutory responsibilities and that the information is clear?**

Yes  No

**If no, what additional information do you think should be included?**

As practitioners should have regard for the Millan principles, it must therefore follow that any commissioning takes these into consideration. The principle of participation highlights the need to ensure that independent advocacy is accessible, and is integral to any care and treatment. We feel that it should be referenced therefore in The Guide for Commissioners.

4. Section 10 covers commissioning of independent advocacy. This is a much shorter section than in the previous guide as it refers to the Guidance on the procedures for Procurement of Care and Support Services given in the joint Scottish Government and COSLA guidance issued in 2010 and available at:

<http://www.scotland.gov.uk/Resource/Doc/324602/0104497.pdf>.

**Question 2: Are you content that the level of detail given in Section 10 on the Commissioning of Independent Advocacy is appropriate?**

Yes  No

**If not, why not?**

Independent Advocacy has a quite unique role which differs considerably from other support and care organisations. In view of this, we feel that more specific detail should be given about commissioning an independent advocacy service, and in particular concerning the necessity of respecting and encouraging the independence. We believe that this may be open to interpretation, and does not fully explain the relevance and importance of independence and therefore may compromise this.

5. Both commissioners and the advocacy groups have a responsibility to ensure that the advocacy being provided is of good quality and is effective. Section 12 of the guide covers Monitoring and Evaluation and mostly reflects the arrangements currently set out in the 2010 guidance. However we understand that the cost of independent evaluations is high and is not always undertaken. In relation to this we are currently exploring a pilot for evaluation of advocacy projects with the SIAA. This will involve the recruitment of independent sessional evaluators to undertake evaluations based on the Principles and Standards within this guide over an 18 month period. SIAA will facilitate the appointment and training of the evaluators. The report of the evaluation will be prepared by the evaluators and will go to the commissioners and the advocacy group. The SIAA will be in a position to offer support to the advocacy group in the event that improvements are required. An evaluation of the pilot will be conducted prior to any decision on whether to proceed with this model. The evaluations will not be restricted to SIAA member organisations.

**Question 3: Would you support a programme of evaluations based on the pilot model of evaluation set out at 5 above?**

Yes  No

**If not, why not?**

6. Examples of situations that can potentially cause a conflict of interest which might impact on the person receiving the advocacy support, the advocate, the advocacy organisation or a service provider have been included at Appendix 2.

**Question 4. Do you think it is useful to highlight situations (such as those given in Appendix 2) that commissioners should be mindful of in order that consideration is given to how these would be avoided/handled/resolved?**

Yes  No

**Are there any others you would add/remove?**

Provision for advocacy for both the carer and the person they care for by an independent advocacy organisation does not create a dilemma, and is easily managed by having a separate advocate for carers; reducing any conflict of interest.

An alternative case study might be as follows:

A woman has been caring for her husband, who has a debilitating long term condition, for several years. Her husband has been receiving advocacy support from the local advocacy organisation. She feels that she needs advocacy support as a problem has arisen for her in her carer role and she asks the advocate if he could advocate for her as well as for her husband. The advocate explains that he cannot advocate for both her husband and for her. The advocate agrees to refer her separately to the advocacy organisation.

**We would welcome your thoughts on what the impact of each of these situations would be and also your views on what action should be taken to minimise conflict. We will consider the responses and add as part of the guidance.**

This section will be helpful as an exercise for commissioners to use to encourage consideration of some of the potential conflicts and how these might be minimised. However, we feel that it is insufficient on its own to explore the many conflict issues that arise and are not always immediately apparent.

The Independent Advocacy movement has many years of experience in dealing with issues and dilemmas concerning advocacy support. Conflict of interest has been one of the areas focused on, as evidenced in the Principles and Standards and Codes of Practice produced. We are particularly aware of what this means for people using the service, and in the operation of a service which is truly independent and as free as possible from conflicts of interest. This is also something which people using the service give great importance to. It

may be more difficult for organisations that offer advocacy as one of many types of support to approach the issues of conflict of interest from the same perspective. Conflicts of interest may not always be immediately apparent and the potential conflicts detailed in this section do not provide an exhaustive list of issues that may be encountered.

7. The layout of the guide has been changed to provide information and direct links to a list of relevant policy and guidance documents in Appendix 3.

**Question 5: Do you find the information on additional reference material/useful links in Appendix 3 helpful?**

Yes  No

**Are there any others you would add?**

**Are there any you would remove?**

### **General Comments**

**We would welcome any further general comments you may wish to offer here.**

The independent advocacy movement has strived for many years to promote and develop their quality of practice, and in order to do so have agreed a definition of Independence which facilitates the least conflict of interest. This level of independence cannot be achieved by an organisation offering advocacy along with other care and support services, and importantly, may not offer reassurance to people using the service that there is independence from the other services provided by that organisation.

The structure and psychology of an independent advocacy organisation is such that we feel it is best placed to support people with their advocacy needs, and can do so without restriction.

The management of an independent advocacy worker is best done within an environment that can understand and offer support with the unique issues and dilemmas that arise from this specific type of support. We strongly believe that this is much harder to achieve when done within a structure offering different types of support that differ greatly from advocacy, and approach their support from differing perspectives.

We strongly believe that advocacy should only be delivered by independent advocacy organisations that only provide advocacy. The best way to minimise the likelihood of conflicts of interests arising is for the organisation to only provide advocacy.

With this in mind, we believe that the proposed new wording in the Commissioners Guide will cause confusion and enable many different interpretations of what are possible conflicts of interest. We feel that this may lead to inconsistency of advocacy provision.

**We are grateful for your response. Thank you.**