

## **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?**

The draft guide provides a clear outline of the statutory responsibilities in relation to the provision of independent advocacy. Barnardo's Scotland welcomes the embedding of the statutory definition of independent advocacy (from the Mental Health (Care & Treatment) (Scotland) Act 2003 and associated guidance) throughout the guide for commissioners including within the proposed principles and standards. We also welcome the acknowledgment within the guide that "different approaches to independent advocacy are needed: there is no best model.

Although the guide provides a helpful outline of different types of advocacy it would be useful to include reference to 'non-instructed' advocacy within section 2.

.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

Section 10 of the guide provides clear guidance for commissioners of Independent Advocacy services. Particular emphasis should be placed on ensuring that commissioners:

- ♦ Promote the participation of service users within commissioning processes and subsequent monitoring/evaluation
- ♦ Reflect relevant legislation/national frameworks within commissioning processes, including, for example Getting it right for every child
- ♦ Promote an outcomes based approach to practice
- ♦ Create service level agreements with advocacy providers for a minimum period of three years

Reference to the statutory duties on commissioners of independent advocacy under the Equality Act 2010 is welcomed especially in relation to meeting the additional needs of specific client groups.

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  (with caveats) No

**If not, why not?**

An emphasis on evaluating advocacy is to be welcomed although further work is required on agreeing an appropriate model. The pilot model of evaluation should be developed taking into account both the existing SIAA guidance but also other nationally recognised evaluation models. Further information is required on the recruitment, training and management of the independent sessional evaluators. Input should be sought from other advocacy providers rather than a reliance solely on the SIAA. In addition, further information about the ongoing funding of the evaluation model/s once the pilot phase has been completed would be helpful. The process for supporting advocacy providers to make the improvements identified through external evaluation also needs more detail. The proposed SIAA support should be available only through the request of the advocacy provider.

As a starting point the pilot model must

- ♦ Be outcome focused,
- ♦ Ensure the effective participation of service users,

- ♦ Reflect the principles and standards within the proposed guide for commissioners.
- ♦ Build upon an ongoing approach to evaluation rather than being a 'one off'.

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  **not in current in its current form**

We welcome the emphasis placed on identifying potential conflicts of interests within the provision of independent advocacy. As potential conflicts of interests can vary depending upon individual circumstances it is unclear how helpful it would be to highlight specific examples especially as those currently included within appendix 2 are narrow and cover a number of very similar scenarios.

The guide for commissioners should ensure that the service or services they commission should:

- ♦ Have a clear conflict of interest policy which includes setting out what action will be taken when perceived and/or actual conflicts are identified
- ♦ Ensure that the views of service users are sought, recorded and taken into account within issues relating to perceived/actual conflicts of interest

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

There is a broad range of additional reference material within section 3 which will be helpful to commissioners of independent advocacy. Priority and emphasis should be placed upon the information related to statutory requirements. It

would also be helpful to include more specific information/links to the United Nations Convention on the Rights of the Child (UNCRC) and the statutory duty upon the Scottish Government to provide an advocacy service for parents and young people (aged 16/17) who have grounds to make a reference to the Additional Support Needs Tribunal for Scotland (ASNTS). The right to advocacy is a statutory responsibility under the 2009 amendments to the Education (additional support for learning) (Scotland) Act 2004.

It will also be helpful to update this appendix to include reference to and information on the advocacy provisions in the Children's Hearings (Scotland) Act 2011, when those are commenced. In particular, it will be useful to include links to the advocacy schemes for children and young people commissioned to deliver those provisions

### **General Comments**

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

Barnardo's Scotland welcomes and supports the publication of the proposed guidance to commissioners, and looks forward to future guidance aimed at specific issues relating to children and young people's advocacy.

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