

## **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 guide provides a clear outline of the statutory responsibilities in relation to the provision of independent advocacy. CHILDREN 1<sup>ST</sup> is pleased to see the statutory definition of independent advocacy (the Mental Health (Care & Treatment) (Scotland) Act 2003 and associated guidance) used throughout the guide for commissioners, including within the proposed principles and standards. We welcome the acknowledgment within the guide that “different approaches to independent advocacy are needed: there is no best model”.

It would also 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

**If not, why not?**

We feel that section 10 is clear and provides an appropriate level of detail. There are some issues which could be given greater emphasis, including the need to: 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; and create service level agreements with advocacy providers for a minimum period of three years.

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?**

We would support a programme of evaluations but feel that the way in which this should happen requires further consideration. 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.

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

It is useful and necessary for the guide to highlight the potential for conflicts of interest, but the examples used are very narrow and for this reason could be misleading. Potential conflicts of interests can vary depending upon individual circumstances, so it is very important to include a wide range of different examples. The guide should encourage commissioners to ensure that advocacy services have a clear conflict of interest policy which includes what action/s will be taken when perceived and/or actual conflicts are identified, and ensure that the views of service users are sought, recorded and taken into account within issues relating to perceived/actual conflicts of interest.

The scenarios at appendix 2 currently focus on conflicts of interest in organisations which provide advocacy services as well as other services. If scenarios are going to be used, it

would be a good idea to include a wide range, including conflicts of interest within organisations that solely provide advocacy services. This would help to ensure those reading the guide understand that there are a variety of ways in which to provide appropriate advocacy, and that the potential for conflicts of interest is always present but can be planned for, dealt with and minimised.

Some of the ways in which CHILDREN 1<sup>ST</sup> avoids conflicts of interest is by making it very clear to all involved what the role of the advocate is. At meetings, advocates ensure that everyone there knows and understands that they are there in an advocating role and will not be speaking on behalf of their organisation or giving their own opinion. CHILDREN 1<sup>ST</sup>'s advocacy services also ensure that service users have an understanding of the role of the advocate through the provision of an advocacy postcard to service users explaining what an advocate can and can't do.

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

Appendix 3 contains a range of useful material. Priority and emphasis should be placed upon the information related to statutory requirements. It would also be helpful to include more specific information/links on 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).

This appendix should also include reference to and information on the advocacy provisions in the Children's Hearings (Scotland) Act 2011, when this is possible. In particular, it will be useful to include links to the advocacy schemes related to this.

It would also be useful to include a link to the National Guidance for Child Protection in Scotland.

### **General Comments**

CHILDREN 1<sup>ST</sup> welcomes and supports the publication of the proposed guidance to commissioners and we look forward to supplementary guidance, including materials with a focus on advocacy for children and young people.

We would, however, suggest a few small changes in order to more accurately reflect the role of an independent advocate:

Section 1.1.3 states that one of the themes of advocacy is 'safeguarding individuals who are at risk'. Although this is further explained in the body of the text, we feel it would be more appropriate to talk about 'ensuring that the rights of the individual are not infringed'. The reason for this is that, although we would hope advocacy would help to safeguard the individual, this may not always be the case, as the role of the advocate is to be the voice of the individual. Depending on what the individual wishes to say this may involve saying something that does not safeguard them.

The wording at section 3.2, 'in order to be completely on someone's side in this way', would also benefit from being changed. The current wording suggests an adversarial situation in which the advocate aims to win. This is not the role of the advocate – it would be more appropriate to talk about ensuring the individual's views are heard and understood.

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