

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?

Firstly, more detail could be added to the statement “to take appropriate steps to ensure that those persons have the opportunity of making use of those services.” After consulting with our member schools one stated that they have found it “historically difficult to access independent advocacy for children through the local authorities.” Some of our member schools put parents in touch with independent advocacy services rather than undertaking the process themselves, however parents have come up against similar problems. This is supported in the Doran Review which states there should be, “more support for parents who are not able to articulate their concerns well or do not have the confidence to push or ask questions. This could be achieved, in part, through improved access to advocacy services for those parents who need them.” Elaborating on the aforementioned statement in the guidance to provide more detail would stress the importance of accessibility which has previously been raised as an issue, whilst also incorporating a recommendation from the Doran Review.

Secondly, it could be made clearer in the guidance what organisations/groups fall under the duty of either the local authority or Health Board as one of our member schools stated that they didn't know which to contact to commission an independent advocate. A list detailing this information could be compiled and included in the guidance so that commissioners, through early engagement, could make it clear to these organisations/groups who they should be contacting to secure the availability of an independent advocate. In the report *Establishing the Responsible Commissioner: Guidance and Directions for Health Boards* (March 2013) it states, “Pupils at additional support needs schools or colleagues remain the responsibility of the health board in which their parents or guardians are normally resident.”¹ However the guidance simply states the public body must secure availability “to persons in its area” thus schools remain confused about which organisation they should contact.

Finally, one school commented that most advocacy services seem designed for adolescents rather than children; perhaps the guidance could suggest that services are tailored to suit those it serves? As it is stated in the *Consulting on Advocacy* section of the Scottish Government website, “Where children and young people are concerned there may be additional things to take into account, like the child's capacity to express views, tensions with parents or carers, parental rights or sometimes child protection issues.”² SCIS feels that distinguishing the processes used to advocate for different groups in the guidance would provide a consistent level of quality for service users.

¹ http://www.sehd.scot.nhs.uk/mels/CEL2013_06.pdf

² <http://www.scotland.gov.uk/Topics/People/Young-People/families/advocacy>

Hopefully adopting and implementing the suggestions we have made would prevent schools privately contracting independent advocacy agencies thus leading one school to feel that they are “paying for a deficit in the local authority and national service which should be available”.

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?

Although the guidance “highlights the need for engagement with service users prior to and during commissioning processes”, perhaps it could be expanded upon with the following, as quoted in the joint guidance by the Scottish Government and COSLA, “Public bodies should consider whether to hold an open day or workshop for potential service providers in order to provide additional information about their requirements and to explain how the procurement process will operate. This may not be possible in every procurement exercise because of the level of resource required.”³ Again, stressing the importance of accessibility would hopefully prove helpful in improving access to independent advocacy and making organisations aware of who can provide them with that service.

In addition, the joint guidance states that public bodies should:

- "establish good lines of communication with service providers, with designated staff who are approachable and able to deal with issues;
- engage with service provider forums in discussion of policy and practice and the development of good practice; and
- be open to suggestions from providers about how the public body’s systems could be improved and costs reduced”

All of these points would be useful to include in the guidance, again putting more emphasis on the need to make independent advocacy as accessible as possible.

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

³ <http://www.scotland.gov.uk/Resource/Doc/324602/0104497.pdf>

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?

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.

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?

Education (Additional Support for Learning) (Scotland) Act 2009 which adds to the Education (Additional Support for Learning) (Scotland) Act 2004, stating:

“14A Provision of advocacy service: Tribunal

(1) The Scottish Ministers must, in respect of Tribunal proceedings, secure the provision of an advocacy service to be available on request and free of charge to the persons mentioned in subsection (2).

(2) The persons are—

(a) in the case of a child, the child’s parent,

(b) in the case of a young person—

(i) the young person, or

(ii) where the young person lacks capacity to participate in discussions or make representations of the type referred to in subsection (3), the young person’s parent.

(3) In subsection (1) “advocacy service” means a service whereby another person conducts discussions with or makes representations to the Tribunal or any other person involved in the proceedings on behalf of a person mentioned in subsection (2).”

Are there any you would remove?

No

General Comments

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

The Scottish Council of Independent Schools (SCIS) is an independent education charity representing over 70 member schools in Scotland which educate around 32,000 children of mixed abilities from diverse backgrounds.

The revised guidance relates mainly to our schools for young people with additional support needs, therefore we have consulted with our 18 member schools of this type. We strongly support Article 12 of the United Nations Committee on the Rights of the Child which states “children and young people have the right to speak up and have their opinions listened to

and taken seriously by adults”, and hope that the continued work in advocacy in Scotland allows this to become standard practice.

We are grateful for your response. Thank you.