

# Policy Response



## Consultation on Independent Advocacy – A Guide for commissioners

### Capability Scotland

19<sup>th</sup> July 2013

Capability Scotland campaigns with, and provides education, employment and care services, for disabled people across Scotland.

### Summary

- Capability Scotland believes there is a need for the Guidance to make reference to the impact the Social Work (Self-directed Support) (Scotland) Act 2013 will have on demand for advocacy services. The right to increased choice, control and participation contained within the Act will only be meaningful to many disabled people if it is accompanied by increased access to independent advocacy services. This must be considered during the commissioning process.
- Capability Scotland believe the Guidance would benefit from reference to the fact that advocacy is essential not only to satisfy domestic legislative duties such as those under the Mental Health (Care and Treatment) (Scotland) Act 2003, but also to fulfil basic human rights standards, such as Article 21 of the UN Convention on the Rights of Persons with Disabilities. This seeks to guarantee the right to freedom of expression including the freedom to seek, receive and impart information on an equal basis with others.
- Capability Scotland believes there is a need to change some of the terminology used in the guidance. Currently the text repeatedly refers to the need for advocacy services for those who are 'vulnerable'. In many cases, advocacy services are not required because of an innate vulnerability on the part of the individual. They are, instead, required because institutional, attitudinal and communication barriers have prevented an individual from expressing themselves clearly and prevented their views being given adequate weight. It is essential that commissioners take the needs of this group into account.

## Our Response

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

1. We believe that there is an adequate level of detail in relation to statutory responsibilities under the Mental Health (Care and Treatment) (Scotland) Act 2003. However, there is also a clear need for the Guidance to make reference to other legislation which, although it does not create a direct duty to provide advocacy services, must be considered by commissioners. This includes:

#### **The Social Work (Self-directed Support) (Scotland) Act 2013**

2. Under this legislation, local authorities have a duty to offer information on the provision of independent advocacy to those people the local authority believes would benefit from it. Furthermore, section 1 of the Act states that a person must be provided with any assistance that is reasonably required to enable them to express any views about the options for self-directed support and to make an informed choice. In many cases this will clearly require access to advocacy services.

3. Evidence gathered through Capability Scotland's Advice Service suggests that there is an insufficient supply of advocacy services. This means disabled people are not able to receive the support and assistance they require to make and express decisions about their social care requirements. Cases reported to us include a disabled man who has been assessed by his local authority and told he was no longer eligible for social care support. The man felt he had not been given adequate support or opportunity to explain his needs but was unable to find an advocacy service that had capacity to support him through the complaints process.

4. Another woman explained that he had been unable to access advocacy services in time for an assessment of his needs by her local authority. She said she felt *'that people were talking about me – it was all about me – but I had nothing to do with it'*

5. The implementation of the Social Work (Self-directed Support) (Scotland) Act will result in increased involvement and participation of disabled people. It is therefore essential that commissioners are prepared to meet the corresponding increase in demand for advocacy services.

#### **Getting it Right for Every Child (GIRFEC) / the Children and Young People (Scotland) Bill**

6. GIRFEC makes clear reference to the central importance of the involvement of children and their parents and carers in decision making. According to the Scottish Government that is why, *"good quality advocacy support – which helps children and families to be 'respected' and 'included' – is a significant part of the GIRFEC approach."*

7. This is reflected in the recently introduced Children and Young People (Scotland) Bill which seeks to codify aspects of GIRFEC. In its current form, sections 31(5) and (6) provide that in deciding whether a child requires a child's plan, the responsible authority should, so far as reasonably practicable, to have regard to the views of the child and their parents / carers. Again, in many cases this is likely to include access

to advocacy services. It is essential that commissioners are aware of this and similar provisions if they are to commission services adequate to meet demand.

8. Once again, calls to Capability Scotland's Advice Service suggest that there is not an adequate supply of advocacy services to meet current demand in this area. One parent who contacted us has a two year old son with global developmental delay, autism and communication difficulties. The child attended a playgroup, but his mother became extremely frustrated that there was no support available for playgroup staff to understand her child's needs. The local authority told her that there was no money available to provide training to staff and refused to meet with her again. No advocacy service in the area was able to provide support to the family.

### **The Human Rights Act 1998**

9. Capability Scotland believe the Guidance would benefit from reference to the fact that access to advocacy is essential not only to satisfy domestic legislative duties such as those under the Mental Health (Care and Treatment) (Scotland) Act 2003, but also to fulfil basic human rights standards, such as Article 21 of the UN Convention on the Rights of Persons with Disabilities which seeks to guarantee the right to freedom of expression including the freedom to seek, receive and impart information on an equal basis with others. This right is also given domestic effect by section 6 of the Human Rights Act 1998 in conjunction with Article 8 of the European Convention on Human Rights. Failure to make reference to these standards could result in them being given inadequate consideration by commissioners.

### **Question 3: Would you support a programme of evaluations based on the pilot model of evaluation set out in paragraph 5 of Part 2 of the consultation paper?**

10. Yes. However there is a need to clearly establish in the Guidance how the views of advocacy service users are to be taken into account during evaluation. While, as the Guidance acknowledges, this can be an extremely difficult process it is vital that it is considered in the design of the evaluation process.

### **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?**

11. Yes. However, what is more important than the potentially difficult situations laid out in the Guidance is information on how commissioners ought to approach them. We believe this information should also have formed part of this consultation.

### **General Comments**

12. While section 1 of the guidance provides a good overview of the situations in which advocacy may be required, there is an overemphasis throughout the document on advocacy as a service which is necessary to meet the needs of 'vulnerable' people. In many cases, advocacy services are not required because of an innate vulnerability on the part of the individual, but because institutional, attitudinal and communication barriers have prevented them from expressing themselves clearly and from their views being given adequate weight.

13. We have a concern that, unless reference is made to this in the guidance,

commissioning officers will fail to consider 'non-vulnerable' disabled people as having a need for advocacy services. The need for advocacy as a result of external barriers is illustrated by comments made by Capability Scotland customers.

*"I have good communication skills though often I find because I am in a wheelchair people assume I can't talk or think for myself."*

*"I have no problem with communicating with others, although I feel like others sometimes will not communicate directly to me, they will communicate with my carer first. I sometimes feel others do not listen to me."*

*"Lack of confidence is an obstacle as I feel I am unable to speak up for myself."*

### **About Us**

Capability Scotland campaigns with, and provides education, employment and care services for disabled people across Scotland. The organisation aims to be a major ally in supporting disabled people to achieve full equality and to have choice and control of their lives by 2020. More information about Capability Scotland can be found at [www.capability-scotland.org.uk](http://www.capability-scotland.org.uk).

### **Contact Us**

Thank you for the opportunity to comment on this consultation. If you require more information on this response, please contact:

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