

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? NO

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

The injudicious use of the terms “independent advocacy” and “advocacy” (as if they were one and the same) throughout the Guide is confusing and invites misinterpretation.

While there is a strong emphasis on the provision of independent advocacy through statutory responsibility, it is concerning to note that, elsewhere in the guide this vigour of expression is lost.

It is our belief that this has come about as a direct failure to observe principle 3.1 whilst pursuing an unintended interpretation of principle 3.2.

While it is acknowledged that “advocacy” is provided by a range of services, e.g., Nurse to their patient or a Social Worker to their client, it is the lack of a conflict of interest that enables “independent advocacy” to be distinct.

It is this difference that requires further clarification in the Guide to ensure that the factors noted in Sections 1.1.6 and 1.1.7 are satisfactorily met.

In relation to 3.2, it is essential that commissioning services ensure that the “complementary” nature of such “tasks” are **wholly transparent and understood** in relation to potential conflicts of interest e.g., can a service provider properly provide independent advocacy to a client?

Additionally, how would it be ensured, and demonstrated, that vulnerable clients (noted in sections 1.1.6 and 1.1.7 of the Guide for Commissioners) can properly access an effective independent advocacy service that is free from conflict, if it is being provided by those very services and systems that they are obliged to use for support to their health and well-being?

1.1.6 *“Some people have to rely on powerful service systems for help with all aspects of their life - housing, personal assistance, decision-making, income, occupation, mobility. This can happen particularly when people have been immersed in the service system since childhood, and when they have no strong allies outside institutions.”*

We do not believe that independent advocacy can be provided properly or effectively by an organisation delivering other care services. Furthermore, we believe that any steer away from the intention of the Principles and Standards of independent advocacy ultimately has the potential to erode the spirit of the Mental Health (Care and Treatment) (Scotland) Act 2003.

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? NO

If not, why not?

We feel that there was insufficient detail included regarding the processes involved in commissioning independent advocacy for us to be able to comment as we would wish.

References to “advocacy” should be amended to read “independent advocacy”.

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

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

Are there any others you would add/remove? NO

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.

All of the examples given would create conflicts of interest for all stakeholders.

The provision of independent advocacy in any of these situations (in accordance with principle 3.1) would negate these conflicts.

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

Are there any others you would add? NO

Are there any you would remove? NO

General Comments

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

Given that this consultation is based on “Independent Advocacy – A Guide for Commissioners”, we are somewhat perplexed to note the inclusion and direction for the commissioning of “non-independent advocacy”. Question 4 pre-supposes the commissioning of “non-independent advocacy”. We feel that this guide suffers from contradictory and unclear pathways that are open to misinterpretation.

We are gravely concerned that the essential nature of independent advocacy – freedom from conflict of interest – is being undermined. This is difficult to understand when any proposed non-independent alternatives start from a position in which psychological, financial and structural conflicts of interest abound.

This response form was not wholly compatible with online completion i.e. some ‘check box’ facilities could only be completed manually. This was a frustration and resulted in more time being needed to complete this form. Potentially this could affect the ability of some respondents to engage with this consultation.

The response and consultation document(s) did not always fit together in a meaningful way.

The consultation, in part, was very restrictive and did not enable a full response to be delivered. Particularly with reference to Section 10 whereby, the question asked was so specific it denied a fuller response on the matter of Commissioning independent advocacy.

We are grateful for your response. Thank you.