



**THE LAW SOCIETY
of SCOTLAND**
www.lawscot.org.uk

Consultation Response

Consultation on Independent Advocacy – Guide for Commissioners

The Law Society of Scotland's response

July 2013

Introduction

The Law Society of Scotland aims to lead and support a successful and respected Scottish legal profession. Not only do we act in the interests of our solicitor members but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes.

The Mental Health and Disability sub-committee (the committee) welcomes the opportunity to consider and respond to the Scottish Government's Consultation on Independent Advocacy – Guide for Commissioners. The committee has the following comments to make:

General Comments

The committee notes that the guide sets out what 'advocacy' is. However, it fails to specify the boundaries within which advocates must operate. It is essential that the terms of reference are clear. The guide should explain that advocacy is not a limitless role. A full and clear description of the role of advocates should be given including what advocacy is not.

The committee notes **Page 13, paragraph 5.2** refers to a definition of 'mental disorder' and lists separately dementia and acquired brain injury. Dementia and acquired brain injury both fall within the definition of mental disorder.

The committee notes **Page 11, paragraph 3.4**. This fails to set out clearly the statutory provisions under section 259 of the 2003 Act, which are set out later in section 6. It would be helpful if the relevant statutory provisions are specified where necessary, at paragraph 3.4 and elsewhere in the document for ease of reference.

The committee notes **Page 15, standard 3.1** states 'cannot be involved'. This is misleading as it suggests the advocate cannot be involved in advocating for their client in any of the services specified which must be unintended. It is suggested that this be

amended to read ‘..cannot be engaged in the delivery of welfare or care services, or the provision of other services...’

Questions

Q1. Are you content with the level of detail given in relation to the statutory responsibilities and that the information is clear?

This should make reference to statutory principles set out in section 1 and section 2 and to those matters specified at section 3 of the 2003 Act. Although the statutory principles do not apply to advocates, when discharging a function, advocates require to have a sound knowledge and understanding of these, given the extent to which they apply to those individuals who are discharging functions.

Q2. Are you content that the level of detail given in Section 10 on the Commissioning of Independent Advocacy is appropriate?

The health and social care legislative landscape is presently subject to a great deal of change and development. It may be helpful to reflect this and to consider any implications arising from proposed legislation, e.g. the Adult Health and Social Care Integration Bill.

Q3. 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?

We are unable to respond to this question as we cannot locate paragraph 5 of Part 2 in the consultation document.

For further information and alternative formats, please contact:

Brian Simpson

Law Reform

DD: 0131 476 8184

E: briansimpson@lawscot.org.uk

The Law Society of Scotland

26 Drumsheugh Gardens

Edinburgh

EH3 7YR

www.lawscot.org.uk