

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?

In general the information in this document is clear and well laid out.

This draft commissioning guide notes that its Principles and Standards differ from the Principles and Standards stated in SIAA's 2010 Guidance for Commissioners. We are concerned that these differences could undermine the 'independence' of independent advocacy.

We feel that the move from SIAA Standard 3.2

“Independent advocacy and promoting independent advocacy are the only things that independent advocacy organisations do”

to this document's Standard 3.2 shifts the focus of 'independence' to the involvement of the advocacy organisation with the individual, rather than recognising that the agency providing independent advocacy should not be at risk of conflict with the local authority or NHS Board at all. We believe that this change dilutes the concept of 'independence' in advocacy.

We are also concerned that while much of Section 3.7 - the 'key factors which underpin good independent advocacy' has been taken from the SIAA 2010 Guide for Commissioners (pg 7) a pivotal 'key factor'

'advocacy groups can not be providers of other services'

has been amended to

'advocacy groups should not be involved in the care or provision of other services to the individual who requires advocacy'

We are concerned that this rewording also dilutes the 'independence' of independent advocacy. This proposed amendment would allow 'independent' advocacy to be provided by an organisation that may be funded by that Local Authority or NHS board to provide other (non advocacy) services. There may not be a conflict of interest directly in relation to the person receiving advocacy services but there could be other ongoing conflicts with the potential to impact on advocacy work.

Advocacy is a very skilled role – we are concerned that allowing advocacy provision to be 'bolted on' to agencies that provide other services will result in the demise of truly independent advocacy.

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 the wording in 10.5 relating to the Equality Act needs to be revised to reflect more fully the intentions of the act. We also believe that guidance should be provided to commissioners on ensuring that advocacy contracts are inclusive of all people with protected characteristics and that service outcomes should be monitored to ensure that they are accessible using an Equality and Diversity monitoring tool.

We suggest that 10.2 might want to reference 12.6.1 and explore the opportunity for using the opinions of service users and staff to peer review advocacy services.

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?

If a robust system for monitoring the contract (which includes evaluation of outcomes) is in place we are not convinced that this further level of evaluation is required.

Independent review as described may be useful if an advocacy service is in difficulty. However, if this has to be met within the existing budget of a service it could affect service provision. We feel priority must be given to service provision when allocating resources.

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.

All these examples of possible sources of conflict involve an organisation providing services additional to advocacy. If these are recognised as potential areas of conflict why not avoid them completely by supporting the SIAA definition of independent advocacy – ‘Independent advocacy and promoting independent advocacy are the only things that independent advocacy organisations do’?

Additional guidance should also be offered to commissioners on reciprocal independent advocacy provisions, where independent advocacy organisations agree to provide advocacy in place of each other in cases of conflict of interest.

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?

Are there any you would remove?

General Comments

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

We are concerned by the language used in 1.1.2 (second bullet point) suggesting that advocacy empowers people to ‘... make their own decisions’. We believe that Standard 1.2 from the SIAA guidelines - ‘Independent advocacy helps people to have control over their lives and to be fully involved in decisions which affect them’ – is more appropriate.

We feel section 1.1.6 is confusing and doesn’t reflect the needs of the prison population where there may be issues that impact on human rights. Skilled advocacy is required to identify absolute rights. We feel that this document would benefit from more guidance on commissioning advocacy services in prison settings.

We feel that section 10.5 should read:

There is a statutory duty under the Equality Act 2010 for NHS boards and local authorities to provide services which are equitable and accessible ensuring that any barriers to services are addressed (e.g. communication, mobility, sensory, gender and cultural support).

We would prefer alternative language to be used in 6.11 as NHS and Local Authority service provision should be based on need rather than on judgement deeming some more deserving than others.

We welcome the opportunity to contribute to the national discussion about independent advocacy and look forward to contributing further to the development of this guidance.

We are grateful for your response. Thank you.