

## Consultation Questionnaire

SCLD is a Centre for Excellence, made up of 12 partner organisations, that is funded from a range of sources, including the Scottish Government, NHS Boards and Local Authorities. Our mission is to work in partnership with people with learning disabilities, people on the autism spectrum and family carers to challenge discrimination and to develop and share good practice. SCLD's goal is an inclusive Scotland where everyone is valued and respected for who they are and what they contribute as equal citizens.

SCLD's partner organisations include 12 third sector organisations and universities: Association for Real Change (ARC), British Institute for Learning Disabilities (BILD), Badaguish Outdoor Centre, Capability Scotland, Central Advocacy Partners, Down's Syndrome Scotland, ENABLE Scotland, Key, PAMIS and the Universities of Dundee, Glasgow and St Andrews.

SCLD welcomes the opportunity provided by the consultation process to comment on the 'Independent Advocacy – Guide for Commissioners'. The guide provides useful clarity to commissioners on the principles, value and implementation of independent advocacy in Scotland. Our key messages for the guidance are:

- We think it is important that there is explicit reference to 'Self-directed Support' (SDS) within the main body of the guide as this area of policy and practice provides the essential context for the delivery of health and social care in Scotland. Independent advocacy has the potential to contribute significantly to enabling people to achieve the choice and control that is at the heart of SDS.
- 'The keys to life' (2013) is the new learning disability strategy for Scotland and it contains a clear commitment to independent advocacy. It would be helpful for there to be references and links to the strategy within the guide.
- The guide makes numerous references to 'patients' and 'treatment' which could imply that access to independent advocacy is mainly for people within the healthcare system. We think that it is worth amending this language to ensure that commissioners are clear that people with a 'mental disorder' who live in the community who may wish to get support from an independent advocate have the same rights as people detained under the MH (CT) Act.

- Independent advocacy has the potential to facilitate the engagement of people and elicit their voices beyond their own individual service requirements. Public policy in Scotland widely recognizes the value of 'coproduction'. This guide can contribute to the cultural shift that is required in the drive to improve public service delivery in Scotland by promoting the inclusion of people who are excluded and marginalized in the design, development and delivery of public services.

## **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?**

### **Part 1: Background**

Since publication of the Guide for Commissioners in 2010 the Social Care (Self-directed Support) (Scotland) Act 2013 has been passed, and the Self-directed Support Strategy, and 'The keys to life' Learning disability policy have been published. The strong emphasis on independent living, human rights and choice mean that independent advocacy has the potential to contribute positively to delivery of the vision and principles of both these legislative and policy areas. Independent advocacy is recognised within these policies as a central resource in ensuring that people with learning disabilities understand information and the choices that are available to them. These areas of policy provide the crucial context for the provision of health and social care for people with learning disabilities, as well as other disabled people, within Scotland. This should be recognised more strongly throughout this guidance document.

#### **1.1.7**

Given the importance of independent advocacy in ensuring that people with learning disabilities have their voices heard, it would be helpful to make a specific reference to people with learning disabilities within this section.

#### **1.1.8**

The reference to 'treatment' in this paragraph risks limiting our understanding of the application of independent advocacy to health interventions only. In order to ensure that the role of independent advocacy in relation to social care support is clear we would recommend changing the first sentence to read as follows: "If individuals do not have well-motivated and capable family and friends to speak up for them, they are at risk of not receiving the treatment or social care support that is most appropriate to meet their needs"

#### **3.1**

Bullet point 1: People can be treated unfairly as a result of institutional and systemic barriers as well as prejudice and their own 'vulnerability'.

Bullet point 3: is it more appropriate to say that friends and family may have conflicts of interest – rather than 'part of the problem'?

#### **5.3**

The emphasis on the right to independent advocacy for people living in the community here is important – the multiple references to 'patients' throughout the guide however undermines this and should be broadened to include people who are not detained under the Act and may be supported by a wide range of care providers in community settings.

## **6.6**

Standard 3.2: In order to protect the independence of advocacy organisations there should be supplementary information here to provide greater clarity on the 'tasks' that are considered complementary to, or not in conflict with 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?**

### **General points**

Through the eSAY data collection we know that people with learning disabilities have reported that they sometimes struggle to access independent advocacy services. For example, in 2011 327 people with learning disabilities reported that they needed an advocate but did not have one. (SCLD, eSAY Statistics release adults with learning disabilities implementation of 'The same as you?' Scotland 2011).

Therefore we strongly agree that the development of Strategic Advocacy Plans should be based on a comprehensive scoping to build understanding of unmet need within local areas. However, there is also potential to link this to proposals to build a more comprehensive national picture. This may be achieved by cross-reference to recommendation 32 in 'The keys to life' which states: "That by 2018 the Scottish Government works with the Scottish Independent Advocacy Alliance, PAMIS and SCLD to scope the need for advocacy and to develop an Action Plan together to improve delivery and uptake of independent advocacy at local level".

SCLD is of the view that people with learning disabilities should be involved and included in designing and commissioning services, including advocacy services, alongside commissioners from health and social care backgrounds and would welcome some recognition of this within the section covering commissioning.

Independent advocates may require very specialized skills to work with people with communication needs; the recent evaluation of 'The same as you?' found that some individuals with communication needs struggled to get an advocate who was able to support them. Commissioning advocacy should take into account the investment which may be needed in developing and maintaining these skills as well as the additional time some individuals may require to participate effectively.

**6.14**

Whilst the expectation that 'independent-minded advocates' challenge agency policy, it is not clear how the guidance facilitates and protects this.

**7.6**

Whilst the role of advocacy in developing 'person-centred' services is recognised it could also be added that advocacy could support and facilitate individuals to engage directly in service redesign which is recognised an important factor in developing improved health and social care services across a range of Scottish health and Social care policy areas.

**10.4**

Suggested additional bullet point:

- facilitate 'psychological independence'

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?**

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?**

- "The keys to life: Improving quality of life for people with learning disabilities" (2013)
- "Commissioning social care" 2012 Audit Scotland
- Human Rights Act 1998

**Are there any you would remove?**

**General Comments**

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

Participation is a key principle of a human rights based approach. Everyone has the right to participate in decisions which affect their human rights. Participation must be active, free, meaningful and give attention to issues of accessibility, including access to information in a form and a language which can be understood. In the past, people with learning disabilities have been excluded from participating in decisions which affect their lives. SCLD believes that people with learning disabilities should be included in the development, design and delivery of policies and practices which affect them. Therefore we would like to emphasise the potential for independent advocacy to enable people to have influence outside of their individual experience in order to inform design, development and delivery of services. We believe this will lead to the development of high-quality person-centred care and support that is inclusive and accessible to a wide range of people.

**We are grateful for your response. Thank you.**