

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?

We believe that reference to the principle of participation as identified by the Millan Committee should be included.

The Participation Standard for the NHS in Scotland, developed by the Scottish Health Council acknowledges the importance of access to independent advocacy. The Guide for Commissioners needs to make reference to the Participation Standard.

Information is clear and succinct, and lay out is very readable with easy hyperlink access to appropriate documents and additional information.

Considering the detail provided in the document, with reference to the 'key factors which underpin good independent advocacy' (3.7 in consultation document) are in keeping with the SIAA Guide, other than standard 3.1 which has been amended from 'advocacy groups cannot be providers of other services' to 'advocacy groups should not be involved in the care or provision of other services to the individual who requires advocacy'. While this standard presents as having the intent of protecting the client from conflict, standard 3.2 has moved away from independent advocacy being 'the only things' that independent advocacy organisations provide. This principle proposes that independent advocacy is appropriate where the agency's 'other tasks either complement, or do not conflict with, the provision of independent advocacy'. Standard 3.2 allows the introduction of potential conflict at agency levels.

We are very concerned that this will remove the 'independence' of advocacy. The proposed amendment in the consultation document states that advocacy can be provided by organisations that are funded by the NHS or Local Authority to provide services other than advocacy. While there may not be a conflict of interest directly in relation to the adult receiving an advocacy service, there may be other ongoing conflicts between the providing and funding agencies which could potentially impact on the quality of any advocacy provision.

Advocacy support is sought for a variety of reasons, but underpinning their work is the intention of protecting someone's rights. We work with the most vulnerable in our population and therefore the advocacy support needs to be free from any other agendas or pressures, however subtle, which may impact on their ability to truly enable this.

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 there needs to be more detail on the specific commissioning of independent advocacy as opposed to commissioning of other support or care.

In addition we believe that the information around planning should include reference to the need for extensive, meaningful involvement of current and potential advocacy service users and other stakeholders in the whole planning and commissioning process. This will support the achievement of the key factor underpinning good independent advocacy (page 12) – ‘advocacy groups should be firmly rooted in, supported by and accountable to a geographical community or a community of interest’.

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?

More information is needed about the cost to advocacy organisations. Self evaluation is the most effective way for long term improvements to be made as they are identified and owned by the organisation itself. Self evaluation should be an integral element of any proposed programme of evaluations.

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

Useful but not necessary if you keep the standards as they currently have been written by SIAA. Making sure that these scenarios, and possibly many others, cannot arise at all, would be the most useful course of action.

Appendix 2 identifies 7 scenarios of possible conflict of interest. Each are possible because of the amendment to Principle 3, particularly standard 3.2 which states that independent advocacy can be provided by an agency 'whose other tasks either complement, or do not conflict with, the provision of independent advocacy. Knowing that these conflicts can arise and that they are likely to impact negatively on the client in receipt of advocacy support makes my organisation question why the amendment is being considered in the first place.

Are there any others you would add/remove?

I would ask that the dilemma is not allowed to be introduced, resulting in the appendix 1 not being needed.

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.

The impact of these situations would be significant. Providing effective independent advocacy is a very skilled role to execute, and when provided well, is invaluable. Most advocacy agencies and referrers will be able to recall examples where advocacy workers

believe they are practicing with the client's best interests, but are influenced by other 'agendas' and do not provide truly independent advocacy.

All of the scenarios provided here further complicate this picture. The subtle influences which can impact on the advocacy worker being able to practice effectively should be minimised. This should be done by the Scottish Government in its guidance, which should be clear and not open to subjective interpretation by commissioners or non-independent organisations. What can be clearer and more understandable than stating that “**Independent advocacy and promoting independent advocacy are the only things that independent advocacy organisations do.**”

This section may be helpful as an exercise for commissioners to use to encourage consideration of potential conflicts and how these might be minimised rather than as a section that poses questions and then provides answers. Conflicts of interest may not always be immediately apparent and the potential conflicts detailed in this section do not provide an exhaustive list of issues that may be encountered.

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 Participation Standard for the NHS in Scotland

Are there any you would remove?

General Comments

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

CAPS is proud to have been an Independent Advocacy organisation for 21 years and has promoted and upheld the virtues of Independence.

We strongly believe that advocacy should only be delivered by independent advocacy organisations that only provide advocacy, conflicts of interest will arise for any organisation providing services and advocacy. The 4 key principles that underpin independent advocacy have been developed over many years by the advocacy movement and other relevant stakeholders. Conflicts of interests are not always easy to identify or manage or apparent from the outset. The best way to minimise the likelihood of conflicts of interests arising is for the organisation to only provide advocacy.

Advocacy is sought for those who are most vulnerable in our society, therefore emphasising the need for their advocacy support to be exempt from conflict in any way.