

## **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?**

The draft guide is written clearly and we welcome the fact that there is going to be supplementary guidance focussing specifically on advocacy for children and young people.

In 1.1.1. we suggest that “make informed choices and to have control over their care” might be amended to include “have control over as many aspects of their lives as possible.”

In 2.1.1.2, the final sentence on citizen advocacy “The advocate supports their partner using their natural skills and talents rather than being trained in the role” might be extended to include “though should have access to relevant training where appropriate”.

It would be helpful in the section on different models of advocacy to have an explanation of “non-instructed advocacy” and its use. Many people with learning disabilities continue to be supported by their family and some individuals lack the capacity to communicate well or to make decisions or instruct others. Their family carer may have been their ‘citizen advocate’ all their life – notwithstanding any potential personal conflict of interest. In situations where someone has limited capacity, often individuals and their unpaid family carers need a ‘whole family’ advocacy support focused on the individual’s needs but it can sometimes be difficult to achieve this if the unpaid carer has no formal appointment such as guardianship. This is distinct from the needs of unpaid carers for advocacy support in their caring role as outlined in 3.8.2. which we would also agree is vital.

In 3.7, we welcome the definition of the key factors that underpin good independent advocacy, in particular that they “should be firmly rooted in, supported by and accountable to a geographical community or a community of interest”; and the recognition that “different approaches to independent advocacy are needed; there is no best model”. We would suggest that a useful additional factor is that “advocacy groups should ideally be controlled by those who use the advocacy service or are members of the group.”

We welcome the reminder in 5.3 that Commissioners have a legal duty to ensure that everyone with a mental disorder in their area can access independent advocacy and that this does not just apply to adults or to those detained under the Mental Health Act.

It would be helpful under 6.3 to have an example of an organisation whose other tasks either complement, or do not conflict with, the provision of independent advocacy. It’s ENABLE Scotland’s view that the key issue is avoiding conflicts of interest and that it is possible for an agency that provides services in one local authority or Health Board area and of a different nature, to provide an independent advocacy service in a different local area where it has no other service provision, or where the advocacy service is constituted and managed separately.

8.4 We welcome the recognition of the additional barriers that some groups face and the importance of access to advocacy. This is the case for people with learning disabilities who may have difficulty expressing themselves, and are used to people not listening to them which further inhibits their ability and confidence to speak up. Reflecting on the experiences of our members, generic services are not always best placed to meet their needs. While appreciating the focus on LGBT communities (mentioned in para 8.5), we also recommend that the needs of the learning disability community are similarly highlighted and would be a helpful addition to the Guidance.

8.7 – We would recommend that the word ‘disability’ is added to the list of factors that can lead to multiple discrimination. This section should reflect the protected characteristics under the Equality Act.

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

We are content that the Guidance signposts commissioners to the public procurement rules but suggest that the reference to the “need for engagement with service users prior to and during commissioning processes” is pulled out into a separate paragraph in order to give it more emphasis.

We welcome the recommendation that funding should be guaranteed for a minimum of three years in order to provide stability and longer-term engagement within communities.

We also welcome the reminder to commissioners of their statutory duties under the Equality Act to provide other support services including interpreters and translation services. It would be helpful to clarify if that includes the provision of information in alternative formats including easy-read.

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       Possibly

**If not, why not?**

We support the principle and practice of monitoring and evaluating advocacy services and recognise that there needs to be a range of options for this process.

However, there is a lack of detail in the proposals above and it's not clear what the scope of the pilot evaluations will be, or the cost-effectiveness, or whether this will be a service that agencies can choose to use. Further information about the proposal is needed. In scoping out the pilot process we would suggest that the recruitment profile for independent evaluators reflects an existing level of relevant experience.

It is also not clear, if the cost of evaluation is something that should be included in the funding (as indicated in para 10.2), why evaluations are not always carried out by agencies and whether there are other ways of encouraging this.

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

It may be helpful to have a tool or additional guidance about how to recognise conflicts of interest but the examples given are too similar and it is difficult to complete the impact and action columns without more information about individual situations. We agree with the suggestions made by Aberlour, Barnardo's Scotland and Children First that it would be helpful for advocacy services to have a clear conflict of interest policy that includes actions to

be taken, how these will be decided; and for the views of those who use the service to be taken into account. It might be useful to look at existing risk assessment tools and how these could be used or adapted. We would be happy to be involved in the further development of this section alongside other interested organisations.

**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?**

**Are there any you would remove?**

### **General Comments**

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

We welcome the publication of the revised guidance which is clear and helpful and look forward to the additional guidance focusing on children's advocacy.

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