

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.

Children in Scotland's response to parts 1 and 2 of the consultation are largely the same as that of several members: Children 1st, Aberlour and Barnardo's. However, from part 3 onwards, there are specific comments that reflect the broader constituency of our membership.

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

Comments:

The draft guidance provides a clear outline of the statutory responsibilities in relation to the provision of independent advocacy. Children in Scotland echo the sentiments of our members in welcoming the embedding of the statutory definition of independent advocacy (the Mental Health (Care & Treatment) (Scotland) Act 2003 and associated guidance) throughout the guide for commissioners including within the proposed principles and standards. We also welcome the acknowledgment within the guide that "different approaches to independent advocacy are needed: there is no best model".

Although the guide provides a helpful outline of different types of advocacy it would be useful to include reference to 'non-instructed' advocacy within section 2.

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

Comments:

Section 10 provides clear guidance for commissioners of Independent Advocacy services. Particular emphasis should be placed on ensuring that commissioners:

- Promote the participation of service users within commissioning processes and subsequent monitoring and evaluation.
- Reflect relevant legislation and national frameworks within commissioning processes, including, for example Getting It Right For Every Child.
- Promote an outcomes based approach to practice.

- Create service level agreements with advocacy providers for a minimum period of three years.

Reference to the statutory duties on commissioners of independent advocacy under the Equality Act 2010 is welcomed especially in relation to meeting the additional needs of specific client groups.

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 **But with the caveats below** **No**

Comments:

An emphasis on evaluating advocacy is to be welcomed although further work is required on agreeing an appropriate model. Children in Scotland feel that the pilot model of evaluation should be developed by reviewing the existing SIAA guidance in the context of contributions from others in the field. Significant progress has been made in honing the advocacy principles, standards and the evaluation framework and the continued refinement of the framework by all stakeholders is to be commended. Further information is required on the recruitment, training and management of the independent sessional evaluators and input would ideally be sought from all advocacy providers. In addition, further information about the ongoing funding of the evaluation model/s once the pilot phase has been completed would be helpful. The process for supporting advocacy providers to make the improvements identified through external evaluation also needs more detail. The proposed SIAA support is a welcome resource and informed by the expertise of members of the alliance, however, this framework is a guide and to be used at the discretion of all advocacy providers.

As a starting point the pilot model must:

- Be outcome focused.
- Ensure the effective participation of service users.
- Reflect the principles and standards within the proposed guide for commissioners.
- Build upon an ongoing approach to evaluation rather than being a 'one off'.

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 **But not in its current form** **No**

Comments:

We welcome the emphasis placed on identifying potential conflicts of interests within the provision of independent advocacy and therefore, these scenarios are useful illustrative examples of scenarios which both advocacy providers and commissioners will encounter and will need to address. It may be helpful to provide case studies that focus on potential conflicts of interest in a case of non-instructed advocacy and collective advocacy and/or to diversify the sample by providing other, more varied examples. It would also be helpful to be clear that potential conflicts of interests can vary depending upon individual circumstances.

The guide for commissioners should ensure that the service/s they commission:

- Have a clear conflict of interest policy, which includes what action/s will be taken when perceived, and/or actual conflicts are identified.
- Conflict of interest policies should also be supported by robust evaluation systems.
- Ensure that the views of service users are appropriately sought, recorded and taken into account within issues relating to perceived/actual conflicts of interest.

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

Comments:

There is a broad range of additional reference material within section 3 which will be helpful to commissioners of independent advocacy. Priority and emphasis should be placed upon the information related to statutory requirements. It would also be helpful to include more reference to:

- The United Nations Convention on the Rights of the Child (UNCRC)
- UNCRC General Comment No. 12, "[The right of the child to be heard](#)"
- The statutory duty upon the Scottish Government to fund a national independent advocacy service for parents and young people (aged 16 and 17) during Additional Support Needs Tribunals for Scotland (ASNTS) proceedings

It will also be helpful to update this appendix to include reference to and information on:

- the advocacy provisions in the Children's Hearings (Scotland) Act 2011, when those are commenced. In particular, it will be useful to include links to the advocacy schemes for children and young people commissioned to deliver those provisions
- any potential implications from the passing of the CYP Bill in Spring 2014

General Comments

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

General Comments:

Children in Scotland welcomes and supports the publication of the proposed guidance to commissioners and looks forward to supplementary guidance with dedicated materials focusing on children's advocacy.

On the one hand, we recognise that there are rightful concerns around managing conflicts of interest when commissioning and delivering advocacy services - reflected in general comment no.12 of the UNCRC which stresses the need for advocacy support to be free from conflicts of interest - and, on the other, appreciate that many organisations have robust ways to address freedom from conflicts of interest as well as long-standing and useful

experience handling these situations successfully. It would therefore be helpful to see standard requirements for conflict of interest policies and standard quality management systems supporting that. We are mindful of the potential for the continued debate around independence within the movement to become a barrier to progress. We welcome the continuing valuable, quality work that is ongoing across the board in this area and seek to support a consensus of views around delivery of independent advocacy that takes into account the range of professional expertise and experience across the sector and which will strengthen and advance the cause. We believe that the proposed guidance for commissioners takes significant steps towards achieving this consensus. Children in Scotland calls for the individual needs of the child receiving advocacy support to be the first priority at all times and acknowledges that the form of advocacy and how that is delivered needs to be tailored to each individual: there is no 'one size fits all' solution and commissioners need to be mindful of the flexibility required by organisations to deliver *effective access* to advocacy for children and young people.

Advocacy is an increasingly essential vehicle by which children and young people across Scotland can articulate their voices and be heard in decisions that affect them. In the midst of changes to the way that welfare is delivered and the effects of a deep recession on services across Scotland, we anticipate a significant increase in demand and need for advocacy services and call for unity in support of a national advocacy framework.

Children in Scotland would like to see explicit reference to the UNCRC throughout the guidance as a framework for commissioning services for children and young people and in so doing, promote a child's rights-based approach to advocacy services and echo the principles underpinning GIRFEC and other national frameworks. In referencing the UNCRC it would be helpful to provide greater detail on the specific need for the provision for advocacy to enable children have their voice heard in both:

- proceedings that are initiated by the child (such as complaints against ill-treatment and appeals against school exclusion); as well as:
- those initiated by others, which affect the child, such as parental separation or adoption.

In line with findings from our recent outcomes model mapping research around disabled children and young people in Scotland, it is important that the guidance calls for a recognition of the importance of engaging *directly with all* children and young people in shaping their advocacy service and agreeing the individual outcomes they aspire to. Furthermore, in Section 11.9, particular emphasis should be placed on the need for commissioners to ensure that training is promoted and made available on effective and accessible communication methods. Being able to communicate was

considered fundamental to meeting a range of desired outcomes for disabled children and young people and all those in regular contact with the child need the knowledge and skills to understand a child's means of communication. It is therefore vital that the need for professional support, development and advice in providing advocacy services for children with additional support needs, children who are disabled and importantly those children and young people with communication difficulties, is acknowledged.

Children in Scotland supports the involvement of children and young people in shaping the development of this framework as it progresses and would advocate for sufficient time to be granted to organisations working directly with children and young people to involve them in shaping the next phase of this policy development as we start to look more closely at services specifically for them.

We are grateful for your response. Thank you.