

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?

1) The guide should include clarity that the role of independent advocacy is **not** about seeking the 'best interest' of a client, but helping a client to express their wishes and preferences. On a personal basis, an independent advocate may strongly disagree with the views of the client, but this is irrelevant as the advocate's views should not be expressed. Therefore the reference to '...being right...' in para 6.10 is also irrelevant (and should be removed), as advocacy has nothing to do with the rights and wrongs of a situation, but with helping the client to be heard.

Having such clarity might also reduce the conflict and antagonism that independent advocates sometimes experience from staff within care/service providers (whether from statutory, third or independent sectors).

To cover this aspect, the Dumfries and Galloway service specification for independent advocacy includes the paragraph below, which may be helpful:

'Advocate for the client only

*Advocates do **not** work in the 'best interest' of service users but work to their direction. Advocates will listen, help service users to explore options and support them to obtain information so that their decisions can be better informed, but it is for service users to decide what they want their advocates to do and what action should be taken. (The exception to this is in adult and child protection where the Provider is required to act if they identify a risk of serious harm relating to the service user.)'*

2) However we agree with the definition of independent advocacy contained in Principle 3, which is in line with the Mental Health Act. The more restrictive definition in the SIAA Principles & Standards would prevent many clients benefitting from various very positive advocacy projects across the country.

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?

1) We do not agree with the requirement that funding should cover the costs for an external evaluation. (see below - Question 3)

2) Otherwise we are content with the detail.

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?

1) In principle, the pilot above appears attractive - but there are no details of the likely costs. On the basis of previous proposals from SIAA, we are concerned that the costs might be quite high - especially in comparison to the funds available to local advocacy groups to provide independent advocacy. As noted in para 11.8.1, there is a concern about imposing onerous requirements on, mostly small, advocacy providers.

2) Our preference would be that - rather than a requirement for external evaluation - self evaluation be supported (or joint purchaser/ provider self evaluation). This could be based on the SIAA self evaluation framework - possibly with further consultation on its content. One aspect that would need improving - is to make the documentation much more user-friendly. At present the tool is quite restrictive, for example - responses cannot be updated, 'evidence' (e.g. documents) cannot be uploaded, response boxes are too small. (In D&G we have tested this tool, and thought that it had great potential - but required revision to enable evaluation to be shared more widely, including between purchaser and provider.)

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?

- Scottish Government - *CEL(2008)06: NHS Continuing Healthcare:*
http://www.sehd.scot.nhs.uk/mels/CEL2008_06.pdf
- The Mental Welfare Commission for Scotland web-site:
http://www.mwcscot.org.uk/mwc_home/home.asp
- Mental Health Tribunal for Scotland web-site:
http://www.mhtscotland.gov.uk/mhts/CCC_FirstPage.jsp

Are there any you would remove?

No

General Comments

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

We are grateful for your response. Thank you.