



Cabinet Secretary for Social Security and Older People  
The Scottish Government  
St. Andrew's House  
Regent Road  
Edinburgh  
EH1 3DG

17<sup>th</sup> January 2020

Dear Cabinet Secretary

**Reference to: Public Tendering For The Provision of Social Security Independent Advocacy Services - Scotland Wide.**

We are writing to express our grave concerns about the tendering of independent advocacy services for the new social security system in Scotland. We understand the Health and Social Care Alliance (The Alliance) have already written to you and we fully endorse the concerns raised in their letter.

**Independent Advocacy and Scottish Social Security**

Independent advocacy organisations have been providing support to vulnerable people across Scotland for almost 3 decades and have a wealth of knowledge and experience in supporting the most marginalised people in Scottish society. Independent advocacy supports the inclusion of disabled people in society, and supports them to take control of their lives.

The experience and insight of our members enables us to consider the current procurement exercise being undertaken for the commissioning of independent advocacy for the new social security system, due to begin implementation from the 1<sup>st</sup> June 2020.

In conjunction with 'The Alliance' a number of independent advocacy providers delivered the Scottish Government funded Welfare Advocacy Support Project, and have direct experience of providing support to

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disabled people accessing benefits. An immediate concern is that the learning from this pilot appears to have been overlooked by the Scottish Government in their drafting of the tender specification.

We were heartened by the innovative and insightful approach taken when the legislation was being drafted and approved, which committed the Scottish Government to a principled human rights based approach with people at the centre of the process. Thus avoiding the adverse experiences of the UK welfare reform agenda over the last few years, which have increased hardship for the poorest and imposed bureaucratic processes that have greatly disincentivised people making their rightful claim to much needed cash.

The inclusion of the commitment to independent advocacy support for disabled claimants was lauded as a new and enlightened approach, making sure that people with a disability had the support of an advocate if they felt they needed it when navigating the system. The aim was to maximise participation and entitlement to benefits, improve take up and income maximisation and ensure disabled people were able to navigate the system with the minimum of red tape and barriers. Access to independent advocacy for disabled people was seen as a key lever in meeting these positive outcomes.

It is with great concern and disappointment that we are writing to express our belief that the beneficial outcomes anticipated within the new system are at great risk of being lost due to the requirements in the draft tender for independent advocacy in the new social security system. Our belief is that unless this draft tender is substantially reformed, that disabled people will not be able to meaningfully access independent advocacy, thus limiting their ability to access the entitlements they have a legal right to.

We also note that the draft tender makes no reference to nor aligns with the principles, methodologies or requirements placed upon advocacy commissioning contained within the Scottish Government's own guidance on commissioning Independent Advocacy;

***'Independent Advocacy - Guide for Commissioners 2013' i***

We have detailed below our reasons for these concerns

**1. Spot Purchasing of Social Security Independent Advocacy.**

- a. We believe the proposed spot purchase service model contained within the tender is badly conceived as it does not meet the requirements of the proposed advocacy standards developed by the Scottish Government and other stakeholders and will have a significant detrimental impact on the service people access.
- b. In order for this new service to be successful it is crucial it is delivered by organisations with an expertise in independent advocacy, but who are also sustainable and robust. We believe that the spot purchase model places an unsurmountable burden and risk on local advocacy providers, and does not conform to the government's own guidance on commissioning advocacy which appears to have been disregarded;

***"There is now a much greater emphasis on partnership between commissioners and providers of services ...planners are responsible for enabling and facilitating the work of service providers, not just negotiating and paying for it". ii***

- c. At a meeting with the Scottish Government procurement team on 9/1/20 it was stated that funding for the service would be by spot purchase for support/services delivered, in arrears and available for 2 years, with some possibility of extension. We note the Guide for Commissioning Independent Advocacy places a responsibility on statutory commissioners to ensure core funding for service development is made available and states;

***"...it is essential that organisations have reliable core funding. This should run for at least three years".iii***

- d. We believe that without sustained core funding and an appreciation of the need for start-up and development costs, it will be impossible for any independent advocacy provider to enter the market for this tender and provide a quality service.
- e. We note that both in the tender document and the presentation provided at the meeting on the 9/1/20 the lack of clarity about what the Scottish Government will actually pay for. It is unclear whether the Scottish Government will only pay for face to face independent advocacy or if payment will also cover training, support and supervision and team meetings?
- f. We are concerned that organisations will not be able to recruit suitably qualified and experienced staff and be forced to employ staff on zero-hour contracts. We are also unsure about the necessity of the detailed information required by the Scottish Government about staff employed by independent advocacy organisations.
- g. The effect of this will be that local communities and the poorest in society may be deprived of the opportunity to have the support of well established, experienced and effective local community-based organisations when accessing social security, with whom many are familiar. We do not believe this will strengthen communities and in fact undermines community cohesion.

## **2. Access to Social Security Independent Advocacy and Restrictive Eligibility Criteria.**

- a. We are concerned about the proposed need for vulnerable people to provide identification in order to access independent advocacy. Many people supported by independent advocacy organisations may not possess a passport, driving licence or proof of address. We are not clear about this requirement and following the meeting on 9/1/20 we remain unclear about the types of identification required.
- b. We note with dismay that when this element of eligibility criteria was being questioned at the meeting on 9/1/20, the commissioning response was that this is a requirement to prevent fraud, with reference to individuals travelling from England to potentially defraud the new system. As benefit fraud accounts for less than 1% of current social security expenditure, we do not see the relevance of including references to fraud as the evidence base for restrictive eligibility tests. We thought the new approach to Scottish Social

Security emphasised maximising take up and respect for people with disability.

- c. We are concerned about the tone, and what would appear to be a lack trust and confidence in the ability of independent advocacy organisations to effectively manage support to people with complex needs. The clear implication is that these eligibility checks are required as advocacy may become complicit in fraudulent activity within the new scheme.
- d. Independent advocacy providers manage and are currently accountable for the expenditure of significant public funds in Scotland. They have also been operating eligibility criteria for access to their services, due to decreasing investment in advocacy, and significant increases in demand for services. We are happy to demonstrate how this could be achieved by providers having the necessary checks in place, without it becoming another barrier to vulnerable people accessing the new system.

### **3. Non-Instructed Advocacy and Inclusion**

- a. We have a major concern that according to the tendering documents and reinforced at the meeting on 9/1/20, only people able to instruct their advocate will be eligible to access independent advocacy to help them with their social security claim.
- b. Our understanding is that Scottish Social Security is available to all people with a disability in Scotland, some of whom may or may not have family, carers or a proxy decision maker. This is particularly relevant for people affected by some degree of cognitive impairment, severe communication difficulty and may not have anyone in their life to assist them. Some people may have someone they know, but there may be trust issues due to Adult or Child protection concerns. Indeed, one of the most reported areas of harm in Scotland is financial abuse of disabled individuals, where their benefits are mis-appropriated by harmers, often closely related to the individual.

- c. Individuals such as this remain eligible for disability benefits, but may need independent support when accessing and navigating the system, including the support of an independent advocate to challenge barriers, obstacles or harmers and promote the individuals views on how they wish their resources to be managed.
- d. The Scottish Government Guide for Commissioners notes that Non-Instructed Advocacy is necessary when;

***“...a person who needs an independent advocate cannot tell the advocate what they want. This may be because the person has complex communication needs or has a long-term illness or disability that prevents them from forming or clearly stating their wishes/desires. This usually takes place with people who have dementia or profound and/or severe learning difficulties”.<sup>iv</sup>***

- e. It would appear that a significant number of people, eligible for disability benefits, who meet the criteria above would be at risk of exclusion from the new scheme without additional support. Our view is that it is appropriate that an independent advocate provides that support. This would be consistent with the Scottish Government’s commitment to Equality rights and the UN Convention of The Rights of The Person with a Disability (UNCPRD). We also note that this approach promotes independence, and respects people as individuals, irrespective of their familial or other arrangements.
- f. This is not a new area of work for the Independent Advocacy sector as a significant proportion of our work in Scotland is non-instructed. Independent advocates get to know the person, try to get an understanding of their will, rights and preferences. We also speak with family members, carers and significant others and uphold and safeguard individual rights, and provide support to people to access additional other services they are entitled to. At the January meeting we were informed that non-instructed advocacy was not necessary as family members would step in to make the claim on the person’s behalf. We are concerned about the assumptions

contained within this statement as they do not reflect the experience of the people independent advocacy organisations support and seem not to appreciate the complexity of disabled people's lives.

#### **4. Quality Assurance, Measuring Impact, Service Effectiveness**

- a. The independent advocacy sector is committed to providing high quality services to vulnerable people. We think that the people who access these services are a key stakeholder and should be central to any evaluation of quality, impact and effectiveness.
- b. We are concerned at the absence of individual outcomes apart from being satisfied with the (advocacy) service contained within this tender. Effective independent advocacy organisations should be working to provide the highest quality of service, ensure people have a greater understanding of the processes, and are better equipped to deal with issues in the future.
- c. In addition, we would expect independent advocacy providers to provide feedback to the Scottish Government and the Scottish Social Security Agency on how they engage with people and areas for improvement.
- d. We find the service reporting requirements and KPI's within the tender to be overly proscriptive, unrealistic and restrictive. We note the Guide for Commissioners comments on the relationship between the commissioner and provider as;

***“... commissioners should recognise that the primary accountability of any advocacy organisation is to the people it serves. The organisation is accountable to commissioners for how it spends public money, and should be expected to report fully on this. ...commissioners do not own the organisation and should do what they can to encourage the organisation to maintain its independence.”*** <sup>v</sup>

## **5. Complaints**

- a. Independent advocacy organisations welcome feedback and comments on the quality of support they provide to vulnerable people. This allows for a process of continuous improvement and learning. However, we have concerns about the arrangements outlined in the tender regarding the handling of complaints about the proposed service. The tender documents appear to be explicit in stating that all complaints will be escalated to the Scottish Government. Given this is a service independent of Scottish Ministers, this may present as a conflict of interest, and at the very least will challenge the independence of advocacy providers.
- b. According to the tender documents there is a very tight timescale which appears to be outwith guidance issued by Scottish Government or the Scottish Public Services Ombudsman. Given that the SPSO have been at the forefront of developing best practice in complaints handling, we would have thought that this would be reflected in the tender. Other than complaints there is no reference to service feedback, positive or otherwise and this would appear to be an oversight.

## **6. Tender Evaluation**

- a. We are also concerned that the panel who will deliberate on awarding the tender will not include anyone with expertise in independent advocacy. This may be from an independent advocacy provider or someone who has had experience accessing support from independent advocacy. We feel this opportunity for co-production and evaluation is important and will enrich the tender evaluation.

## **7. Meeting with Scottish Government on 9/1/20.**

- a. The meeting noted above did not satisfactorily clarify the tender content nor how it will be evaluated. This presents a problem for tenderers and is unfair. If anything, given the statements made by

Scottish Government representatives at the meeting, the outcomes became more ambiguous with a number of those attending being confused by contradictory statements, or statements made which sharply diverged from the actual tender document e.g. it was stated at the beginning of the meeting that a manging agent model would not be the preferred procurement option for the Scottish Government, and would not score as highly as other preferred options.

- b. By the end of the meeting it was stated that an applicant who tendered as a manging agent would be evaluated as highly as any other option being considered. This left a number of those attending not knowing exactly how to proceed, it at all.

We urge the SG to withdraw the tender and work with us and other stakeholders to co-design the proposed delivery model.

Yours sincerely

*Shaben Begum*

Shaben Begum  
SIAA Director

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<sup>i</sup> Independent Advocacy – Guide for Commissioners. The Scottish Government. 2013

<sup>ii</sup> Independent Advocacy – Guide for Commissioners. The Scottish Government. 2013 p27 11.1

<sup>iii</sup> Independent Advocacy – Guide for Commissioners. The Scottish Government. 2013 p27 11.3

<sup>iv</sup> Independent Advocacy – Guide for Commissioners. The Scottish Government 2013 p49 para2

<sup>v</sup> Independent Advocacy – Guide for Commissioners. The Scottish Government.2013 p28 117.2