

CONSULTATION TASK AND FINISH REVIEW GROUP

SUMMARY REPORT**Purpose of the Report**

1. To advise Members of the recent consultations that the Consultation Task and Finish Review Group have responded to on behalf of the Committee.

Summary

2. At the Monitoring and Co-Ordination Group meeting held on 31st October 2011, agreement was given to the establishment of a Task and Finish Review Group to respond to health consultations on behalf of this Scrutiny Committee, with all Members of the Scrutiny Committee being invited to attend meetings.
3. This report outlines recent consultations which have been considered by the Review Group, together with the responses thereon (**Appendix 1, 2 and 3**) which have been submitted on behalf of this Committee.

Recommendations

4. That this Scrutiny Committee retrospectively approves the responses submitted by the Task and Finish Review Group, as detailed in (**Appendix 1, 2 and 3**) of this report.

Paul Wildsmith
Director of Resources

Background Papers

- (i) Department of Health Local Authority Health Scrutiny: Proposals for Consultation
- (ii) Department of Health Joint Strategic Needs Assessments (JSNAs) and Joint and Health and Wellbeing Strategies (JHWSs) draft guidance consultation: Proposals for consultation
- (iii) Department of Health Securing best value for NHS Patients

Abbie Metcalfe : Extension 2365

S17 Crime and Disorder	This report has no implications for Crime and Disorder
Health and Well Being	This report has implications to the address Health and Well Being of residents of Darlington, through scrutinising the services provided by the NHS Trusts.
Carbon Impact	There are no issues which this report needs to address.
Diversity	There are no issues relating to diversity which this report needs to address.
Wards Affected	The impact of the report on any individual Ward is considered to be minimal.
Groups Affected	The impact of the report on any individual Group is considered to be minimal.
Budget and Policy Framework	This report does not represent a change to the budget and policy framework.
Key Decision	This is not a key decision.
Urgent Decision	This is not an urgent decision
One Darlington: Perfectly Placed	The report contributes to the delivery of the objectives of the Community Strategy in a number of ways through the involvement of local elected members contributing to the Healthy Darlington Theme Group.
Efficiency	The Work Programmes are integral to scrutinising and monitoring services efficiently (and effectively), however this report does not identify specific efficiency savings.

MAIN REPORT

Consultation Task and Finish Review Group

5. Following the establishment of the Task and Finish Review Group, that Group have met on two occasions to respond to the Department for Health's proposals for Local Authority Health Scrutiny,
6. Details of the proposals are contained in this report and the responses submitted on behalf of this Scrutiny Committee are attached (**Appendix 1, 2 and 3**).

Department of Health Local Authority Health Scrutiny: Proposals for consultation

7. The Department of Health published intentions to strengthen and streamline the regulations on Local Authority Health Scrutiny.
8. The proposed changes were seeking to strengthen local democratic legitimacy in NHS and public health services, helping to ensure the interests of patients and public are at the heart of planning, delivery and reconfiguration of health services.
9. The document built on the proposals included in the Equity and excellence: Liberating the NHS and Local Democratic legitimacy in health: a consultation on proposals. The Committee responded to both of these consultations.
10. This consultation period ran for eight weeks from 12 July 2012 until 7th September 2012 and Members of this Committee attended one meeting to formulate the response (attached as **Appendix 1**) and respond to the consultation ahead of the deadline.

Joint Strategic Needs Assessments (JSNAs) and Joint Health and Wellbeing Strategies (JHWSs) draft guidance consultation: Proposals for consultation

11. The Department of Health published intentions to support Health and Wellbeing Boards and their partners in undertaking and contributing to Joint strategic Needs Assessments (JSNAs) and Joint Health and Wellbeing Strategies (JHWS) within the modernised health and care system.
12. This consultation period ran for eight weeks from 31st July 2012 until 28th September 2012 and Members of this Committee attended one meeting to formulate the response (attached as **Appendix 2**) and respond to the consultation ahead of the deadline.

Securing best value for NHS Patients

13. The Department of Health launched a consultation inviting comments on the proposals for regulations for the NHS Commissioning Board and Clinical Commissioning Groups on procurement, patient choice, competition and managing conflicts of interest.

14. The documents sets out proposed requirements to ensure good procurement practice; that commissioners enable patients to exercise choice, to prohibit commissioners from taking actions to restrict competition; that commissioners manage conflicts of interest and outlines Monitor's proposed investigative and enforcement powers.
15. This consultation period ran for eight weeks from 15th August 2012 until 26th October 2012 and Members of this Committee attended one meeting to formulate the response (attached as **Appendix 3**) and respond to the consultation ahead of the deadline.

Appendix 1

Members of Darlington Borough Council's Health and Partnerships Scrutiny Committee have considered the Department of Health Local Authority Health Scrutiny; proposals for consultation. Members have addressed the questions below and would like to make a few initial observations on the proposals to assign the Health Scrutiny power to the Local Authority, as opposed to Overview and Scrutiny Committees specifically.

The Health and Partnerships Scrutiny Committee has over the years, developed into a well-respected team of Members from a variety of backgrounds who come together to consider the health needs of Darlington's residents and the general public, leaving politics to one side. Members of the Scrutiny Committee are committed, determined and have developed expertise in all elements of the NHS and have established good working relationships with NHS Trust and other Local Authorities, Members believe that this would be a massive blow if the power of Health Scrutiny was assigned to the Local Authority and can see no reason for this to happen. Currently the Scrutiny Committee is directly accountable for the decision it makes and have clearly defined role, Members question whether this would be the case if the Local Authority were to have the power of Health Scrutiny.

The Health and Partnerships Scrutiny Committee would also like to stress that the work of the Committee is not only based around responding to NHS service configurations but also Members proactively scrutinise pertinent topics of interest. For example, the Scrutiny Committee have undertaken reviews in respect of developing a stroke card to raise awareness of the symptoms of stroke, commissioned leaflets in respect of the promotion of oral health and dental costs and are about to embark on a piece of work in respect of Chronic Obstructive Pulmonary Disease, one of Darlington biggest killers.

1. Do you consider that it would be helpful for regulations to place a requirement on the NHS and Local Authorities to publish clear timescales? Please give reasons.

Members believe that it would be helpful for regulations to place a requirement on the NHS and Local Authorities to publish clear timescales, as it would provide clarity for decisions and strengthen consultation guidelines. This would also contribute to consultations being undertaken more widely and enable the public to be meaningfully engaged about proposed changes.

2. Would you welcome indicative timescales being provided as guidance/ what would be the benefits and disadvantages of this?

Members thought that this would be a disadvantage and feel that it should be a matter for local determination and agreement.

3. Do you consider it appropriate that financial considerations should form part of local authority referrals? Please give reasons to support your view.

Members of the Scrutiny Committee are very aware of the financial constraints placed on the NHS and Local Authorities at this current time and the Committee has a proven record of scrutinising the elements which fall within its remit of the Medium Term Financial Plan. Members are mindful of financial considerations but think that it would be a step too far to make it a statutory requirement. It is accepted that financial considerations should be taken into account; however, this is not the main consideration for a Local Authority referral. Members of the Scrutiny Committee base their opinion on robust evidence around access and quality of service provision and consider what is in the best interest of their residents and the general public.

4. Given the new system Landscape and the proposed role of the NHS Commissioning Board, do you consider it helpful that there should be a first referral stage to the NHS Commissioning Board?

Members do not support the suggestion of a first referral stage to the NHS Commissioning Board and feel it would be an added layer of bureaucracy. Members also expressed concerns that making an initial referral to the NHS Commissioning Board could result in delays in decision making which could impact on patient care and safety. Members consider that using the expertise of the NHS Commissioning Board as a 'sounding board' would be helpful based on its discretion but this would depend on the nature of the relationship that Health Scrutiny will have with the NHS Commissioning Board, which is yet to be determined.

5. Would there be any additional benefits or drawbacks of establishing this intermediate referral?

Only that it may result in delaying the decision to be taken.

6. In what other ways might the referral process be made to more accurately reflect the autonomy in the new commissioning system and emphasise the local resolution disputes?

We have no specific comments.

7. Do you consider it would be helpful for referrals to have to be made by the full council? Please give reasons for your view.

Members of the Scrutiny Committee do not believe that this would be helpful. Firstly, Members of the Committee have built up an immense amount of knowledge and expertise on dealing with Health Scrutiny matters and the Committee is held in high regard by fellow Members, Officers and other Local Authorities. Without such a Committee, Members believe that well informed decisions about referrals would not be made, as decisions would be made by Councillors who have not been involved in gathering information. Members feel that this would undermine the value of Scrutiny and goes against the spirit of localism. Furthermore, agendas for full Council meetings are often long and decisions may be taken quickly and not given sufficient discussion time. The Scrutiny Committee is non-political and has a good reputation of cross party working and supporting each other.

The Scrutiny Committee is aware that the Department of Health had originally proposed that Health and Well Being Boards would have the power of Scrutiny over statutory consultations on proposed reconfigurations and this notion was rejected following widespread opposition due to the clear conflicts of interests between those who set Strategy and then scrutinise the implications of the Strategy. Members feel that if the power of referral was given to full Council the issue of conflict of interest would arise again with Members of the Health and Well Being Board sitting at full Council and deciding whether a matter should be referred.

Members also note that the consultation document refers to the fact that by ensuring full Council has a role to play in deciding upon a proposal being referred. It says;

“...will also bring health oversight and scrutiny functions in line with other local authority scrutiny functions, which also require the agreement of full council”¹.

Could the Department of Health provide examples of this? Members could not think of any areas where full Council agrees/endorsees substantive actions of the scrutiny process.

8. Do you agree that the formation of joint overview and scrutiny arrangements should be incorporated into regulations for substantial service developments or variations where more than one local authority is consulted? If not, why?

Members support the development of Joint Overview and Scrutiny Committees and currently work with well-established joint arrangements in the Tees Valley and across the North East Region. Members can see the value in the North East Joint Health Scrutiny Committee in considering issues that affect the wide local populations for example. Children’s Congenital Heart Services and some guidance on how they are constituted would be helpful.

¹ Para 72, page 19.

Members of Darlington Borough Council's, Health and Partnerships Scrutiny Committee have formulated the response below in relation to the Joint Strategic Needs Assessments (JSNAs) and Joint and Health and Wellbeing Strategies (JHWSs) draft guidance consultation.

1. Does the guidance translate the legal duties in a way which is clear in terms of enabling an understanding of what health and wellbeing boards, local authorities and CCGs must do in relation to JSNAs and JHWSs?

Members of the Health and Partnerships Scrutiny Committee agreed that the draft guidance is clear, and the legal duties are written in an understandable way. Members also wished for it to be known that the 'Easy Read Guide' contributed well to understanding the consultation document in advance.

2. It is the Department of Health's view that health and wellbeing boards should be able to decide their own timing cycles for JSNAs and JHWSs in line with their local circumstances rather than guidance being given on this; and this view was supported during the structured engagement process. Does the guidance support this?

Members of the Health and Partnerships Scrutiny Committee feel this is a fair view and have agreed that the guidance should provide such flexibility. Members believe that health and wellbeing boards must focus on their local area circumstances and if guidance was given it could act as a distraction from focussing on local circumstances.

3. Is the guidance likely to support health and wellbeing boards in relation to the content of their JSNAs and JHWSs?

Members feel that the guidance should support health and wellbeing boards in relation to the content of their JSNAs and JHWSs. The guidance is not prescriptive and caters for local flexibility.

4. Does the guidance support the principle of joined up working, between health and wellbeing board members and also between health and wellbeing boards and wider local partners in a way that is flexible and suits local circumstances?

Members believe the intentions of the guidance are good but feel that it should be up to the individuals involved to ensure integrated practices. Members feel that once sufficient time has elapsed, the tangible outcomes could be assessed, to determine whether or not 'joined up working' has been successful.

Although the guidance supports the principle of joined up working, there needs to be a focus on accountability which Members feel accountability should fall within the remit of Health Scrutiny Committees.

Members hope joined up working between the health and wellbeing board and wider local partners will strengthen existing integration. For example, the 'Responsive Integrated Assessment Care Team (RIACT)' has been devised jointly by Darlington Borough Council and the NHS trusts, the programme integrates services with wider local partners from various healthcare professionals to the voluntary organisations such as the Red Cross in order for the local community to benefit.

5. The DH is working with partners to develop wider resources to support health and wellbeing board members on specific issues in JSNAs and JHWSs, and equality is one theme being explored.

a) In your view, have past JSNAs demonstrated that equality duties have been met?

It is in the opinion of Members that past JSNAs and JWHSs have been in line with equality legislation.

b) How do you think that new duties and powers, and this guidance will support health and wellbeing board members and commissioners to prevent the disadvantage of groups with protected characteristics, and perhaps other groups identified as in vulnerable circumstances in your area?

Members stated the inclusion of Healthwatch would play a vital role in protecting the vulnerable groups. Healthwatch is not only the public and patient voice but a community and voluntary sector involvement link.

6 a) In your view have JSNAs in the past contributed to developing an understanding of health inequalities across the local area and in particular the needs of people in vulnerable circumstances and excluded groups?

It is the view of Members of the Health and Partnership Scrutiny Committee that JSNA in the past has contributed to developing Members understanding of health inequalities in Darlington Borough Councils local area.

6 b) What supportive materials would help health and wellbeing boards to identify and understand health inequalities?

Members think expert evidence and qualitative data is essential for health and wellbeing boards to understand health inequalities. Patient stories and case studies would provide a clearer and personal understanding of the issues of the local community.

7. It is the Department of Health's view that health and wellbeing boards should make use of a wide range of sources and types of evidence for JSNAs and they should be able to determine the best sources to use according to local circumstances. This view was supported during the structured engagement process. What supportive materials would help health and wellbeing boards to make the best use of a wide range of information and evidence to reach a view

on local needs and assets, and to formulate strategies to address those needs?

Members discussed what supportive materials would help health and wellbeing boards to do this and suggested that access to the Councils' Learning Information System and other quantifiable local data would be beneficial. Such data would provide local information on all aspects of health and wellbeing down to ward level. Members believe that training on legislation and collaborative working as well as, relevant on-going training to develop health and wellbeing board Members skills and awareness of the communities health needs is essential.

8. What do you think NHS and social care commissioners are going to do differently in light of the new duties and powers, and as a result of this guidance? – What do you think the impact of this guidance will be on the behaviour of local partners?

Members feel this cannot be answered at this present moment in time as the changes are in their infancy. However, Members feel individual partners do not always work together and the onus would be on them to encourage team working and develop a process of accountability. Members recognised the guidance proposes cultural change and is presenting the NHS and social care Commissioners with an opportunity to break down barriers and build relationships.

9. How do you think your local community would benefit from the work of health and wellbeing boards in undertaking JSNAs and JHWSs? – What do you think the impact of this guidance will be on the outcomes for local communities?

Members hope that health care needs would be met as JSNAs and JHWSs are specific and focused tools. Members feel the guidance encourages collaborative working and believe this should bring a seamless experience for patients and service users and a cultural shift to fully integrated working.

10. Additional Comments

Members of the Health and Partnerships Scrutiny Committee would like to add that the final guidance would benefit from being more robust, to 'ensure' rather than 'encourage' the new ways of working.

- 1. Do you agree that we should establish broad principles for good procurement practice in the regulations, rather than setting more prescriptive procedural rules?**

Answer: Yes

Please provide any further details below.

Members feel broad principles would enable commissioners to retain their autonomy and flexibility to be able to apply principles best suited to local circumstances.

However Members are concerned about 'any qualified provider' and whether patients at some stage could disagree with providers listed by commissioners, and if patients disagreed what further choices would patients have. Therefore further clarification is needed between procurement and patient choice.

- 2. Do we need to introduce any additional safeguards to ensure that commissioners comply with good procurement practice?**

Answer ; No

- 3. Could the proposals have any perceived or potential impact on equality including people sharing protected characteristics under the Equality Act 2010?**

Answer: No

Member's highlighted that commissioners would have a statutory duty to reduce inequalities and therefore cannot foresee any inequality problems.

- 4. Do you agree that the regulations should protect patients' rights to exercise choice as set out in the NHS Constitution?**

Answer: Yes

Please provide any further details below.

Members agree that regulations should protect patients' right to exercise choice and highlighted the government's ambition towards greater choice and control for patients in care and treatment.

- 5. Are there any further safeguards that should be established through the regulations or elsewhere to protect the extension of choice?**

Answer : Yes

Please provide any further details below.

Members believe that clarification on procurement and patient choice would be beneficial as they have concerns as to what would happen to patients who declined the providers listed.

- 6. Do you agree that we should adopt an effects based approach to assessing restrictive conduct by commissioners, rather than assuming that conduct which restricts competition is automatically against patients' interests?**

Answer : Yes

Please provide any further details below.

Members agree that an effects based approach should be adopted. The assumption that conduct which restricts competition is against patient's interest, would create a prescriptive approach. Members agree that setting out behaviour that is prohibited would not be the best approach and that behaviour would only be considered anti- competitive if the outcome was against patient interest.

- 7. What can the Department of Health, NHS Commissioning Board and Monitor do to ensure that commissioners understand the requirements so that they can effectively 'self-assess' whether or not their conduct falls within the rules?**

Members feel that the Department of Health, NHS Commissioning Board and Monitor should publish guidance and self-assessment tools, that would enable commissioners to effectively self – assess whether their conduct falls within the rules. Further suggestions are that the Department of Health, NHS Commissioning Board and Monitor highlight certain standards or criteria to ensure that commissioner's understand what the requirements are.

- 8. Are there particularly problematic behaviours which we should address specifically, for example in the requirements or in Monitor's guidance for commissioners?**

Answer : Yes

Please provide any further details below.

Members feel that there should be clear guidance on problematic behaviour and that the guidance should be regularly updated so that Commissioners are aware of what could be a potential breach of the regulations.

9. Do you agree that the Act and draft requirements impose sufficient safeguards to ensure that commissioners manage conflicts of interest appropriately?

Answer : Yes

10. If not, what additional safeguards could we introduce?

Members acknowledge that the Act and draft requirements impose sufficient safeguards to ensure that commissioners manage conflicts of interests appropriately however Members suggest further safeguards should be introduced to ensure transparency in decision making.

Members are concerned how the NHS Commissioning Board would manage its own conflict of interests. Members recognised that the NHS Commissioning Board performance manages Clinical Commissioning Groups and hosts Clinical Support Units which provides procurement support to Clinical Commissioning Groups. Members were concerned that a performance issue could arise directly from procurement decisions taken by the Clinical Support Unit on behalf of the Clinical Commissioning Group. There must be safeguards to show how the NHS Commissioning Board would deal with such a situation.

Members agreed that in relation to the NHS Commissioning Board, clarity needs to be given on how its conflicts of interest will be monitored and managed.

Additional Comments:

Members of the Health and Partnership Scrutiny Committee greatly welcome the new robust powers that Monitor will have in the future.