

INDEPENDENT SCRUTINY: CONSULTATION

The Board welcomed the concept of independent scrutiny with its potential to strengthen advice to Ministers and create greater public confidence and discussed the consultation paper at its January meeting to inform this response.

1. Review of Options

In reviewing the proposed options, we would make the following points:

- Options 1 and 2 do not propose models of independent scrutiny. Option 1 is essentially an engagement process, option 2 conflates a potentially independent body and the process of Local Authority scrutiny.
- In considering option 3 a number of points arose from the Board's discussion:
 - The option, as articulated in the paper is contradictory, - describing an expert Panel but one which has a majority of lay (non clinical members) to ensure public confidence;
 - The proposition of longitudinal involvement during the early stages of engagement and development of options by NHS Boards creates substantial opportunity for confusion on roles and responsibilities. Parts of these processes lie within the remit of the Scottish Health Council (SHC), and further elements are intended to be fully exposed in formal public consultation. It is the process of formal public consultation which fully, and finally, tests the Board's proposition for change and informs final Board decisions, prior to submission for Ministerial decision;
 - There was not agreement that people from a clinical background should be excluded from being Panel chair and there were concerns at the suggestion that a non-clinical majority should always be required;
 - In our proposal, outlined more fully later in this paper, the scrutiny should be timed and focused to consider the outcome of process and its conclusion;
 - The proposed conflation of the SHC current role and providing support to independent scrutiny creates potential for confusion rather than the Panel having its own secretariat led at a senior level. It is not clear where senior independent leadership of the support function would come from in an SHC model.
 - The Board's most significant concern was that there is great potential for confusion, duplication and delay if three processes led by different bodies are underway in parallel, ie:

- the NHS Board process of planning, review and engagement for service change;
 - the development, advice and scrutiny of public engagement by the Scottish Health Council;
 - the involvement of an independent scrutiny panel, from the earliest stages of the Board's planning, review and engagement process;
- An additional point of confusion is that the Board does not make final decisions on its proposals until the end of public consultation - by which time under option 3 independent scrutiny would have concluded and offered its advice. Ministers would therefore be in a position of having an Independent Scrutiny Panel report of process and options but no Independent Scrutiny Panel advice on the final outcome - that seems a significant deficit and is at odds with the aspirations outlined in parts of the consultation material.

The Board concluded there were serious issues with option 3, as set out and it does not present a workable option for scrutiny which will meet the expressed objectives.

2. Preferred Model

In our view, the most effective model would have the features below:

- A single Panel appointed through the public appointment process with an appropriate mix of experience from the NHS, local government, voluntary sector and lay people.
- That Panel to commission appropriate expert advice depending on the issue under consideration.
- The Panel to be supported by its own Director and support team - independent of other bodies.
- The Panel to offer advice and conclusions to the Cabinet Secretary on the planning and review process which has led to a Board decision requiring Ministerial consideration - and the correctness of the decision itself, not to formally engage in the earlier parts of the process.
- The Panel to offer the facility of informal advice to Boards during their planning and review processes.

This proposed model assumes that the Scottish Health Council retains its role in advising on public engagement and consultation processes.

3. Other Issues

The Board discussed a number of other issues in considering the consultation proposals, which we believe require careful consideration in finalising the approach to independent scrutiny. These points are summarised below:

- Service change decisions are often difficult and controversial. The higher levels of difficulty and controversy are often present where NHS Boards are not able to deliver the outcome which public opinion may seek, independent scrutiny may provide limited resolution, in these circumstances.
- The consultation material focuses very strongly on public opinion and does not acknowledge that the interests of patients and public opinion will often not be consistent. For example, where there is a very strong evidence base for change, in more specialist services, and change is therefore in the interests of patients, Scottish and UK experience has still seen substantial community opposition. A further example of this public/patient conflict relates to the location of particular services - for example, our own experience with the medium secure unit. There is also often community opposition to particular groups of patients and their treatments, for example, methadone treatment for people with addiction problems.
- The purpose and construct of independent scrutiny should be to provide advice to the Cabinet Secretary on proposals before her for decision, after the full pre-engagement and public consultation process are completed.
- Many decisions on NHS service change require a degree of judgement of conflicting or limited evidence and advice, and a degree of judgement on trade-offs, between clinical, economic and community factors. Creating different judgement processes, running in parallel, during the planning, review and pre engagement phase of decision making would be very difficult to manage to a conclusion for public consultation and thereafter ministerial decision making
- The proposed criteria for change do not highlight financial and value for money issues which are often significant in driving service change.
- We agree the Cabinet Secretary should be the trigger for independent scrutiny but these proposals do not give clear process or criteria for those decisions.
- Although the issue of Local Authority scrutiny was not directly part of the consultation, and as that scrutiny is not in place in Scotland it could not provide the trigger for scrutiny as it does in England, members felt the potential of this approach - across health services - was worthy of further consideration.
- Members also noted that if the proposal to directly elect members to NHS Boards is implemented reconsideration of these arrangements may be required.

- The Board were disappointed that the consultation material could have provided information on the Independent Reconfiguration Panel model in England and the five years of experience of its operation.
- The Board discussed the analysis of the experience of the SHC, set out in annexe one of the consultation papers and contrasted that to the local experience of dealing with a number of highly controversial service changes. The Board did not share the view that controversy has generally been created by process issues, and therefore, challenged the conclusions that improving and extending process is the route to improving public confidence. Although there is clear support for genuinely independent advice, offering a clear view on final service change proposals, to the Cabinet Secretary, from a properly constituted Panel.
- The Board would welcome further discussion on the Annexe 3 guidance, **“Informing, engaging and consulting the public in developing health and community care services”**, which proposes a number of new requirements, including changes to the role of the SHC, and a different approach to the consultation process heavily focussed on the use of options appraisal.

Response completed 24/1/08