Dan Isaac
Patients and Quality Division
Scottish Government
St Andrew's House
Regent Road
EDINBURGH
EH1 3DG

Date 21 January 2008
Your Ref
Our Ref GJB/GB/VM/letters/0121issac

Enquiries to George J Brechin
Extension 8080
Direct Line 01592 648080
Email george.brechin@nhs.net

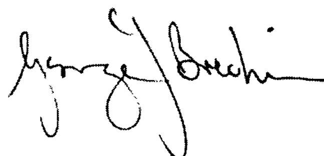
Dear Mr Isaac

INDEPENDENT SCRUTINY: THE INDEPENDENT EXAMINATION OF PROPOSALS FOR MAJOR CHANGE IN NHS SERVICES: A PUBLIC CONSULTATION

Thank you for the opportunity to comment on this consultation.

NHS Fife Board discussed the consultation document at length at its meeting on 18 December 2007 while considering its response. The Board has now agreed that the attached paper represents its views and has asked for the paper to be forwarded to the Scottish Government.

Yours sincerely



GEORGE J BRECHIN
Chief Executive

Enc

17497

CONSULTATION ON INDEPENDENT SCRUTINY AND INFORMING, ENGAGING AND CONSULTING WITH MEMBERS OF THE PUBLIC ON SERVICE CHANGE -

RESPONSE FROM NHS FIFE

Introduction

1. We welcome the opportunity to consider and respond to both the Scottish Government's proposals on Independent Scrutiny and the Guidance on Informing, Engaging and Consulting with Members of the Public on Service Change. Part A of this response deals with the Independent Scrutiny and part B with the Informing, Engaging and Consulting Guidance.

2. There are, however, three important considerations in relation to the Guidance that we felt we should point out at the outset. Firstly, the guidance contained in Appendix 3 of the document has no "read across" to the main thrust of the consultation document, on Independent Scrutiny. Many of the paragraphs in the draft guidance make no reference to the Independent Scrutiny process, even though they are referring to phases where this process would be activated:

   - Paragraphs 11, 13, 17 18 and 19 of Appendix 3

   - Paragraph 24 describes the decision to "move to the formal consultation stage" as a matter for the NHS Board and the Scottish Health Council, when, in fact, the independent scrutiny process will also have a direct impact

   - Paragraph 25 refers to the consultation document with no reference to the documentation which will emerge from the process of Independent Scrutiny

   We feel that the guidance on Informing, Engaging and Consulting will need to be revised to take account of the final decision on the independent scrutiny process.

3. Secondly, towards the end of the period of consultation separate consultation was launched on the direct election of members to NHS Boards. We are currently considering the implications of this second

consultation but at this stage we would point out that the implications of direct elections do not seem to have formed part of the thinking to date on the proposals for independent scrutiny.

4. Thirdly, another comment that is common to both parts of the consultation relates to the reference in the Action Plan for Better Health, Better Care to the introduction of a Participation Standard against which NHS Boards will be measured from 2009. This is likely to set the wider framework for informing, engaging and consulting members of the public, of which Independent Scrutiny is one possible element of the process. These different components need to be considered together – and, ideally, introduced to a co-ordinated timetable.

Part A: Independent Scrutiny

5. Turning to the specific proposal for Independent Scrutiny, we recognise that there is a clear policy direction to bring an element of Independent Scrutiny into the process of introducing change to NHS services. With this in mind, the Government's preferred option of an independent scrutiny panel is the best of the three options set out in the consultation document. Nevertheless, we have serious concerns about the process that we do not feel are adequately addressed in the consultation document.

6. The consultation document uses terms like "lay", "expert", "non-clinical" and, even, "independent", almost interchangeably e.g. paragraphs 21 and 22 of the document. We think greater rigour is required in what these mean, their impact on the selection of panel members and what the policy intention is. For example, what is the expertise that the panel member brings if that person is non-clinical? (In relation to this, we note that the ad hoc panels were chaired by a health economist/academic and a retired NHS professional.)

7. Moreover, there does not appear to be any place in the process for what most members of the public would recognise as a truly lay member i.e. a member of the public. We understand why, as it would be invidious to select a member of the local community to take on this role, but it is another example where greater thought needs to be given to the purpose of the process and the role of the panel members in it.

8. We refer in paragraphs 12-15 below to the difficulties that the NHS has had in engaging with members of the public over service change. The appointment of a panel which is termed independent or lay does not immediately address this. There also needs to be more detail given of the transparency and accountability of the panel.

9. We are aware that two Independent Scrutiny Panels have already been set up – to review service changes in NHS Lanarkshire and NHS

Ayrshire & Arran and in NHS Greater Glasgow & Clyde. They have now produced their reports. There is a major opportunity to review how these ad hoc Panels operated in practice and use this experience in finalising the guidance.

10. We are aware that there has also been a research project conducted by the Scottish Council Foundation on behalf of the Scottish Health Council looking into significant change in health services. This has looked at experience in NHS Borders and NHS Lanarkshire. The report is being finalised soon and the Scottish Government Health Directorates might also wish to consider the findings of this research.

11. The value in using both this experience and this research is the need to address some fundamental issues relating both to the independent scrutiny process and to past processes of public engagement. The consultation document in presenting the case for independent scrutiny suggests that improved communication, information and advice and more rigorous assessment of these could help.

12. No one would argue with this in general but the consultation document refers to evidence base. While some of the drivers for change are based on evidence, this is not always cut and dried. They still require an element of judgement or subjectivity e.g. the application of Royal College guidelines or other clinically-based standards, the willingness of staff to provide certain services or the ability to recruit to certain areas.

13. We suggest that in some of the recent debates about service change across the country the public's perception has been challenged, if not shaken, by forces in the face of which the NHS *seems* powerless. These include the influence of clinical governance bodies in determining clinical safety issues, changes to medical training with the impact of increasing specialisation and the impact of measures such as European Working Time Regulations.

14. These have all been powerful levers for change in the NHS and, when spelled out to the public, their reaction has been mixed. Some critics suggest that better management and planning would have avoided adverse impact on the service. Others suggest that NHS Boards are using this as an excuse to bring about change that they wanted in any case.

15. This last perception is fundamental to the debate and needs to be addressed in the development of policy. It relates to the mistrust some members of the public have about change in the NHS and what NHS managers and clinicians say to them. Independent Scrutiny is one measure that could help restore a measure of trust in the process of change. As long as judgements have to be exercised, however, it is questionable whether the proposed independent scrutiny process alone will be sufficient.

16. This issue is raised again with the requirement on NHS Boards to be able to demonstrate that "due weight" has been given to the views of the public. Due weight, both in absolute and relative terms, requires a judgement.

17. We feel that some of the issues we have touched upon mean that there could always be tension between what services the public want and what services the NHS feels able to provide safely – or often **continue to** provide safely. Consideration needs to be given to the possibility that it is not possible to design a process that enables a decision being taken without controversy if that decision does not please everyone.

18. Relevant to this is the definition of significant change. We are aware that work is in hand to try to define this. The understanding of what is a significant change and what is not is germane to this whole process and the final guidance should include this as well.

19. We note the realisation in the document of potential tension between the panel and its "focus primarily on the local circumstances" while requiring it also "to reflect a consistent policy approach to the design and delivery of services across Scotland". It will be important to see some form of consistency across Panels and it is not clear how this would be achieved.

20. We were unclear about the legal standing of an Independent Scrutiny Panel and whether there would remain an option for legal challenge e.g. through Judicial Review.

21. We have concerns about the role of the Scottish Health Council in the process, because it is being asked to perform several tasks at different stages. There is potential for conflict and confusion between these stages.

    (a) Any NHS Board planning a significant change and wanting to involve the public in the process will be discussing with the Scottish Health Council the timing and process for this, as the Informing, Engaging and Consulting Guidance makes clear.

    (b) In parallel, there will be a trigger which could bring the independent scrutiny process to bear. This could easily follow from the local bilateral discussion and subsequent discussions with the Scottish Government Health Directorates. If this does happen, the Scottish Health Council is then required to service the Independent Panel.

    (c) Once it has completed this work, the process moves into formal consultation, including the issuing of the commentary by the panel. The Scottish Health Council will then work with the NHS Board on the formal consultation process and subsequently report on the process to Scottish Ministers.

We suggest that the role of the Scottish Health Council in the process should be reconsidered, as we are not convinced that their involvement in all the ways suggested is practicable.

22. On a different but related point, we wonder if there will be any evaluation of the process of informing and engagement carried out by the independent panel.

23. We are also concerned that two stages in the process could duplicate one another. The Independent Scrutiny Panel will be involved in reviewing the need for change, the development and generation of options and information on all of this. Subsequently, the formal consultation on any change by the NHS Board will largely consist of precisely these three components. It is difficult to see where one will differ from the other, especially in the eyes of the public.

24. We recognise that the proposal for independent scrutiny stems from the need to have a better basis for dialogue between the NHS and the public on service change. We acknowledge the value of this and have no difficulty with the proposal in general. We believe, however, that we have highlighted some fundamental conceptual issues that remain to be addressed and some matters of practical operation that require further thought before the proposal is implemented. As we say in paragraphs 9-11 above, we believe there is an opportunity to do this in the light of current experience and research.

Part B: Informing, Engaging and Consulting with Members of the Public on Service Change

25. Paragraphs 4 and 6 in the Guidance/Appendix 3 of the document make an important point that responsibilities for public involvement should be part of routine communication with local people and proposals for service change should as far as possible emerge from the Board's day-to-day engagement with the people and communities it serves. This is true but it would be helpful if the guidance also demonstrated an awareness of the wider context of the patient experience initiative.

26. NHS Boards are increasingly broadening their public engagement process into the National Patient Experience Initiative. As Boards demonstrate better their ability to capture patient experience and then use this to develop their services, including changes to services, then the more traditional form of informing, engaging and consulting will develop and change.

27. As it is, apart from the hope expressed in paragraphs 6 and 13 that changes should emerge from regular communication and dialogue, the guidance makes no reference to the wider context of the patient experience initiative at all. Instead, it is based on the more narrow and traditional approach to service change i.e. option development (even

with public engagement), option appraisal, consultation document and consultation process. We would like to see the wider context given greater prominence.

28. We have referred in the introduction to the lack of a "read across" as a significant shortcoming in the guidance as drafted at present. There is another, which relates to an impact assessment. There is no evidence in the draft guidance that its impact on various communities has been assessed to ensure that it complies with the various equality duties. We think that there are several ways that it could have an adverse impact and the final guidance will need to demonstrate that it has considered this in full.

NHS Fife
January 2008