

Lothian NHS Board

Nursing
Deaconess House
148 Pleasance
Edinburgh
EH8 9RS
Telephone 0131 536 9000
Fax 0131 536 9009
www.nhslothian.scot.nhs.uk



NHS Independent Scrutiny Consultation
Freeport NATN452
Healthcare Policy and Strategy Directorate
St Andrew's House
2 Regent Road
EDINBURGH
EH1 0DR

Date 24 January 2008
Your Ref
Our Ref HTM/CMc

Enquiries to Heather Tierney-Moore
Extension 89069
Direct Line 0131-536 9069
Direct Fax 0131-536 9055
Email heather.tierney-moore@lhb.scot.nhs.uk

To Whom It May Concern

INDEPENDENT SCRUTINY: THE INDEPENDENT EXAMINATION OF PROPOSALS FOR MAJOR CHANGE IN NHS SERVICE - NHS Lothian Response to the Public Consultation

Please find attached NHS Lothian's response to the above consultation document, as approved at our Board meeting.

Yours faithfully

A handwritten signature in black ink that reads 'Heather L. Tierney-Moore'.

HEATHER TIERNEY-MOORE
Nurse Director

1750B



Headquarters
Deaconess House 148 Pleasance Edinburgh EH8 9RS

Interim Chair Bob Anderson
Chief Executive James Barbour O.B.E.

Lothian NHS Board is the common name of Lothian Health Board

Independent Scrutiny

The Independent Examination of Proposals for major change in NHS Service.

NHS Lothian Response to the Public Consultation

January 2008

Overview

NHS Lothian is committed to driving forward improvements in its dealings with the public in Lothian which '*strengthen the public ownership of the NHS by improving the rights [of the public] to participate*'. (Page 5, Better Health, Better Care: Action Plan, Scottish Government December 2007)

NHS Lothian is proud of its track record in delivering major changes in the quality and range of service provision. This progress continues to build robust, modern and inclusive approaches to public participation in our work. We look forward to expanding, developing, refining and being more inclusive in all we do supported by high quality and effective communications.

NHS Lothian recognises the Cabinet Secretary's desire 'to have more comprehensive reassurance and advice that the major decisions made by NHS Boards *'are based on the best available clinical and financial evidence and robust assessment and appraisal of options'*

In accepting that premise the Board is pleased to acknowledge the reaffirmation (in paragraph 8 page 8)

*"The purpose of independent scrutiny will be to provide more rigorous examination of the information and evidence, and an independent assessment for the public and Ministers, **while retaining the responsibility and accountability of NHS Boards and Ministers for decisions.**"*

General Comments

With specific reference to the last paragraph above, NHS Lothian Board wishes to emphasise its expectation that the role of the Board, and especially non-executive directors is to deliver 'Independent Scrutiny' in the decision making process. The role of non-executives in the discharge of governance through in part performance analysis should be recognised within the considerations for the overall delivery of scrutiny in NHS Scotland.

It would have been helpful to include in this consultation, a clear definition or set of criteria which the Cabinet Secretary will use to categorise a service

change as “major”. Much of the deliberations on how independent scrutiny would work, where in the planning process it would come, the fit with the production of business cases, and indeed when a Board would approach the Cabinet Secretary to establish whether a proposal was major change, remain unanswered.

One view could be that the Cabinet Secretary has the right at any point in time to call in NHS Board plans and the supporting evidence, should that be deemed necessary. This would be in preference to trying to define what is a major change in NHS services for a diverse group of Boards with diverse scope and complexity in their service planning, and requiring an additional process of Independent Scrutiny which may not be needed.

NHS Lothian would welcome consideration of the point, that not all major change would necessarily need to be independently scrutinised and that therefore the Cabinet Secretary should exercise judgement on whether or not Independent Scrutiny is needed.

This view is informed by the emerging Government agenda for more public ownership and improved rights to participate. This will inevitably mean that in all we do, whether major or not so major, we need to demonstrate proportionality of public engagement processes at all stages using a variety of appropriate methodologies.

NHS Lothian has contributed to the ongoing research project commissioned by the Scottish Health Council to define major service change. The consultation document states the following:

“Future decisions about the concentration of services on fewer sites should be limited on the grounds of resource or workforce constraints to services which:

- are highly specialised and a clinical benefit can be demonstrated, or
- receive seriously ill patients 24 hours per day, or
- care for medically unstable patients through the night, and for which
- it can be demonstrated that service redesign will not achieve a sustainable outcome.”

The emerging research outputs consider a scoring system against set criteria where a certain score would distinguish major change. However, NHS Lothian was concerned that what was proposed was not refined sufficiently to differentiate and practically all change would have been classified as major. We would be very keen to continue to progress the refinement to reach a definition. The public acceptability of the proposals during consultative phase has in the past escalated proposed change to major or significant. If our public involvement and engagement processes are effective then this potential for such escalation should be ameliorated. In any proposal criteria

or definition it is important that it is locally agreed and that Boards can ascribe a change as major based on local knowledge of sensitivity.

NHS Lothian notes that the consultation document does not include provision for major change where there is more than one NHS Board, nor regional or national planning. NHS Lothian and its partners in South East and Tayside (SEAT) Regional Board have approved Public Involvement processes. The Government may wish to consider how regional proposals levels of major change will fit in the proposed consultation.

It would be useful to set out very explicit mapping of the timing of the Independent Scrutiny within the current planning processes and timelines. While there may be some advantages for an Expert Panel to have an ongoing scrutiny role, we would suggest that Independent Scrutiny should be:-

- credible, trustworthy and independent;
- undertaken by those with recognised skills and expertise;
- a one off;
- at a specific point in the timeline;
- completed within a reasonable time with the report available to Boards within 20 days;
- undertaken in a consistent and systematic way with analysis derived from explicit criteria measures;
- realistic about the availability or absence of evidence;
- understanding that value for money is different from affordability;
- a supportive process which builds trust in all key stakeholders;

NHS Lothian Board in their consideration of the consultation response wished to express their desire for both of the following to be undertaken in a short timescale:-

- a) an explicit timeline from the identification of the need for Independent Scrutiny to its conclusion and report and
- b) the alignment of the timing of Independent Scrutiny within planning and business case production templates.

Options for an Independent Scrutiny Approach.

Option 1:- Decision Conference

NHS Lothian has had successful experience of using this type of methodology to support public engagement. We do not believe that this tool is appropriate to deliver – on its own – the desired outcomes. We do however recognise that it can be a valuable tool which Boards can use in generating and agreeing options for example.

Option 2:- A Scrutiny Body

NHS Lothian suggests that a body such as a local authority being asked to scrutinise evidence is not a viable option for the following key reasons:

- NHS Boards have developed integrated ways of working for service planning, finance and workforce and therefore to have one side of a partnership with an additional scrutiny role is a conflict of interest
- The larger Boards have integrated ways of working with more than one local authority which adds further complexity
- NHS Lothian suggests that current guidance exists requiring NHS Boards to inform and work with local authorities and that further statutory rights (as set out in paragraph 18) are not considered necessary.
- The desire to create a 'strong locally based element to independent scrutiny of service change' (paragraph 19) would not be delivered by this option as local authorities are rarely independent of NHS plans however;
- There may be an argument that local authorities could request Independent Scrutiny (Independent Scrutiny) if the Cabinet Secretary was to exercise judgement rather than automatically requiring Independent Scrutiny to be undertaken.

Other considerations

NHS Lothian suggests that further consideration should be given to create a role for Audit Scotland within the provision of Independent Scrutiny.

As a credible independent organisation with access to experts and analytical processes their role within the selected option could be further negotiated. *It may also be the case that the secretariat could be with Audit Scotland and that it acts as the scrutiny body which establishes the panel.*

Option 3:- An Expert Panel

NHS Lothian accepts that of the options outlined this is preferred subject to the proceeding comments.

Responses to Questions set out in the Consultation

Question 1 Do you agree that an expert panel is the most effective way to provide independent scrutiny? If not, what would be your preferred choice?

NHS Lothian would wish to see that the Independent Scrutiny process is informed by a robust evaluation of the current panels and processes undertaken in 3 West of Scotland NHS Boards.

We agree with the details as set out in Annex 2 and emphasise the need for credibility, expertise, skills and independence of panel members. We would wish to see an explicit set of timings against which all aspects of the panels work, from initiation to conclusion are undertaken.

The list of organisations from which nominations can be drawn should be greatly explained to include patient and staff side organisations, charitable, voluntary sector and academic organisations etc. For some panels, expertise may need to be sourced out-with Scotland. Non Executive Directors in NHS and other organisations may well have the required skills to undertake such a role.

Question 2 Do you agree that the role of the panel should be to assess the safety, sustainability, evidence-base and value for money of proposals for major changes to local NHS services?

NHS Lothian agrees that the role of the panel should be as set out above. We wish to be explicit however that affordability as a criterion is a decision for the NHS Board to make in balancing local demands, especially reducing inequalities.

NHS Lothian is concerned that there is no consideration as to what would happen

- a) In the absence of evidence and
- b) Where the evidence is contested between the Board and the panel (or other Independent Scrutiny mechanism)

We suggest that there needs to be consideration for a resolution process should there be a major difference of opinion between the Board and a panel. Such a dispute aired in public is unlikely to deliver confidence in a process (but may help inform the public of how complex some decisions can be).

Question 3 Do you agree that the panel chair should be a lay person appointed by Scottish Ministers?

NHS Lothian supports this and sees the logic in Ministerial appointment.

Question 4 Do you agree that the panel should have a lay majority among its members?

There is a need to ensure a balance between experience and skills, the size of the panel and lay membership. The overarching need is to ensure credibility. The public recognises the importance of getting the right people rather than a lay majority.

Question 5 Do you agree that the panel should assess the evidence and options during the process of public engagement prior to consultation, and provide a commentary on these that would be available to the Board and to Ministers in reaching decisions?

We believe the evidence generated from public engagement most certainly should be presented but suggest the review of public engagement processes is for the SHC and NHS Board to agree.

There is a potential advantage in a commentary from 'a critical friend' having a supportive effect rather than being seen to undermine the NHS Board's work. The timing of this being available prior to public consultation is accepted. However it would need to be explicit what the Cabinet Secretary was agreeing to by receiving the commentary and how that would interface with the needs of the NHS Board to then move on to public consultation. It would be unacceptable if NHS Boards had no right of appeal on a contested commentary and decisions were then made by Government. It is to be hoped that the Cabinet Secretary, on receipt of a mutually agreed commentary, would then endorse the Board's options and direct the Board to progress to public consultation.

Question 6 Do you have any other comments on how independent scrutiny should be carried out or on the guidance on 'Informing, engaging and consulting the public in developing health and community care services' at Annex 3?

We welcome the intention to finalise guidance on informing, engaging and consulting the public, which has been in draft since 2002. The main part of the guidance refers to informing, engaging and consulting for major service change and the steps

outlined clearly build on the previous guidance, which NHS Lothian has followed.

The definition of major service change is not clear and we look forward to receiving further information on the work commissioned by the Scottish Health Council to provide clarity. We are concerned however that the work on this to date would require the vast majority of NHS Lothian's redesign re-provision and service planning to be considered major. In order for the engagement process to be able to proceed at a reasonable pace, NHS Boards will need prompt advice at the beginning from the Healthcare Policy and Strategy Directorate, as stated in paragraph 10, as to whether proposed change is regarded as major. However, NHS Boards would not wish to find part way through the process that the categorisation was changed, because the Healthcare Policy and Strategy Directorate had altered its opinion.

The learning NHS Lothian has generated over many years of major service change is that "formal" consultation is invariably needed for a range of changes and strategy developments, irrespective of whether the Scottish Health Council (SHC) has agreed these are major changes (e.g. NHS Lothian Primary Care Modernisation Strategy was not considered "a significant service change", yet NHS Lothian undertook significant public consultation). It is therefore perhaps unhelpful to make this distinction of "formal", as the key factor is the extent and scope and range of methodologies to be used rather than the classification of "formal" consultation, while acknowledging that all change classified by the Minister, as major service change would require the broadest most inclusive approach. NHS Lothian suggests that the key decision rests on the mature and extent of the proposed change and that public consultation proportionate to that change agreed in conjunction with the SHC will remain a feature of all service planning.

The steps outlined in the process, paragraphs 13 to 31 are clear. The requirement to develop an involvement and communication plan at the start is welcomed and necessary. Rules of engagement in the process need to be clear, in particular that while NHS Boards will take note of the views of people affected, there may be occasions where not all people's views can be acted upon and NHS Boards have ultimately to make the final decision (as per paragraph 8 page 8 in the main document).

Paragraph 25 refers to information that must be contained within a consultation document. It includes the statement that it must balance any argument offered in support of an option with any relevant counter argument. This contradicts the process outlined prior to public consultation under option development and option appraisal, which requires it be shown why each option is considered viable. While NHS Boards may be required to state pros and cons of a particular option that have been considered, the option development and appraisal process inevitably will lead to either a) a preferred option or b) only 2 or 3 viable options. NHS Lothian understands that the status quo should remain an option where service centralisation is being proposed, given the Government's stated objective of an assumption against centralisation except in specific circumstances.

Question 7 Do you have any other comments on either the consultation process or your preferred choice?

NHS Lothian notes from paragraph 13, page 32 (Annexe 1, Independent Scrutiny – A Public Consultation) that the Independent Scrutiny process would not reach a view on a preferred option. This would remain a decision for the NHS Board to take as part of the option appraisal process.

This clarity is really important in affirming the role responsibility accountability and subsequent governance function of NHS Lothian Board.

It will be important that in coming to conclusions regarding the evidence put forward by the Board that any scrutiny process pays regard to the whole picture when major service change is part of a bigger programme of change.

Where evidence is found to be insufficient or inaccurate by the scrutiny process it should be a requirement that these opinions and conclusions are backed up by robust evidence themselves, which would also withstand scrutiny.