Independent scrutiny of NHS Boards proposals for major changes in local NHS Services

Response to the proposals from NHS Ayrshire and Arran

Introduction

NHS Ayrshire and Arran welcomes the opportunity to comment on these proposals and shares the Government's views that all decision making in regard to major service change across the NHS should be undertaken in a transparent, objective and objective basis before full public consultation takes place.

NHS Ayrshire and Arran has recently had experience of an Independent Scrutiny Panel (ISP). Our response, therefore, provides tangible examples of challenges to the usefulness of ISP and suggestions for effective alternatives.

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

Although some in the organisation feel that this may be the most effective option of the three offered in the consultation paper, the experience of NHS Ayrshire and Arran has raised a number of concerns.

Fundamentally, there needs to be clarity on whether the scrutiny is on *process* or on *substance*. They are very different.

For example we used PWC to provide process assurance to the NHS Board. A Scrutiny Panel could use this expert and independent audit as part of their consideration of the proposals. In our local experience it proved of no little concern that the thorough examination of our option appraisal by PWC and further independent advice given by an independent expert came to different conclusions to those of the ISP.

We also used a further external expert – Prof Trevor Sheldon, Professor of Health Studies and Deputy Vice-Chancellor of the University of York - to provide assurance on the research evidence search strategy and subsequent analysis and application of the evidence. Again, the thorough examination of this expert came to very different conclusions to that of the ISP.

On the basis of the above, we suggest that an alternative and more reliable approach is for Boards to have in place appropriate audit arrangements – agreed with the ISP – and on which the ISP can rely. This would avoid duplication and would be a more effective use of public monies.

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We strongly urge that the Scottish Government uses this experience from NHS Ayrshire and Arran to evaluate its preferred option before adopting it.

The other two options offered may be less resource intensive. However, both options present considerable challenges. For example, option one fails to give consideration to who will make the decision on which options go forward for scrutiny. Option 2 presents challenges as local authorities have considerable co-dependencies around issues such as the 'Joint Futures' agenda or mental health changes, which may unduly influence decision making. Local political pressures may also adversely affect the independence of the process.

It is unclear why the development of the role of the Scottish Health Council (SHC) has not been considered as an option. Given the independence of the SHC and the established infrastructure, it would be more effective to enhance the role of this body, rather than creating another scrutiny body. Clearly, the SHC will have to secure the necessary lay expertise on a case by case basis to address the change proposal under consideration.

An alternative approach to the development of the role of the SHC is the use of external auditors such as a social science department of a university or an independent research/professional organisation to evaluate the evidence.

Whichever approach is adopted, it is critical to have an explicit process on quality assurance on the work of the ISP. Our local experience shows conflicting views given by ISP and other independent experts on our processes and outputs.

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 NHS Boards proposals for major changes to local NHS services?

Clearly, any scrutiny panel should consider all the variables that form the process of developing robust proposals. It is therefore crucial that a robust, evidence based methodology is used consistently to ensure an agreed, accepted and understood approach to decision making (all stakeholders). The factors outlined in question 2 are an integral part of a robust approach.

The remit of the ISP in terms of process and procedure requires careful consideration. As noted above, there needs to be clarity on whether the scrutiny is on *process* or on *substance*.

It may be of value to note the kind of critical comment made by our external adviser in relation to the collation and interpretation of the research evidence. The Board had engaged him early in the process to give guidance and offer quality assurance. His final report following the release of the ISP final report highlighted the following concerns in relation to the ISP's comments on the

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Board's use and analysis of evidence. The Panel had been highly critical of the Board.

Professor Sheldon noted;

- 'At times, it appeared that the ISP was using the critique to 'score points'.

'The ISP does not seem to recognise (at least not explicitly) the complexities of developing an evidence base to inform policy making, especially an area as inherently contested as the configuration of health services. This is significantly more complex than, say, the appraisal of a health technology in several ways:

   - Polices are multi-faceted, having several components;
   - There is unlikely to be direct evidence on the effectiveness, cost-effectiveness or safety of the whole or even significant components of the policy options;
   - Studies that have been undertaken are only likely to provide indirect evidence relevant to some aspects of options;
   - Evidence from such studies is often likely to be of poorer quality than one would find from a related health technology. For example there is unlikely to be experimental or otherwise well controlled evaluation data;
   - There are likely to be questions about the generalisability or transferability of the results of studies to the geographical, social and institutional context in which the policy options are being considered.'

- 'In other words, 'facts' will rarely speak for themselves and interpretations will vary between people who are trying to be objective.'

- 'Overall, it is unlikely that complex reconfiguration proposals will ever be clearly evidence-based in the same way as medical interventions can often be. There will always be a need for high levels of judgement and interpretation of evidence and its application.'

Overall he was supportive of the approach taken by the Board.

Another challenge in the recent NHS Ayrshire and Arran experience with the ISP was that whilst the use of 'external' evidence including advice from Royal Colleges was agreed as acceptable, the ISP criticised the Board's use of such evidence.

The Remit of the Panels suggested in Section 5, P34, presents high risk if they were to encourage submission of alternative evidence-based perspectives and 'full range' of possible options. The recent local experience showed over 1000 options were generated in the development of options. There needs to be clarity as to how this process, if adopted, could be managed and assurance that the quality of evidence needs to be on par with that presented by the Boards.

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There is an absolute need to ensure clarity of purpose regarding NHS Boards statutory duties e.g. consultation and how this relates to scrutiny. Also, NHS Boards have in place appropriate audit arrangements. Such robust arrangements could be agreed with the ISP panel, which in operation would prevent duplication and be more cost effective.

Adequate public involvement in this process is crucial. Lay panel members must be given the training, support and information required to effectively contribute on an equal footing with any appointed clinical experts. Lay members should be involved in all aspects of the work of the scrutiny panel including determining priorities, gathering information, reporting and governance.

In the recent NHS Ayrshire and Arran experience, the ISP was tasked to conduct the public engagement process. This received criticisms from the public, elected members and staff as the ISP did not provide a public meeting for the population of North Ayrshire – the most deprived part of the local population; advertisement of the public meetings was very limited and gave very short notice, hence the attendance was poor; background information was sent out very late or given on the night of the public meetings hence those attending could not have meaningful dialogue on the night.

As another aspect of engagement with stakeholders the Panel visited only the Ayr A&E and not Crosshouse. Furthermore, the medical expert on the ISP did not make the visit with the Panel, hence the 'lay' members did not receive advice in assessing comments from staff they met.

It is essential to build in adequate time for meaningful public engagement and consultation, which was not the case in the recent NHS Ayrshire and Arran experience.

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

Yes, in accordance with the code of practice for Ministerial Appointments to Public Bodies in Scotland.

Direct appointment of the Chair by Minister could be subject to cynicism of genuine 'independence'.

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

Yes, to ensure the panel can provide transparent independent scrutiny. However, if truly 'lay' then an audit approach is the only possible route. If 'expert' then something more might be expected. Perhaps more time and the ability to recruit external expert advice needs to be possible if there is a lay majority.

It is not clear that a small panel of three or four individuals can have the competence to assess all of the issues. For example it did not prove possible for the Panel to visit the two A&E units in Ayrshire and the A&E expert on the Panel was unable to visit either.

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?

It would seem sensible as part of a robust approach to assess the evidence during the process of public engagement. This would give all stakeholders the chance to take stock of the process to date and provide an opportunity for further engagement and/or additional information to feed into the process.

However, a robust and consistent approach to appraising the available evidence is required. The methodology used must ensure objectivity and reduce any bias in interpretation. Any external review of the collation and interpretation of the research commissioned could be reviewed by the ISP, rather than the ISP attempting to do this themselves.

Clearly, the paucity of robust health service based research examining service change/ service efficacy is a major factor that has to be considered.

There needs to be clarity on the basis of judging whether the Board has taken proper account of the response from the public. Since many proposals for change will elicit criticism the fundamental principle of whether the decision is based on a 'vote' by the community needs to be addressed.

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?

Please refer to the alternative proposals outlined in the response to question 1.

NHS Ayrshire and Arran's recent experience of ISP's has highlighted practical/process issues, which require to be considered. This includes:

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- Communication – there were difficulties around communication between NHS Board officers and the ISP and a real lack of engagement. The Board believes that at least some of the problems of differing interpretations could have been solved with improved formal and informal contact. It was also the case that the ISP made public statements that invited controversy. The Board took the decision not to enter into public debate although this did cause some internal dissent.

- Timescales/Cost – timescales require to be realistic to allow an appropriate level of scrutiny. Also, the cost both in financially and in staff time has been considerable;

- Use of press briefings to selective individuals in the media in advance of the publication of their Interim and Final Reports.

Annex 3 sets out clearly the responsibilities of NHS Boards and provides detailed guidance on the process of robust community engagement. The role of the Scottish Health Council (SHC) is clearly defined. However, there requires to be further clarity around what constitutes 'major' service change. It would be essential for the SHC developed criteria to explicitly define 'major' service change. This will ensure consistency in application across NHS Scotland.

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

The approach to be adopted MUST:

- be subject to and stand up to quality assurance;
- bring added value in terms of usefulness of outputs to inform Board decision, use of staff time and public finance;
- be conducted within a clear code similar to those of public appointments, in particular – integrity, respect and ethical behaviours;
- have members are truly independent, without personal agendas, and present unbiased views.

It also must be the case that the consultation process has been in accordance with the standards for community engagement allowing all stakeholders an opportunity to submit their views.

In conclusion, NHS Ayrshire and Arran would urge caution in the adoption of Options 3 based on the negative experienced recently. This response has provided advice on the issues that need to be addressed if the process is to have credibility.

NHS Ayrshire and Arran also strongly recommend that other options should be considered and in particular:

- Boards to have in place appropriate audit arrangements – agreed with the ISP – and on which the ISP can rely. This would be a more effective use of public monies as there is no duplication of work. The use of an 'external auditor' model can check that the process is secure.

- Scottish Health Council might be able to provide the scrutiny over an 'audit' process.