

# **NHS Borders Response to the Public Consultation of Independent Scrutiny Proposals**

**25<sup>th</sup> January 2008**

## **Introduction**

NHS Borders welcomes the opportunity to respond to the consultation. The consultation paper has been distributed within NHS Borders and to key partners including members of:

- The Community Health and Care Partnership
- The Public Partnership Forum
- The Borders Involving People Network
- The voluntary sector including Borders Voluntary Community Care Forum

The Groups have agreed to feedback their views independently. This paper covers the response from NHS Borders.

## **General Comments**

A number of general comments were received including:

- The need to clarify the definition and the set of criteria to categorise service change as 'major'. Any and all public consultation is dependent on this. Experience within the NHS Borders consultation process evidences the need to reconcile different views, opinions and perceptions of 'significant/major change' both in quantitative and qualitative terms. Clarification of the definition would enable a more consistent approach to consultation around major change across a diverse group of NHS Boards. NHS Borders has contributed to the ongoing work commissioned by the Scottish Health Council to help define major change and notes that the complexity of the task has extended the timeline on this work. NHS Borders looks forward to the outcome and report from Scottish Health Council.
- NHS Borders welcomes the opportunity of further discussion of the point that 'all major change be subject to independent scrutiny' and suggests an increased role for the Cabinet Secretary in determining when to utilise independent scrutiny processes.
- Board and Joint Strategies are developed and consulted upon and often these attract a low level of interest even though many and creative opportunities are provided for involvement in the development of options and option appraisal. Thereafter, it is only when specific elements of the strategy come to be implemented that the public become enlivened and escalate their interest to prevent implementation often despite further opportunity to become involved along the way. The potential for this approach by the public to impact significantly on timescales and resource and the earliest realisation of efficiencies and savings has to be considered. The responsibility and accountability for those things lies with the Board when the difficult but very carefully and fully considered decisions are at least delayed, if not overturned by a process and a body which has no responsibility at all for that impact.

- NHS Borders uses a range of different consultation approaches to involve patients and the public in service change and redesign. These are carefully considered to promote patient and public involvement proportionate to the service change. This can be difficult to balance to the satisfaction and benefit of all involved. The proposals outlined create new dimensions of involvement and scrutiny. It is desirable that these complement existing processes without adding further complexities that stretch existing capacity levels.
- Local experience indicates that many of the methods used to gather public opinion allow the result to be biased towards the views of those people who have a very strong personal view on the matter rather than the view of the general population who may be able to take a more balanced overview of health services. It is important to be transparent in presenting different points of view.

## **Options for an Independent Scrutiny Approach**

### **Option 1:- Decision Conference**

NHS Borders has not formally used a 'decision conference' as a stand-alone public engagement process. It is recognised that this can be a valuable tool. Similar processes have been used to generate ideas and options as part of the service change/redesign work. NHS Borders experience of this part of the process indicates the need to establish robust terms of reference and accountability for decision making processes. NHS Borders considers that this is not a stand-alone option but may be part of an integrated process.

### **Option 2:- A Scrutiny Body**

NHS Borders does not support using Local Authority members as a scrutiny body based on the following:

- there is an existing programme of joint working and joint service provision between NHS Borders and Scottish Borders Council with an emphasis on moving towards increased joint service provision. This option would place members of Scottish Borders Council in the unusual position of attempting to scrutinise their own work. The independence and impartiality factors would be challenged.
- NHS Borders has developed strong partnerships with the voluntary sector. As an equal partner in the Community Health and Care Partnership the voluntary sector may be marginalised by this option.
- NHS Borders would support further exploration of the role of Audit Scotland in providing independent scrutiny. Audit Scotland has established a sound reputation in providing impartial scrutiny and has access to a wide range of professional expertise to contribute to this enhanced role.

### **Option 3:- An Expert Panel**

NHS Borders has received a mixed response to this option. In general terms the response indicates that of the three options offered this presents the best opportunity for further exploration of strengthened independent scrutiny processes in line with the above comments.

- The credibility of the experts is seen to be key to the success of the panel. The information given does not fully explain how this might be achieved. Reflecting on the consultation processes held in Borders over the past three years it is not immediately clear how exactly these consultation processes could have been enhanced through the involvement of 'experts'. Lessons learned from the scrutiny panels in place (in the West of Scotland) will perhaps assist Boards with this potential dilemma.

## **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 Borders supports the evaluation of the ongoing work of the independent scrutiny panels established in NHS Boards based on the review of local public consultation. NHS Borders would encourage an open discussion of the lessons learned from the work and experience of these panels and would wish to see this evidence integrated into the arrangements to proceed with an expert panel.

NHS Borders would wish to extend the nominating organisations to include the voluntary sector, the academic organisations, the staff side and other non executive directors within and outwith the NHS.

NHS Borders suggests that some service change may require expertise from outwith Scotland.

**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 Borders suggests that the role of the panel as described above should be targeted as a subset of the above. In particular there is a need to clarify value for money with affordability and to restate the role, remit and the accountability of NHS Boards to include affordability as central to the decision making processes.

NHS Borders would welcome clarification of a resolution process to deal with those situations where evidence is misinterpreted or contested.

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

**Yes**

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

NHS Borders supports an equally balanced membership to promote a range of experience from both professional and lay people and to provide a balanced view. In the experience of NHS Borders the public are most concerned about the integrity and credibility of the panel membership and the need to demonstrate that collectively they have all the required knowledge, skills and experience for the task in hand. This matters more than a numerical lay majority within the membership.

**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?**

NHS Borders works in partnership with SHC to review ongoing public engagement and public consultation process. We would wish this process to continue. The need to scrutinise evidence of good working practice within public engagement prior to public consultation is accepted however such evidence must demonstrate that the views of the public are included as part of the engagement process. Failure to do this risks public scepticism of the process.

NHS Borders would welcome clarification on how this work is assessed and how NHS Boards are involved in this process and in the arrangements for resolving contested decisions and the right of reply. This would strengthen the decision of the agreed, or in some cases, of the reconciled position prior to formal 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?**

NHS Borders looks forward to receiving the final and definitive guidance on informing, engaging and consulting the public and confirms that the current guidance is fully utilised in all service change and redesign work.

NHS Borders requests further exploration of option identification and option appraisal processes. In particular the retention of the status quo option in respect of centralisation of services requires clarification.

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

In developing further work on the use of expert panels it is suggested that core competencies be developed for panel members to demonstrate that these are:

- impartial

- credible
- consistent
- equipped to complete the task within the agreed timelines
- supportive
- command the trust of all stakeholders
- equal to the task in hand

Irene Morris  
Director Organisational Change and Development  
NHS Borders