

LEEDS CITY COUNCIL
SCRUTINY BOARD (HEALTH)

Liberating the NHS: Local Democratic Legitimacy in Health
Department of Health & Communities and Local Government

RESPONSE

Opening remarks / overall comment

In terms of the overall proposals to strengthen the involvement of local authorities within the commissioning of local health services, we are broadly supportive of the government's proposals. We feel the proposals will reinforce the power of 'well being' and make local councils central to the key decisions that are likely to significantly affect the population they serve and represent. As such, we eagerly await the proposals around Public Health and the role of local councils later in the year.

However, there are a number of aspects of the proposals currently put forward that we feel require further clarity, with likely implications needing to be carefully considered and planned.

As a Scrutiny Board with responsibility for health, we would question:

- Whether or not all the proposals are sustainable in the longer-term.
- Whether or not local GPs have the desire or all the necessary skills to commission all the services needed by their patients.

In addition, service commissioning only represents part of the role of local Primary Care Trusts, and we would question how and where functions outside of commissioning are to be undertaken and managed.

In terms of the specific issues associated with local democratic legitimacy in health, we would offer the following response:

Q1 Should local HealthWatch have a formal role in seeking patients' views on whether local providers and commissioners of NHS services are taking account of the NHS Constitution?

The government's proposed reforms of the NHS are underpinned by a stated desire to further strengthen patient choice and influence, in the commissioning and delivery of local NHS services. The NHS constitution usefully sets out the rights and responsibilities of patients within the NHS environment. However, overall public awareness and understanding of the NHS constitution is questionable.

As such, any role in seeking patients' views should also include a role in promoting and raising awareness of the details outlined in the NHS Constitution.

However, the specific role of HealthWatch needs also to be considered in the context of the Health Scrutiny and the role that undertakes.

Q2 Should local HealthWatch take on the wider role outlined in paragraph 17, with responsibility for complaints advocacy and supporting individuals to exercise choice and control?

There is some logic to this proposal, however there should be some caution around HealthWatch organisations having sufficient managerial skills, capacity and resources to exercise these roles efficiently, effectively and consistently.

Q3 What needs to be done to enable local authorities to be the most effective commissioners of local HealthWatch?

Commissioners of any service need to ensure they have a strong and clear vision of what they aim to deliver through the commissioning process, with sufficiently robust performance management arrangements to monitor delivery.

These details need to be adequately communicated at the outset of the commissioning process.

Q4 What more, if anything, could and should the Department do to free up the use of flexibilities to support integrated working?

A significant barrier to effective integrated working can be the restrictions associated with 'ring-fenced' budgets. All freedoms and flexibilities in this area should be considered to help ensure the needs of local communities are not put at risk due to needless bureaucracy.

The proposed statutory role of health and well-being board to promote service integration is an important duty that will help to drive local solutions. However, the role of the proposed health and well-being board needs to be supported by a duty for local GP commissioning consortia to cooperate and work with the local health and well-being board.

Q5 What further freedoms and flexibilities would support and incentivise integrated working?

A significant barrier to effective integrated working can be the restrictions associated with 'ring-fenced' budgets. All freedoms and flexibilities in this area should be considered to help ensure the needs of local communities are not put at risk due to needless bureaucracy.

Q6 Should the responsibility for local authorities to support joint working on health and wellbeing be underpinned by statutory powers?

Legislation on the role and function of health and well-being boards, including an outline of statutory powers, is a fundamental element needed to underpin the proposals. Such powers would provide clarity and should be seen as essential in supporting public accountability of such boards.

Q7 Do you agree with the proposal to create a statutory health and wellbeing board or should it be left to local authorities to decide how to take forward joint working arrangements?

The creation of a statutory health and well-being board is a fundamental element of the proposals to abolish local primary care trusts. A statutory framework, underpinned by local operational decisions and arrangements, is essential in trying to ensure high levels of consistency across England, in terms of their role and functions.

Q8 Do you agree that the proposed health and wellbeing board should have the main functions described in paragraph 30?

We do not believe that health and well-being boards should undertake a scrutiny function. We believe there should be a clear separation of executive (decision-making) and scrutiny (holding to account) functions. In our view, the proposals as currently drafted undermine recent improvements in public accountability arrangements.

Q9 Is there a need for further support to the proposed health and wellbeing boards in carrying out aspects of these functions, for example information on best practice in undertaking joint strategic needs assessments?

It is essential that the proposed health and well-being boards receive the necessary levels of professional and administrative support. While these aspects are likely to be determined locally, a targeted programme of development and support (similar to that offered to the development of health scrutiny) might usefully be considered.

Q10 If a health and wellbeing board was created, how do you see the proposals fitting with the current duty to cooperate through children's trusts?

We did not consider this aspect in detail and have no comments to offer.

Q11 How should local health and wellbeing boards operate where there are arrangements in place to work across local authority areas, for example building on the work done in Greater Manchester or in London with the link to the Mayor?

The effectiveness of joint arrangements is heavily dependant on local involvement and the willingness to cooperate. As such, we believe that such arrangements (where required) should be determined locally through the development and use of appropriate protocols and support arrangements.

Q12 Do you agree with our proposals for membership requirements set out in paragraph 38 - 41?

In terms of membership, we believe that any requirements set by government should be considered as the minimum standard: With the precise membership determined locally to reflect local circumstances and working arrangements.

Q13 What support might commissioners and local authorities need to empower them to resolve disputes locally, when they arise?

Mechanisms currently exist to resolve local disputes (in terms of local authority decisions and NHS commissioning), and are supported by existing legislation. This includes provisions for Councillors Call for Action (CCfA) within the Local Government and Public Involvement in Health Act (2007).

Commissioning decisions are invariably based on local priorities and decision-making. The integration of the commissioning of local health services within local authorities increases the profile of local democracy and importance of local policy choices.

Nonetheless, a framework that helps to support consistent decision-making (i.e. how different and/or conflicting evidence should be weighted and balanced) is likely to be invaluable.

Q14 Do you agree that the scrutiny and referral function of the current health OSC should be subsumed within the health and wellbeing board (if boards are created)?

No: A fundamental element of any arrangements aimed at developing and maintaining clarity in decision-making, counter-balanced with processes to ensure local accountability, is the separation of those different functions – i.e. ‘decision-making’ and ‘holding to account’ and maintaining a high degree of independence. Independence not only adds rigour to arrangements for local accountability, but it also provides another vehicle for patients and local people to raise concerns about proposals, which helps to maintain public confidence in such processes not being ‘closed shops’. As such, the separation of executive and scrutiny functions is a principle to uphold.

With the proposed abolition of local PCTs and creation of health and well being boards, it would seem appropriate that such boards would be best placed to maintain an overview and have overall responsibility for ‘health’ within the appropriate administrative area.

However, an overview (or policy development) function can be usefully undertaken by both decision-makers (in this case the proposed health and well-being board) and those responsible for holding decision-makers to account (scrutiny committees). In Leeds, such arrangements already exist locally and are set out in the Council’s constitution. Arrangements for scrutiny committees to exercise these dual roles have been working successfully in Leeds for a number of years, and can be demonstrated by the work of all Scrutiny Boards: In Leeds, Scrutiny Boards undertake specific inquiries aimed at developing and informing local policy, while maintaining a focus on accountability.

As such, the creation of health and well-being boards could be seen as an extension of current executive arrangements within the Council, which can be easily balanced with the extension of existing local scrutiny arrangements, alongside the statutory health scrutiny powers.

Q15 How best can we ensure that arrangements for scrutiny and referral maximise local resolution of disputes and minimise escalation to the national level?

It is agreed that local resolution of issues should be the preferred route where disputes arise. As such, in the interest of economy, it may be appropriate to provide a clear set of criterion that must be met before any proposed service change and be escalated to an Independent Reconfiguration Panel.

However, local experience suggests that most disputes (and the subsequent escalation of views on services changes) concern groups of patients and service providers rather than service commissioners. As such, with the proposals for all acute service providers to become Foundation Trusts (with the associated governance arrangements that are required), it is important that relationships between the acute trusts and health scrutiny are clearly defined and clarified. For example, with a Board of governors in place, is it more appropriate that patients/ patients groups to raise concerns about provision with the appropriate governor? If the issue is subsequently determined to be as a result of a commissioning decision, only then should it be raised with the scrutiny function.

In addition, with proposals for establishing HealthWatch, clarity is also needed on the relationships between HealthWatch and the scrutiny function to help ensure the roles are complementary and any potential duplication of effort is minimised. While local working protocols will be needed, an over-arching government view would be helpful to ensure a degree of consistency between different areas.

Nonetheless, with the emphasis of the current proposals being about empowering patients, it almost seems inevitable that there will be differences of opinion between patients and medical experts. Balancing the views of patients with the, sometimes, opposing views of medical experts (supported by clinical evidence) will not always be easy and some consistent guidance around how matters/ opinions should be weighted may be helpful.

Q16 What arrangements should the local authority put in place to ensure that there is effective scrutiny of the health and wellbeing board's functions? To what extent should this be prescribed?

Please see the response to question 14.

However, in summary, the creation of health and well-being boards could be seen as an extension of current executive arrangements within the Council. The extension of existing scrutiny powers associated with executive arrangements, alongside the statutory health scrutiny powers, that focus on commissioning policy / decision-making could provide a sufficient framework for effective scrutiny, while also providing sufficient flexibility for local arrangements in terms of structure and delivery of such arrangements.

This would also require an extension of current executive arrangements, specifically in terms of transparency in decision-making, by integrating general corporate governance principals (and associated local arrangements) within the overall management and operation of the health and well-being boards.

Q17 What action needs to be taken to ensure that no-one is disadvantaged by the proposals, and how do you think they can promote equality of opportunity and outcome for all patients, the public and, where appropriate, staff?

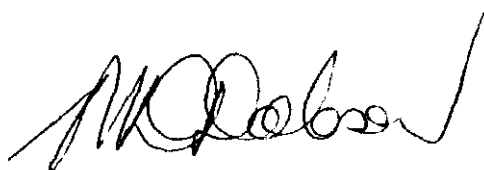
The NHS constitution sets out the broad principles for equality of opportunity and outcomes for all patients. Specific reference to this within any proposed bill laid before parliament will help strengthen such matters and further raise the profile and public awareness around patients' rights and responsibilities.

Q18 Do you have any other comments on this document?

We note the concerns of some professional bodies, such as the British Medical Association (BMA) and the Royal College of Nursing (RCN), recently reported in the media. In our capacity as the Health Scrutiny Board for Leeds, we will continue to meet and discuss the proposals (and their potential implications) with a wide range of stakeholders across the city, including the Local Medical Committee (LMC). We believe it is vital that the views of such bodies (and any concerns raised) are duly considered and taken into account within the overall consultation process.

We trust this response is useful.

On behalf of Leeds City Council's Scrutiny Board (Health)

A handwritten signature in black ink, appearing to read 'Mark Dobson', written in a cursive style.

**Councillor Mark Dobson
Chair**