

**LIBERATING THE NHS: LOCAL DEMOCRATIC LEGITIMACY IN HEALTH –  
BRACKNELL FOREST COUNCIL'S RESPONSE TO CONSULTATION QUESTIONS**

**Consultation Questions**

**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 Council are concerned that it must not be assumed that the local LINKs can assume the greater responsibilities of HealthWatch as proposed. The wider role of HealthWatch will require people with skills and experience as advocates and case workers. While the HealthWatch could certainly be in a position to ensure patients views are responded to this should not supersede, the Local Authority's role of holding the NHS to account through the present Overview and Scrutiny function, which is a vital to local democratic legitimacy.

**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?**

The Council considers that the role of HealthWatch needs to be more clearly defined, particularly in regard to conflicts of interest. Is it to be an enabler or a service provider? The provision of advocacy services for individuals who may want to complain about NHS services could be delivered through the Local Authorities' complaints services which are already well established.

The White Paper does not describe the relationship between local HealthWatch and the Patient Participation Groups, whose role could be supplanted by local HealthWatch.

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

This builds on Councils' strength of commissioning a wide variety of services. The Council would urge more definition of the role and expectation of the Councils themselves as commissioners of HealthWatch and of HealthWatch itself. HealthWatch cannot be a traditional voluntary organisation, and we believe that its responsibilities demand a more robust appointments process in the same way as non Executives on Health Bodies.

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

Funding arrangements are not flexible enough at present to allow for the whole system to benefit from savings made by one part of it. So, for instance if the Local Authority makes changes which benefit the NHS, then the saving stays within the NHS. Thus there is little incentive for each partner to work together for mutual benefit, indeed both sides seem to care most about their own interests. Overcoming this will also require a cultural shift at the interface of the NHS and Local Authorities.

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

A duty on the NHS similar to Local Authorities – ‘to promote integration’ - instead of the weaker proposed duty ‘to cooperate’ would be helpful, as would mutual responsibility for delivery of outcomes.

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

While it would seem right that the responsibility for supporting joint working be a statutory role, this will be an empty gesture unless any statutory duties are accompanied by appropriate funding by the government. The duty to promote joint working needs to be such for NHS commissioners also. If the Local Authority was part of the governance of the GP consortia, perhaps with a seat on the Board, joint working could be assisted by joint structures.

**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?**

Yes, a statutory footing would be appropriate. The new localism agenda demands that Councils should be a member of their local GP Consortium. Indeed, government could sensibly go further than this, giving Local Authorities the responsibility to commission local GP services rather than have these procured by the national NHS Commissioning Board, as proposed by the government.

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

With a fundamentally important addition, the main functions as set out in Paragraph 30 are acceptable.

The Council welcomes the Government’s commitments in the White Paper to: “strengthen the collective voice of the patients and the public through arrangements led by local authorities” (page 3); “to strengthen local democratic legitimacy and accountability” (page 4). The Council also welcomes the statements in the consultation document that: “Through elected members, local authorities will bring greater local democratic legitimacy to health” (page 1); “we propose an enhanced role for elected local councillors” (page 3); and “Public scrutiny is an essential part of ensuring that Government and public services remain effective and accountable” (page 13). Incongruously, these statements are swept aside by the statement on page 35 of the White Paper that the current statutory functions of Health Scrutiny would be replaced by the new Health and Wellbeing Boards, yet their stated main duties make no reference to Health Scrutiny. It is vital that Local Authorities can continue to hold NHS organisations to account for their performance publicly, and anything less would run counter to the policy statements in the White Paper and consultation document, and be a fundamentally retrograde step for localism and the accountability of the NHS.

The Council therefore suggests that the main functions in paragraph 30 should be

expanded by adding:

“Recognising the need to separate the Executive and Scrutiny Functions, each Health and Wellbeing Board will establish an Overview and Scrutiny Sub Committee with its members holding no Executive responsibilities. The Sub Committee will exercise the statutory powers in the Health and Social Care Act 2001 to hold NHS organisations to account publicly.”

**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?**

The Council is concerned to ensure that any additional duties placed on the Local Authority are adequately funded. The additional duties placed on the Local Authority as a result of the changes proposed in the White Paper are major. The Local Authority will require greater capacity to carry out these duties and thus greater resources to fund them.

**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?**

There would need to be a link between the Children’s Trust and the Health and Wellbeing Board to reduce the possibilities of parallel working. What needs to be clear is leadership and outcomes framework, this will ensure that matters are appropriately addressed.

The Children’s Trust is a key partnership for services for children and young people. Health Services are currently well represented on that group and play a full and active part. Future representation will need to be strong on the Children’s Trust, the sub groups and the LSCB.

**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?**

This question is not applicable to Bracknell Forest Council.

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

Yes, with an addition. Each Health and Wellbeing Board needs to have at least three Non Executive Councillors to exercise the Overview and Scrutiny role. Otherwise, the Health and Wellbeing Board members would effectively have to scrutinise their own performance, which is unsound. This fits with comments in the paper about the Health and Wellbeing Board being scrutinised.

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

Disputes would be less likely if there was a stronger duty on NHS organisations (see response to Q5). When they occur, disputes will need a local appeals system, possibly a public tribunal. It may be that the Parliamentary Ombudsmen could have a role in resolving disputes. Ultimately the Local Authority would see the Secretary of State being the final appeal route.

**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)?**

Yes, provided that the scrutiny and referral duties and powers are explicitly recognised, and are exercisable by 'backbench' Councillors without Executive responsibilities. Please also see answer to Q8.

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

Please see answers to Q5 and Q8.

**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 answer to Q8. The role of any Scrutiny or Audit Function of the Health and Wellbeing Board should be prescribed to enable the work to be carried out. Whichever model is used, it is vital for democratic accountability that there is effective scrutiny that and this requires the existing statutory powers of Local Authorities are undiminished.

**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 Council would expect that equality of opportunity is evaluated at every stage through equality impact assessments. A fair funding formula is needed to ensure no disadvantage, supported by a thorough Joint Strategic Needs Assessment.

**Q18 - Do you have any other comments on this document?**

The Council welcomes the main body of the proposals. However, there are concerns over 'change overload' and the risks inherent in the transition stages of such a far reaching transfer of responsibilities, whilst simultaneously cutting capacity. The Council will want to be assured that the capacity and resource implications on the Local Authorities have been addressed, both for the initial setup and the continuing costs.